

Shafran v Goldman

2016 NY Slip Op 33155(U)

January 26, 2016

Supreme Court, New York County

Docket Number: Index No. 653132/13

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

TIMOUR SHAFRAN and GEM C. ALGAN,

Plaintiffs,

- v -

Index No.: 653132/13
Motion Date: 01/26/16
Motion Seq. No.: 003

MICHAEL GOLDMAN,

Defendant.

The following papers, numbered 1 to 3 were read on this motion to dismiss counterclaim.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits	No (s) .	1
Answering Affidavits - Exhibits	No (s) .	2
Replying Affidavits - Exhibits	No (s) .	3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that to the extent that plaintiffs seek to dismiss defendant's counterclaim, such motion is granted, and to the extent that in his opposition papers, defendant seeks an order dismissing the complaint, such motion is denied, without prejudice to move for summary judgment on notice.

Plaintiffs are correct that defendant's counterclaim fails to state a cognizable claim for malicious prosecution, as defendant does not allege any special damages in his pleading, such as damages that might arise from an unlawfully obtained provisional remedy. See Purdue v Frederick Company, 40 AD3d 285 (1st Dept 2007); Engel v CBS, Inc., 93 NY2d 195, 206-207 (1999).

In addition, as argued by plaintiffs, there is no cognizable claim for civil harassment in New York State. Nor does a freestanding claim for sanctions exists. Nor do the allegations of the

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

counterclaim state a meritorious claim for retaliation.

With respect to defendant's defective motion for summary judgment dismissing the complaint, it should be noted that he appends and refers to an Order entered on May 16, 2014 (Marber, J.) in Goldman v Citicore 1, LLC, Index No. 011969/2012 (Supreme Court, Nassau County), which dismissed all counterclaims, and essentially argues that such order may have some collateral estoppel effect with respect to the instant complaint. An appeal of such order has allegedly been perfected in the Appellate Division, Second Department.

Defendant has withdrawn his sixth affirmative defense alleging lack of personal jurisdiction.

Accordingly, it is

ORDERED that the motion of plaintiffs to dismiss the counterclaim is granted, and the counterclaim is dismissed; and it is further

ORDERED to that the sixth affirmative defense is dismissed as withdrawn; and it is further

ORDERED that the parties are directed to appear in IAS Part 59, 71 Thomas Street, Room 103, New York, New York, to continue their discovery status conference on January 26, 2016, 10 AM.

This is the decision and order of the court.

Dated: January 26, 2016

ENTER:


DEBRA A. JAMES J.S.C.