

People v Balsamo, Rosenblatt & Hall, P.C.
2023 NY Slip Op 30386(U)
January 27, 2023
Supreme Court, Kings County
Docket Number: Index No. 509311/22
Judge: Karen B. Rothenberg
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At an IAS Term, Part 35 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 27th day of January, 2023.

P R E S E N T:

HON. KAREN B. ROTHENBERG,

Justice.

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THE PEOPLE OF THE STATE OF NEW YORK, BY
LETICIA JAMES, ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Plaintiff,

- against -

Index No. 509311/22

BALSAMO, ROSENBLATT & HALL, P.C., A.
BALSAMO & ROSENBLATT, P.C., AKA BALSAMO
& ROSENBLATT, P.C., ROBERT ROSENBLATT AND
EDWARD HALL,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) _____

9, 11-15 33-40, 42

Opposing Affidavits (Affirmations) _____

21 44-48

Reply Affidavits (Affirmations) _____

29, 31-32

Upon the foregoing papers, plaintiff, The People of the State of New York, by Leticia James, Attorney General of the State of New York (NYAG), moves (M.S.1) for an order: (1) dismissing defendants’ First, Third and Fifth through Thirteenth affirmative defenses, pursuant to CPLR 3211 (b), and (2) dismissing defendants’ counterclaims, pursuant to CPLR 3211 (a) (2) and (a) (7).

Defendant Robert Rosenblatt moves (M.S. 2), by order to show cause (OSC), for an order disqualifying Brent Meltzer, Esq. (Attorney Meltzer), as counsel for the NYAG on the ground that “his representation of Plaintiff violates the advocate-witness rule of the New York Rules of Professional Conduct . . .” (NYSCEF # 42).

Background

On March 31, 2022, the NYAG commenced this action against Balsamo, Rosenblatt & Hall, P.C. (Balsamo Law Firm), A. Balsamo & Rosenblatt, P.C. a/k/a Balsamo & Rosenblatt, P.C. and Edward Hall (collectively, the Balsamo Defendants) and Robert Rosenblatt by filing a summons and complaint. The complaint alleges that the Balsamo Law Firm “advertises itself as specializing in landlord tenant law in New York City” and “[i]ts principal business is the collection of debt through initiating legal proceedings against tenants and, in that capacity, they regularly attempt to and do collect debts on behalf of their clients” (NYSCEF #2). The complaint alleges that the other defendants are predecessors of the Balsamo Law Firm, its managing member (Rosenblatt) and its partner (Hall). The complaint further alleges that defendants Rosenblatt and Hall are partners at the Balsamo Law Firm and “have knowledge of [its] illegal, fraudulent and deceptive debt collection procedures and activities, and they collect debts on behalf of [the Balsamo Law Firm’s] clients”.

Regarding subject matter jurisdiction, the complaint alleges that:

“This Court has jurisdiction pursuant to: (i) N.Y. Executive Law § 63 (12) which authorizes the Attorney General to bring an action for injunctive relief, restitution, damages,

disgorgement, and costs on behalf of the People of the State of New York ‘[w]henver any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business’; (ii) N.Y. Gen. Bus. Law [GBL] Article 22-A, § 349 which authorizes the Attorney General to bring an action for injunctive relief, restitution, and penalties on behalf of the People of the State of New York against any person or business entity that has engaged in any deceptive acts or practices in the conduct of business, and (iii) N.Y. G[BL] Article 29-H, § 602 which authorizes the Attorney General to bring an action for injunctive relief on behalf of the People of the State of New York against any creditor or their agent that has engaged or is about to engage in prohibited debt collection practices”

The complaint asserts seven causes of action against defendants for: (1) violation of New York Executive Law § 63(12) by “falsely represent[ing] and imply[ing] in each and every rent demand and petition they send to tenants that they have used their professional judgment about the validity of the debt sought” when they do not do so; (2) violation of 15 U.S.C. § 1692, the Fair Debt Collection Practices Act, by “falsely representing the character, amount, or legal status of [the] debt[s] owed” by “[a]ttempting to collect debt where the debt collection notice or petition name[d] a landlord who does not own the property” and “[a]ttempting to collect [a] debt where the named tenant never signed a lease with the landlord” (3) violation of New York Executive Law § 63(12) based on repeatedly fraudulent acts, including commencing housing court eviction proceedings that assert materially false claims against tenants; (4) violation of GBL § 601 by “falsely represent[ing] and imply[ing] in the rent demands and petitions they serve on tenants that they have used their professional judgment about the validity of the debt

sought”; (5) violation of New York Executive Law § 63(12) based on the Balsamo Defendants’ alleged misconduct set forth in paragraphs 294-301 of the complaint; (6) violation of GBL § 349, the New York State Deceptive Business Practice Act, based on the “repeated filing of fraudulent debt collection lawsuits against New York consumers”; and (7) violation of New York Executive Law § 63 (12) and 22 N.Y.C.R.R. § 130-1.1 (Part 130) based on Rosenblatt and Hall’s filing of frivolous and false court submissions.

On June 8, 2022, Rosenblatt appeared pro se and filed a verified answer to the complaint in which he denied the allegations and asserted 13 affirmative defenses: (1) res judicata and collateral estoppel based on the litigation of *Calixto v Balsamo & Rosenblatt*; (2) failure to state a claim, pursuant to CPLR 3211 (a) (7); (3) statute of limitations; (4) there is no violation of GBL § 349; (5) if Rosenblatt violated GBL § 349, he did not do so intentionally; (6) defendant “complied with all industry standards for attorney review”(7) “the actions alleged herein have already been determined to not rise to the level of fraud required under NY Executive law 63 (12)”; (8) “[t]he exact claims . . . ha[ve] already been dismissed . . . by this Court, in a fully litigated proceeding, where all documentary evidence and arguments have been fully made and briefed” and “[d]efendant was awarded summary judgment dismissing all claims . . .” under 15 U.S.C. 1692, the federal equivalent of GBL § 349; (9) Attorney Meltzer “has had a long history as an adversary of [Rosenblatt] at his prior position as an attorney for Brooklyn Legal Services,” Rosenblatt and Attorney Meltzer have a “hostile relationship” and Attorney Meltzer should be disqualified; (10) Attorney Meltzer has “conspired with a private attorney to deprive

[defendant] of his constitutional rights”; (11) Attorney Meltzer has unclean hands; (12) Attorney Meltzer embarked on a “fishing expedition to sue . . .” without probable cause; and (13) after a “flow of information from a private attorney to [Attorney Meltzer’s] subordinate” “[t]hat subordinate was removed from the case without any explanation” (NYSCEF # 7).

Rosenblatt also asserted four counterclaims against the NYAG alleging that: (1) the NYAG’s claims were “filed in bad faith and for the sole purpose of harassing, and as such . . .” he is entitled to an award of reasonable attorneys’ fees costs; (2) the NYAG is liable for at least \$10 million in damages based on its malicious prosecution; (3) Attorney Meltzer commenced this action to defame defendant by allegedly making “false” statements to “others” outside of the NYAG’s office; and (4) abuse of process.

On June 14, 2022, the Balsamo Defendants collectively filed their verified answer to the complaint with identical affirmative defenses and counterclaims to those asserted by defendant Rosenblatt (NYSCEF # 8).

On June 29, 2022, the NYAG moved to dismiss all counterclaims, pursuant to CPLR 3211 (a)(2) and (a)(7), and to dismiss their First, Third and Fifth through Thirteenth affirmative defenses pursuant to CPLR 3211 (b) (*see* NYSCEF #. 9).

The NYAG submits an affirmation from Sherief Gaber (Gaber), an Assistant Attorney General, who affirms that “[i]n or about May, 2020 the OAG received a complaint from an advocate (the ‘Advocate Complaint’) about Defendants . . .” alleging

that they “were sending debt collection notices and litigating cases against tenants who owed no rent or significantly less than the amount verified in their court filings” (*see* NYSCEF # 11). Gaber affirms that:

“[t]he Advocate Complaint also provided OAG with a Federal Complaint where Balsamo’s debt collection practices were laid out in detail (*see Calixto v. Balsamo & Rosenblatt, P.C.*, 1:18-CV-04675 (E.D.N.Y.), the ‘Federal Calixto Case’). The Federal *Calixto* Case also identified several other tenants who owed no money, but that Defendants had sued in buildings owned by the same owner as Luisa Calixto, the plaintiff in that action.

“A review of the Federal *Calixto* Case documents showed that Defendants by letter conceded liability to a violation of the federal Fair Debt Collection Practices Act (‘FDCPA’, 15 U.S.C. § 1692 et seq), and this admission was subsequently incorporated as a finding into an Order of the Court . . .” (*id.* at ¶¶ 4-5).

Gaber explains that on or about June 20, 2020, the NYAG’s Office, pursuant to Executive Law § 63 (12), served a subpoena on the Balsamo Law Firm “seeking production of documents related to Balsamo’s debt collection practices, policies and procedures. In response, the Balsamo Law Firm produced an affirmation from Rosenblatt describing “the intake practices, what documents if any were reviewed by the firm prior to engaging in debt collection, and [the] process by which intakes would be transcribed to generate litigation papers” and Rosenblatt produced an intake sheet given to Balsamo Law Firm clients prior to commencement of a nonpayment proceeding Housing Court (NYSCEF # 3, Balsamo Law Firm intake sheet).

Gaber affirms that the Rosenblatt Affirmation “[a]lso attached [a] series of documents concerning debt collection efforts, including nonpayment proceedings in Housing Court, against a set of tenants specifically identified by OAG following allegations in the Federal *Calixto* Case” (NYSCEF # 11). Gaber’s office also reviewed a sampling of court files from cases in which the Balsamo Law Firm represented other landlords which “revealed at least two dozen other cases where Balsamo had violated federal or state laws related to debt collection practices”. Gaber asserts that the Balsamo Law Firm is “merely transcribing information given to them by their clients with no further review” which is not “meaningful attorney review” and its filing of frivolous lawsuits constitutes a violation of debt collection laws. Specifically, Gaber affirms that the Balsamo Law Firm has sought to collect debts where: (1) the collection notice or petition names a landlord who does not own the property; (2) the named tenant never signed a lease; (3) the notices and court filings seek to evict a tenant with the wrong unit number; (4) no rent was owed; (5) the petition claims an inaccurate monthly rent; (6) the petition mischaracterizes the nature of the debt by falsely claiming that there is a current lease; and (7) “in rent stabilized tenancies, the apartment rent was not registered with the New York State Division of Housing and Community Renewal (‘DHCR’) . . .”.

Finally, Gaber affirms that in 2021, after the Federal Court declined to exercise supplemental jurisdiction over Calixto’s state law claims, Calixto commenced the Calixto State Action against the Balsamo Law Firm, and submits an April 6, 2022 decision and order, pursuant to which the court (Joseph, J.) dismissed Calixto’s GBL § 349 claim

asserted in the Calixto State Action for allegedly filing inflated rent demands and frivolous litigation against rent-stabilized tenants, pursuant to CPLR 3211 (a) (7) (NYSCEF # 14). Gaber notes that “[t]he decision addresses only Luisa Calixto’s allegations that the Defendants in that action were engaged in a scheme to oust rent stabilized tenants through filings in housing court” and “made no mention of debt collection practices and did not make any determination or discussion beyond Luisa Calixto’s individual pleadings” (NYSCEF 11).

The NYAG also submits an affirmation from Attorney Meltzer affirming that:

“I began working at the OAG in or about August 2016. Before that, I worked at the New York City Department of Housing Preservation and Development from January 2015 until July 2016.

“I have not appeared in a New York City Housing Court matter since at least 2014. Upon information and belief, Robert Rosenblatt never appeared in Housing Court, and to the best of my recollection, I have had one telephone conversation with him although I do not recall the date, the case, or the substance of that interaction. I do not know what Mr. Rosenblatt looks like and we have never had a relationship, adversarial or otherwise” (NYSCEF #15).

The NYAG’s brief argues that the Balsamo Defendants’ First, Third and Fifth through Thirteenth Affirmative Defenses should be dismissed “as no meritorious claims or defenses have been made” and that the Balsamo Defendants’ counterclaims “each fail to state a cause of action, and, moreover, the Supreme Court does not have subject-matter jurisdiction to hear damages claims against the State” (NYSCEF # 10).

All of the Balsamo Defendants, *with the exception of Rosenblatt*, opposed the NYAG's dismissal motion. They submit an attorney's affirmation arguing that "I have read the attached Preliminary Statement and argument [in their opposing brief], which sets forth relevant facts on which my clients' opposition [is] based and believe them to be true and accurate . . ." (NYSCEF #21).

The Preliminary Statement in the Balsamo Defendants' opposing memorandum of law erroneously states that the NYAG seeks to strike *all* of their affirmative defenses, which is not true (*see* NYSCEF # 20) and also erroneously states that the Calixto State Action "alleging the *same claims* as this herein proceeding . . . was *dismissed on the merits* by this Court". Contrary to the Balsamo Defendants' assertion, the record reflects that the Calixto State Action complaint was dismissed on a *pre-answer motion* which *was not on the merits*, was based on an inadequate pleading by Calixto and did not mention or discuss the propriety of the Balsamo Law Firm's debt collection practices (NYSCEF #14). Finally, the Balsamo Defendants argue that the NYAG is "attempting to cause the litigation of a summary eviction case into a debt collection matter, even though the Courts have already determined that litigation is not considered debt collection under the FDCPA" (NYSCEF # 20).

The NYAG, in reply, submits an affirmation from Gaber asserting that Rosenblatt failed to either oppose the motion or timely cross-move.

The NYAG also submits a reply brief claiming that the Balsamo Defendants' opposition "refutes none of the OAG's arguments for dismissal of their defenses and counterclaims".

Rosenblatt, after the return date of the NYAG's dismissal motion on November 7, 2022 moved, by OSC, for an order disqualifying Attorney Meltzer as counsel for the NYAG because his representation allegedly "violates the advocate-witness rule of the New York Rules of Professional Conduct" (*see* NYSCEF #42).

Rosenblatt submits an affidavit attesting that Attorney Meltzer "has a vendetta against me and my firm, and this is a personal war brought about by Mr. Meltzer to punish me and my firm for personal reasons" (NYSCEF # 34). Rosenblatt further claims that "I have never had a more toxic relationship with any attorney in my life as I have had with Mr. Meltzer" while he was an "attorney for South Brooklyn Legal Services and my adversary in well over 100 cases". While Rosenblatt attests that he had several "heated" telephone conversations with Attorney Meltzer, he acknowledges that *he never met Attorney Meltzer in person*. Rosenblatt recounts their "last conversation . . . approximately **15 years ago**" after which they never spoke again.

Rosenblatt claims that Meltzer went after him by conducting a fishing expedition 3 years ago as a "prolonged campaign of harassment". Rosenblatt attests that he has made several requests that Attorney Meltzer recuse himself to no avail and that "discovery will demonstrate to this court that vast used by Mr. Meltzer to take me down.

Rosenblatt asserts that disqualification is warranted because “[t]his proceeding is inherently prejudicial to me as long as Mr. Meltzer is involved” and submits affidavits from two attorneys who worked for him, in which they attest to the hatred between Rosenblatt and Meltzer.

The NYAG, in opposition, submits an affirmation from Meghan Faux, the Chief Deputy Attorney General for the Division of Social Justice at the NYAG’s office, who affirms that:

“On June 1, 2022, Defendant Rosenblatt wrote me an email where he sought the recusal of Brent Meltzer in this case, accusing him of bias and animus. This was the second time I had considered a request by Mr. Rosenblatt to have Mr. Meltzer recused and in each instance I found no basis to do so.

“On June 8, 2022, I responded to Mr. Rosenblatt’s email. See June 8, 2022 email attached as Exhibit A. In my response, I explained that the ultimate decision about whether to open an investigation or commence litigation was not made by Mr. Meltzer, and there was simply no merit to the accusation that this litigation had been commenced because of Mr. Meltzer’s personal feelings toward Rosenblatt. In fact, our subsequent review of court records, complaints and his firms document production found copious evidence that he repeatedly violated various federal and state laws in the course of their debt collection activities.

“Mr. Rosenblatt’s affidavit now clarifies that his interactions with Mr. Meltzer occurred almost 15 years ago, further showing there is no merit to this claim” (*id.* at ¶¶ 3-5).

Meltzer also submits an opposing affirmation affirming that:

“As I have previously affirmed, I have not appeared in a New York City Housing Court matter since at least 2014 when I

left legal services. I began my legal career at South Brooklyn Legal Services in 2002 and became the director of the housing unit in or about 2008.

“Upon information and belief, Robert Rosenblatt never appeared in Housing Court, and to the best of my recollection, I have had one telephone conversation with him although I do

not recall the date, the case, or the substance of that interaction. I do not know what Mr. Rosenblatt looks like and we have never had a relationship, adversarial or otherwise.

“It appears that Mr. Rosenblatt and the two attorneys who provided affidavits have mistaken my identity with someone else. This is not surprising considering they allege these interactions occurred fifteen years ago in 2007” (NYSCEF #46)

The NYAG also submits a memorandum of law arguing that Rosenblatt has not satisfied his burden of demonstrating that ““(1) the testimony of the opposing party’s counsel is necessary to his or her case, and (2) such testimony would be prejudicial to the opposing party”” quoting *Levy v 42 Dune Rd., LLC*, 162 AD3d 651 [2018]) (*see* NYSCEF # 49). The NYAG notes that Rosenblatt “never actually identifies what Mr. Meltzer would be testifying to at trial”

The NYAG’s Dismissal Motion

NYAG seeks dismissal of all but two of defendants’ thirteen affirmative defenses. CPLR 3211 (b) provides that “[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit.”

The NYAG has demonstrated that defendants’ First affirmative defense for res judicata and collateral estoppel based on the Calixto State Action is subject to dismissal.

As previously discussed, the April 6, 2022 decision and order in the Calixto State Action granted the Balsamo Law Firm’s pre-answer motion to dismiss Calixto’s GBL § 349 claim based on allegations that the Balsamo Law Firm filed inflated rent demands and frivolous litigation in a scheme to oust rent-stabilized tenants. It was a summary eviction proceeding regarding a rent stabilized tenant, as distinguished from the instant action regarding debt collection practices. Not only was the decision and order in the Calixto State Action made on a pre-answer motion, which is not a “final judgment” upon which res judicata or collateral estoppel must be based,¹ but the Calixto State Action was between different parties and did not involve the Balsamo Law Firm’s debt collection practices. For these reasons, defendants’ First affirmative defense lacks merit and dismissal is warranted under CPLR 3211 (b).

In addition, defendants’ Ninth affirmative defense, which seemingly reiterates the same relief (disqualification of Attorney Meltzer) that is also sought in Rosenblatt’s OSC (M.S.2) is subject to dismissal, as will be discussed shortly.

The court has considered the NYAG’s remaining arguments in support of its motion to dismiss all but two of defendants’ affirmative defenses and finds them to be unavailing, at this early stage of the litigation when there has been very limited discovery. Consequently, that branch of the NYAG’s motion seeking to dismiss

¹ See *Landau v LaRossa, Mitchell & Ross*, 11 NY3d 8, 13 (2008) (holding that “a dismissal ‘without prejudice’ lacks a necessary element of res judicata – by its terms such a judgment is not a final determination on the merits”).

defendants' Third, Fifth through Eighth, Tenth, Eleventh, Twelfth and Thirteenth affirmative defenses, pursuant to CPLR 3211 (b), is denied.

The NYAG also seeks dismissal of defendants' four counterclaims, all of which seek monetary damages from the NYAG. In their respective answers, the Balsamo Defendants and Rosenblatt assert the identical four counterclaims against the NYAG in its governmental capacity for: (1) an award of reasonable attorneys' fees because the NYAG's claims were filed in bad faith; (2) an award of at least \$10 million for the NYAG's malicious prosecution of this action; (3) damages for Attorney Meltzer's defamation of defendants; and (4) abuse of process (*see* NYSCEF Doc Nos. 7 and 8). The NYAG moves to dismiss defendants' counterclaims on the ground that this court lacks subject matter jurisdiction to hear any claims asserted against the State.

It is well-established that “[t]he Court of Claims has exclusive jurisdiction over actions for money damages against state agencies, departments, and employees acting in their official capacity in the exercise of governmental functions” (*Dinerman v NYS Lottery*, 58 AD3d 669, 669 [2009]). This is true even where the damages are sought in the form of a counterclaim, as is the case here (*see Liddy v DeStaso*, 2 AD3d 792, 793 [2003]; *Wynne v DeStaso*, 2 AD3d 841, 842 [2003]). Thus, this court lacks subject matter jurisdiction over the four counterclaims that the Defendants have asserted against the NYAG in its governmental capacity, and dismissal is, therefore, warranted (*Dinerman*, 58 AD3d 669 [holding that “the Supreme Court properly granted the defendant’s motion to dismiss the complaint pursuant to CPLR 3211 (a) (2) for lack of

subject matter jurisdiction, as the claims in this case arise from acts performed, and determinations made, by State employees in the course of their official duties”)).

Rosenblatt’s OSC To Disqualify Attorney Meltzer

Rosenblatt’s OSC seeks an order disqualifying Attorney Meltzer on the specific ground that “his representation of Plaintiff violates the advocate-witness rule . . .” (NYSCEF #33 and 42). “The determination whether or not disqualification of an attorney is warranted is a matter committed to the sound discretion of the trial court[.]” The “[d]isqualification is warranted if the attorney’s testimony is necessary” and “[t]he burden of demonstrating necessity falls upon the challenging party” (*Bentvena v Edelman*, 47 A.D.3d 651, 651 [2008]).

Here, Rosenblatt has failed to establish any basis to disqualify Attorney Meltzer from representing the NYAG in this action. Rosenblatt’s OSC and his moving affidavit do not even mention what, if any, testimony could possibly be needed from Attorney Meltzer. Furthermore, Rosenblatt’s claim regarding animosity or a vendetta between Meltzer and Rosenblatt is unavailing, especially since Rosenblatt admits that he never met Meltzer in person and that their last (and possibly only) telephone conversation took place about 15 years ago. For these reasons, Rosenblatt’s OSC to disqualify Attorney Meltzer is denied. Accordingly, it is hereby

ORDERED that the branch of NYAG’s motion for an order dismissing defendants’ First, Third and Fifth through Thirteenth affirmative defenses is, at this

junction, only granted to the extent that the First and Ninth affirmative defenses are dismissed, pursuant to CPLR 3211 (b); and it is further

ORDERED that the branch of NYAG's motion seeking dismissal of defendants' counterclaims, pursuant to CPLR 3211 (a) (2), for lack of subject matter jurisdiction is granted; and it is further

ORDERED that Rosenblatt's OSC for an order disqualifying Attorney Meltzer is denied.

This constitutes the decision and order of the court

E N T E R,



J. S. C.