

C.A.F., LLC. v Cheaper Peepers of Am., Inc.
2019 NY Slip Op 30743(U)
February 26, 2019
Supreme Court, Richmond County
Docket Number: 152421/2018
Judge: Jr., Orlando Marrazzo
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND
C.A.F., LLC.,**

DECISION/ORDER

DCM PART 21

HON. ORLANDO MARRAZZO, JR.

Index No.: 152421/2018
Motion No. 1, 2

Plaintiff(s),

-against-

**CHEAPER PEEPERS OF AMERICA, INC.,
CHEAPER PEEPERS OF STATEN ISLAND, INC.,
CHEAPER PEEPERS OF EAST MEADOW, INC.,
CHEAPER PEEPERS OF HICKSVILLE, INC.,
CHEAPER PEEPERS OF NEW HYDE PARK, INC.,
CHEAPER PEEPERS OF MARINE PARK, INC.,
CHEAPER PEEPERS OF FLUSHING, INC.,
CHEAPER PEEPERS OF NEW YORK-MDIV, INC.,
CHEAPER PEEPERS OF NEW YORK, INC.,
CHEAPER PEEPERS OF BALDWIN, INC.,
CHEAPER PEEPERS OF SPRINGFIELD GARDENS, INC.,
CHEAPER PEEPERS OF SPRINGFIELD GARDENS
REAL ESTATE, LLC, S&P WORLDWIDE FUNDING CORP.,
JOSEPH MARK DOHERTY, SEE OPTICAL, INC., D/B/A
CHEAPER PEEPERS, CHEAPER PEEPERS, LTD.
AND LONG ISLAND HOME & PROPERTY
MAINTENANCE, CORP.**

Defendant(s)

**CHEAPER PEEPERS OF AMERICA, INC.,
CHEAPER PEEPERS OF STATEN ISLAND, INC.,
CHEAPER PEEPERS OF EAST MEADOW, INC.,
CHEAPER PEEPERS OF NEW HYDE PARK, INC.,
CHEAPER PEEPERS OF MARINE PARK, INC.,
CHEAPER PEEPERS OF FLUSHING, INC.,
CHEAPER PEEPERS OF BALDWIN, INC.,
CHEAPER PEEPERS OF SPRINGFIELD GARDEN, INC.,
CHEAPER PEEPERS OF SPRINGFIELD GARDENS REAL ESTATE, LLC,
AND S & P WORLDWIDE FUNDING CORP.,**

Third Party Plaintiff(s)

-against-

GAINES & FISHLER, LLP AND ROBERT FISHLER, ESQ.

The following numbered 1 to 4 were fully submitted on 5th the day of February 2019

Papers
Numbered

Notice of motion to dismiss, with Supporting Papers and Exhibits, dated, January 7, 2019 1

Notice of cross-motion for summary judgment and to disqualify plaintiff's counsel, with Supporting Papers and Exhibits, dated, January 28, 2019 2

Reply affidavit in support of motion and in opposition of the cross-motion for summary judgment and to disqualify, dated, February 4, 2019.....3

Reply Affirmation in opposition of cross-motion for summary judgment and to disqualify plaintiff's counsel, dated, February 5, 2019..... 4

Plaintiff moves for an order pursuant to CPLR 3211 (a) (1) and CPLR 3211 (7) dismissing defendant's counterclaims and Third-Party Complaint against the Third-Party Defendants based on documentary evidence and alleging the failure to state a valid cause of action.

Defendant cross-moves for an order pursuant to CPLR 3212 for summary judgment on the first, second, and third causes of action. Defendant further seeks an order to disqualify plaintiff's counsel from representing them in this action.

As is set forth below, both motions are denied.

It is well settled that a motion for summary judgment is a drastic remedy which will be granted only when there are no triable issues of fact (*Alvarez v.*

Prospect Hosp., 68 NY2d 320 [1986]; *Andre v. Pomeroy*, 35 NY2d 361, 362 [1974];
CPLR §3212 (b).]

Once the proponent seeking summary judgment has established a prima facie showing of entitlement to summary judgment as required by CPLR § 3212; the burden shifts to the party opposing the motion for summary judgment to lay bare its proofs and to produce evidentiary proof in proper admissible form in opposition to the motion that is sufficient to establish the existence of material issues of fact which require a trial (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Davenport v. County of Nassau*, 279 AD2d 497 [App Div, 2nd Dept, 2001]; *Maviglia v. Inapart Properties Corp., et.al.*, 149 AD2d 482 [App Div, 2nd Dept, 1991].)

In arriving at the decision whether to grant or to deny such a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party, which requires it to give that party all the reasonable inferences which can be drawn from the evidence (*Fundamental Portfolio Advisors, Inc., v Tocqueville Asset Mgt., Lp.*, 7 NY3d 96, 105 [2006]; *McGill v. Bohack Corp.*, 69 AD2d 853 [App Div 2nd Dept, 1979]; *Negri v. Stop & Shop, Inc.*, 65 NY2d 625 [1985].)

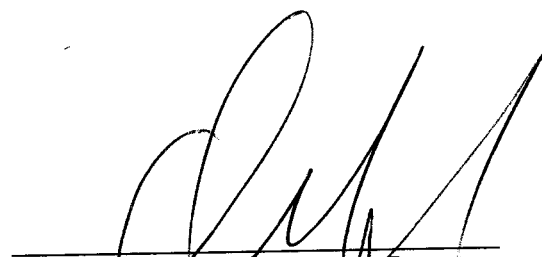
Here, there are several factual issues in contention that precludes this court from granting plaintiff or defendant their applications for an order of dismissal and or for summary judgment. Further, defendant failed to provide a legal basis that

requires the court to disqualify plaintiff's counsel from representing them in this litigation.

Accordingly, all motions are dismissed. This matter is adjourned to March 28, 2019, 9:30AM for a conference to set up a discovery schedule.

This constitutes the decision and order of the court.

Dated: February 26, 2019
Staten Island, New York



Orlando Marrazzo, Jr.,
Justice, Supreme Court