Kenzo Digital Immersive, LLC v Zeitgeist Parallax Inc.

2022 NY Slip Op 30944(U)

March 23, 2022

Supreme Court, New York County

Docket Number: Index No. 150452/2021

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DEBRA JAMES** **PART 59**

Justice

---X

KENZO DIGITAL IMMERSIVE, LLC and DAVID KENZO HAKUTA,

Plaintiffs,

- v -

ZEITGEIST PARALLAX INC. and CATHERINE NOVICK,

Defendants.

---X

INDEX NO. 150452/2021

MOTION DATE 03/23/2022

MOTION SEQ. NO. 001

ORDER - AMENDED (MOTION RELATED)

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24

were read on this motion to/for STRIKE PLEADINGS.

ORDER

Upon the foregoing documents, it is

ORDERED that pursuant to CPLR § 5019(a), the Decision and Order dated March 23, 2022 (NYSCEF Doc. No. 24) is hereby RESETTLED, AMENDED and CORRECTED, as follows; and it is

ORDERED that the motion pursuant to CPLR 3024(b) of plaintiffs to strike paragraphs 81 through and including 87, and paragraphs 89 through and including 90 of the counterclaims interposed in the Answer of defendants Zeitgeist Parallax Inc. and Catherine Novick is granted, and such counterclaims are deemed to have been so amended; and it is further

ORDERED that plaintiffs shall post on NYSCEF their Answer to such counterclaims within ten (10) days of service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to transmit to SFC-Part59@nycourts.gov and to SFC-Part59-Clerk@nycourts.gov and post on NYSCEF a proposed preliminary conference order or competing proposed preliminary conference order(s) no less than two days before April 21, 2022, on which date counsel shall appear via Microsoft Teams, unless such appearance is waived by the court.

DECISION

In Soumayah v Minnelli, 41 AD3d 390, 392-393 (1st Dept 2007), the Court stated:

> Supreme Court also erred in denying that aspect of the motion seeking to strike the seventeenth and eighteenth paragraphs of the amended complaint on the ground that these paragraphs contain "scandalous or prejudicial matter" that was "unnecessarily inserted" in the complaint (CPLR 3024 [b]). In reviewing a motion pursuant to CPLR 3024 (b) the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action (*see New York City Health & Hosps. Corp. v St. Barnabas Community Health Plan*, 22 AD3d 391 [2005]; *Bristol Harbour Assoc. v Home Ins. Co.*, 244 AD2d 885, 886 [1997]; *Wegman v Dairylea Coop.*, 50 AD2d 108, 111 [1975], *lv dismissed* 38 NY2d 918 [1976]; *see also Rice v St. Luke's-Roosevelt Hosp. Ctr.*, 293 AD2d 258, 259 [2002]).
>
> Here, the allegations that defendant Minnelli asked plaintiff how much money he wanted not to initiate suit and that she asked him to reconsider such action are not, at this point, relevant to plaintiff's claims. As a general rule, offers to compromise are

> inadmissible at trial (CPLR 4547). Thus, the allegations related to such are irrelevant and should be struck (*see* Siegel, NY Prac § 230, at 380 [4th ed] ["relevancy is still the best key to whether matter is 'unnecessarily' pleaded, and the best key to relevancy is whether it would be admissible in evidence at the trial"]; Siegel, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C:3024:4, at 323 ["In general, we may conclude that 'unnecessarily' means 'irrelevant'. We should test this by the rules of evidence and draw the rule accordingly. Generally speaking, if the item would be admissible at the trial under the evidentiary rules of relevancy, its inclusion in the pleading, whether or not it constitutes ideal pleading, would not justify a motion to strike under CPLR 3024 (b)"]). The allegations regarding the offers to compromise are not necessary for the sufficiency of plaintiff's causes of action for assault and battery, sexual harassment or retaliatory discharge and wrongful termination and "may instill undue prejudice in the jury" (*Wegman*, 50 AD2d at 111). Thus, the most prudent course of action at this juncture is to strike the allegations (*see Schachter v Massachusetts Protective Assn.*, 30 AD2d 540 [1968] ["(O)n balance, it would be more in keeping with sound discretion and the interests of justice to preserve defendant's right to a fair trial by not permitting plaintiff to invoke the liberal rule with respect to pleadings and allege the aforesaid prejudicial unnecessary matter under the guise of relevancy, which we do not find at this posture of the proceedings. We make no determination as to the relevancy or irrelevancy of such evidentiary matter at the trial, predicated on what may be adduced thereat. Nor is it intended, by striking these allegations, that, if said evidentiary matter should become relevant at the trial, they cannot be proved without being specifically averred in the amended complaint"]; *see also Van Caloen v Poglinco*, 214 AD2d 555, 557 [1995]; *JC Mfg. v NPI Elec.*, 178 AD2d 505, 506 [1991]).

So too here, the references to settlement negotiations and plaintiff's allegations of threat of litigation should such

settlement negotiations fail made in the subject paragraphs of defendants Answer are unnecessary with respect to defendant's counterclaims for violations of NYC Admin. Code § 20-927, et seq (Freelance Isn't Free Act). The allegations with respect to threatening litigation should no settlement be achieved is tautological, and is thus, not probative on the issue of retaliation. See L. Heller & Son, Inc. v Lassner Co., 214 AD315 (1st Dept 1925).

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3/23/2022		DEBRA JAMES, J.S.C.
DATE		

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION	
	[X]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER	
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ] REFERENCE