

Bruce v Solny
2022 NY Slip Op 35050(U)
August 24, 2022
Supreme Court, Kings County
Docket Number: Index No. 510162/2020
Judge: Robin K. Sheares
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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JANET BRUCE,

Plaintiff,

Index No. 510162/2020

-against-

SANFORD SOLNY,
SHANDELLE SOLNY IN HER PERSONAL CAPACITY,
SHANDELLE SOLNY IN HER CAPACITY AS
PRESIDENT OF A TO Z MANAGEMENT I. CORP.,
E 29 ST REALTY INC.,
A TO Z MANAGEMENT I CORP.,
ABRAHAM HOSCHANDER
ABRAHAM HOSCHANDER & ASSOCIATES PLLC
AVINOAM ROSENFELD, and
THE ROSENFELD LAW OFFICE PLLC,

DECISION AND ORDER

**Motion Sequence Nos.
#13, #15, #16**

Defendants.
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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this Motion:

<u>Papers</u>	<u>NYSCEF Document No:</u>	<u>Papers</u>	<u>NYSCEF Document No:</u>
<u>Sequence # 13</u>		<u>Sequence # 14</u>	
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed	288 - 289	Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed	298; 305
Exhibits	290 -293	Exhibits	299 - 304
Opposition	310	Opposition	318 - 319
Exhibits	311 - 312	Exhibits	
Reply	313		
Exhibits	314 - 317		
<u>Sequence # 15</u>			
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed	327 - 328		
Exhibits	329 - 337		
Opposition	344		
Exhibits	345 - 353		

After extensive oral argument, Motion Sequence Numbers #13, #15 and #16 are decided
as follows:

Motion #13

Plaintiff's motion brought pursuant to CPLR § 3211(b) to dismiss all of the affirmative defenses of Defendants Abraham Hoschander & Associates PLLC and Avinoam Rosenfeld and The Rosenfeld Law Office PLLC (collectively, "the Hoschander and Rosenfeld Defendants") in their answers (NYSCEF #s 200 & 201) is GRANTED. All of the Hoschander and Rosenfeld Defendants' affirmative defenses are dismissed with prejudice.

It is well-settled that such a shopping list of conclusory defenses should be dismissed as a matter of law. *See, e.g., Moran Enterprises, Inc. v. Hurst*, 96 A.D.3d 914, 917 (2d Dept, 2012) (reversing lower court for failing to dismiss affirmative defenses "since they merely pleaded conclusions of law without any supporting facts" and citing, *inter alia, Morgenstern v. Cohon*, 2 N.Y.2d 302 (1957); *Fireman's Fund Ins. Co. v. Farrell*, 57 A.D.3d 721, 723 (2d Dept. 2008); *170 W. Vil. Assoc. v. G & E Realty, Inc.*, 56 A.D.3d 372, 372–373 (1st Dept. 2008)). *See also, Scholastic Inc. v. Pace Plumbing Corp.*, 129 A.D.3d 75 (1st Dept. 2015) ("neither plaintiff nor the court ought to be required to sift through a boilerplate list of defenses, or be compelled to wade through a mass of verbiage and superfluous matter, to divine which defenses might apply to the case").

Motion #15

Plaintiff's motion to preclude the Hoschander and Rosenfeld Defendants pursuant to CPLR § 3042 from offering any evidence at trial concerning the items listed in Plaintiff's Demands for Verified Bills of Particulars (NYSCEF #s 253 & 254, "Plaintiff's Demands") is GRANTED.

In its order dated February 10, 2022 (NYSCEF #234), this Court warned the Hoschander and Rosenfeld Defendants that if they did not supply bills of particular “in proper form” by March 31, 2022, they would be precluded from offering evidence at trial concerning the items listed in Plaintiff’s Demands.

This Court finds that the documents the Hoschander and Rosenfeld Defendants submitted (NYSCEF #s 325 & 326, “Responses”) were not “in proper form”, as they were confusing and did not amplify the pleadings, limit the proof, and prevent surprise at trial. *Linker v. Cnty. of Westchester*, 214 A.D.2d 652 (2d Dept. 1995). The Court finds the Hoschander and Rosenfeld Defendant’s failure to comply with its February 10, 2022 order to be willful.

Furthermore, with respect to both Motions 13 and 15, the Court specifically finds that the Hoschander and Rosenfeld Defendants are acting in bad faith, having submitted a confusing litany of documents, including the above referenced answers (NYSCEF #s 200 & 201), the above referenced Responses (NYSCEF #s 325 & 326), and their first attempt at a bill of particulars (NYSCEF #320).

Motion # 16

The Hoschander and Rosenfeld Defendants’s motion to dismiss and/or for a stay in order to join the Estate of James Bruce “pursuant to CPLR § 1001” is DENIED for the following reasons:

1. The motion was improperly made, as section 1001 does not provide for dismissal of an action, the Hoschander and Rosenfeld Defendants have already filed (and lost) a motion pursuant to CPLR § 3211(a), and the single motion rule prevents them from filing a second motion to dismiss under CPLR § 3211(a); and
2. The Court finds that because the Plaintiff purchased the property at issue in this case with her husband, they were tenants of the entirety and any interest in that property or rents

derived from it passed to her when he passed away prior to the filing of this case.

Accordingly, there is no absent necessary party.

This constitutes the Decision/Order of the Court.

Dated: August 24, 2022



Hon. Robin K. Sheares, A.J.S.C.