SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** **60M**

Justice

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G & Y MAINTENANCE CORP.,

Plaintiff,

- v -

540 WEST 48TH ST. CORP., GLSC 48 SPECIAL LLC,CORE CONTINENTAL CONSTRUCTION LLC,CHUNG-LIN CHIANG,

Defendant.

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INDEX NO. 652108/2020

MOTION DATE 01/11/2023, 12/16/2022

MOTION SEQ. NO. 006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 205, 206, 207, 208, 209, 210, 211, 212, 213, 224, 225, 227, 228, 229, 230, 231, 232, 247, 248, 249

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 216, 217, 218, 219, 220, 221, 222, 223, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246

were read on this motion to/for REFER TO ANOTHER JUDGE.

In motion sequence 6, plaintiff seeks to vacate what it viewed as a default. However, as there has been no default, there is nothing to vacate. At oral argument plaintiff asked this court to deem the motion to vacate as one for a trial preference. The court agreed to do so. The court now denies the motion for a trial preference.

As discussed on the record, if plaintiff's cause of action for a fraudulent conveyance has accrued, it must do whatever it needs to do to assert that claim now. If a judgment in this case is needed before plaintiff can assert that claim, then the court is utterly perplexed as to how the cause of action has already accrued. Neither *Pfohl Bros Landfill Site Steering Committee v Allied Waste Sys., Inc*. (255 F Supp 2d 134 [WDNY 2003]), nor any other cases plaintiff cites

shed any light on plaintiff's position. The claim has either accrued or it has not. There being no other basis for a trial preference, the court denies the application.

In motion sequence 7, plaintiff demands that this court recuse itself. The sole basis for seeking recusal was: "There is a conflict between G&Y's appeal and the personal business interest of Judge Crane, not to be reversed. To the extent that Judge Crane could be overturned, and that potential reversal may impact her standing as judge, she is interested in this action" (EDOC 217).

Upon learning that this motion was referred to this judge, as it rightly was as this case is currently assigned to this Part (*see generally* NYSCEF), plaintiff's counsel bizarrely interposed an "affirmation in support of cross motion" (EDOC 221) seeking contradicting relief of both: (1) a stay and (2) "that the motion be made returnable before a different judge."

Also in motion sequence 7, defendant has cross-moved for sanctions against plaintiff and for an award of defendant's costs and attorney's fees associated with opposing this order to show cause. In opposition to the cross motion, plaintiff responds that "a constellation of rulings create a reasonable apprehension of bias." At oral argument, plaintiff explained further that the court's rulings on the prior motions to dismiss were so erroneous that the mounting errors give the appearance of impropriety.

Plaintiff's motion (MS 07) is denied and defendant's cross motion (MS 07) is denied.

If a judge had to recuse every time there was a disagreement with a decision and an appeal, the court system would cease to function. The logic leap from disagreeing with the court's decision to bias is, frankly, bizarre.

The decision on underlying motion that plaintiff's counsel finds so offensive (EDOC 197 [decision and order resolving MS 04]) was rendered after a confusing oral argument where

plaintiff's counsel referred to expert testimony that did not yet exist and plaintiff's deposition which was not in the record (EDOC 177 [tr. of oral argument]). Indeed, oral argument was so unclear, the court had to take the motion on submission to consider it more closely. The court eventually held that plaintiff's allegations that defendant Core Continental Constr., LLC was undercapitalized, such that the corporate veil should be pierced, were speculative and conclusory (see *Saivest Empreendimentos Imobiliarios E. Participacoes, Ltda v. Elman Invs., Inc.,* 117 A.D.3d 447, 450 [1st Dep't 2014]). It was also this court's view that account stated was time barred. If plaintiff believes this court is wrong, plaintiff can appeal, which apparently has happened. But, to leap to the conclusion that this court is biased, because it made these decisions, has no basis whatsoever. Therefore, the court denies plaintiff's motion seeking recusal.

A court can award sanctions for frivolous conduct. Conduct is frivolous if it is (1) "completely without merit in law and cannot be supported by a reasonable ground for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false" (22 NYCRR s 140-1.1[c]).

The motion to recuse was utterly lacking in merit. As stated earlier, the logical outcome of plaintiff's argument would end the court's ability to function. However, the court denies sanctions. There may have been issues on the motion to dismiss that are worthy of appeal and Mr. Toth seems to hold a heart-felt belief that this court is biased, rather than to be using the motion to judge shop.

This is not the first time that plaintiff has engaged in sanctionable conduct, but has avoided sanctions. Previously, plaintiff filed two separate motions, in two separate courts,

requesting the identical relief to consolidate this matter with a case in front of Judge Debra James. At no point did plaintiff's counsel apprize this court that he had made an identical motion in front of Judge James. Not only could this have resulted in hopelessly conflicted rulings, it forced opposing counsel to oppose the same motion in two different courts—for no reason. The court refrained from imposing sanctions during the motion to consolidate too. However, plaintiff and its counsel are warned that any further motion practice that is lacking in merit, or that waste's defendant's time, will result in sanctions.

Accordingly, it is

ORDERED THAT the court denies plaintiff's motion to vacate/for a trial preference (motion sequence 6); and it is further

ORDERED THAT the court denies plaintiff's motion to recuse, plaintiff's "cross motion" to refer this motion to another judge, and denies plaintiff's cross motion for a "stay" (motion sequence 7); and it is further

ORDERED THAT the court denies defendant's cross motion for sanctions.

3/27/2023
DATE

MELISSA A. CRANE, J.S.C.

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