

People v Balsamo, Rosenblatt & Hall, P.C.

2023 NY Slip Op 33493(U)

October 3, 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 3rd day of October, 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
LETTIA 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.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

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

65, 67-76 108, 110-114, 126 169-170

Opposing Affidavits (Affirmations) _____

174-175 176

The People of the State of New York, by Attorney General Letitia James, contests in this action, the legality of defendants’ debt collection practices. The NYAG moves (M.S. 3) for an order, pursuant to CPLR 2221 (d) (2), granting it leave to reargue this court’s January 27, 2023, Decision and Order, and, upon reargument, dismissing the tenth through thirteenth affirmative defenses asserted by Defendants.

Defendant Rosenblatt moves (M.S. 4), by order to show cause (OSC), for an order: (1) issuing a preliminary injunction and/or otherwise temporarily enjoining, staying and tolling the running of the January 2023 Decision and Order pending the Appellate Division's hearing and determination of the appeal, pursuant to CPLR 5519 (c), and (2) staying and tolling all proceedings, including but not limited to any response to discovery in this proceeding, pending the Appellate Division's determination of his appeal, pursuant to CPLR 5519 (c) and/or 2201.

Defendant Rosenblatt also cross-moves (M.S. 8) for an order, pursuant to CPLR 3025 (b) and/or 2004, granting him leave to file an amended answer.

Background

The court adopts the recitation of relevant facts and procedural history as set forth in its January 2023 Decision and Order.

The January 2023 Decision and Order

On June 29, 2022, the NYAG moved to dismiss Rosenblatt's and the Balsamo Defendants' counterclaims, pursuant to CPLR 3211 (a) (2) and (a) (7), and to dismiss Rosenblatt's and the Balsamo Defendants' first, third and fifth through thirteenth affirmative defenses (all except for the second and fourth affirmative defenses), pursuant to CPLR 3211 (b).

By the January 2023 Decision and Order, this court granted, in part, the NYAG's motion to dismiss certain of Defendants' affirmative defenses and all of their counterclaims (NYSCEF # 50). Specifically, the court granted the NYAG's motion to the extent that: (1)

the first affirmative defense for res judicata and collateral estoppel was dismissed; (2) the ninth affirmative defense, which sought to disqualify attorney Brent Meltzer (Meltzer) from representing the NYAG based on his history of animosity and disdain for Defendant Rosenblatt, was dismissed; and (3) four counterclaims asserted against the NYAG were dismissed for lack of subject matter jurisdiction.

Regarding the ninth affirmative defense and Defendant Rosenblatt's prior motion to disqualify Meltzer, the January 2023 Decision and Order held that:

“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 discuss, or even mention what, if any, testimony could possibly be needed from Attorney Meltzer. Furthermore, Rosenblatt's claim regarding animosity or a vendetta between Attorney Meltzer and Rosenblatt is unavailing, especially since Rosenblatt admits that he never met Attorney Meltzer in person and that their last (and possibly only) telephone conversation took place about 15 years ago” (*id.* at 15).

The January 2023 Decision and Order denied dismissal of all but two of Defendants' affirmative defenses “at this early stage of the litigation when there has been very limited discovery” (*id.* at 13). Specifically, the January 2023 Decision and Order denied that branch of the NYAG's dismissal motion regarding Defendants' third, fifth, sixth, seventh, eighth and tenth through thirteenth affirmative defenses (*id.* at 4-5 and 7).

The NYAG's Motion to Reargue

On March 30, 2023, the NYAG moved for an order granting it leave to reargue this court's January 27, 2023 Decision and Order, and, upon reargument, dismissing

Defendants' and Rosenblatt's tenth, eleventh, twelfth and thirteenth affirmative defenses, which the NYAG defines as the "Grievance Defenses."

The tenth affirmative defense alleges that Meltzer conspired with a private attorney to deprive Defendant Rosenblatt of his constitutional rights. The eleventh affirmative defense alleges that Meltzer has unclean hands. The twelfth affirmative defense alleges that Meltzer embarked on a fishing expedition to sue Defendants without probable cause. The thirteenth affirmative defense alleges that after a "flow of information" from a private attorney to Meltzer's "subordinate," the subordinate was inexplicably removed from the case (*see* NYSCEF # 7 and 8).

Essentially, the NYAG argues that the court, "by not dismissing the remainder of the Grievance Defenses" has "allowed Defendants to continue to assert their baseless claims of a vendetta which they are now using as justification to abuse the discovery process" (*id.* at 3). According to the NYAG, Rosenblatt threatened to depose 100 individuals, including housing court judges and other landlord/tenant law firms (*id.*). The NYAG argues that "[t]he sole focus in the Grievance Defenses on AAG Meltzer clearly shows that they are nothing more than a rehash of the Ninth Affirmative defense and Defendants' motion to disqualify, and accordingly they must be dismissed" (*id.* at 6).

Alternatively, the NYAG argues that "the Grievance Defenses are so poorly pled it is unimaginable how they could be tried and adjudicated, much less how reasonable discovery could be conducted on them" (*id.* at 6).

Defendant Rosenblatt, in opposition, submits a memorandum of law asserting that the January 2023 Decision and Order properly denied the NYAG’s dismissal motion regarding the tenth through thirteenth affirmative defenses and that this reargument motion “is completely devoid of any compelling arguments . . .” (NYSCEF # 171 at 2). Importantly, however, Rosenblatt *explicitly admits* that “[t]he tenth through thirteenth affirmative defenses *directly relate to* the various forms of bad faith in the alleged investigation and the selective prosecution by a representative of the [NYAG’s] office[,]” namely, Meltzer (*id.* at 3 [emphasis added]). The remaining Defendants, in opposition, submit a memorandum of law which is identical to Defendant Rosenblatt’s opposition brief (NYSCEF # 173).

Defendant Rosenblatt’s OSC For a Stay Pending Appeal

On March 1, 2023, Defendant Rosenblatt filed his notice of appeal from the January 2023 Decision and Order (NYSCEF # 55).

On April 8, 2023, Rosenblatt moved, by OSC, for a stay pending his appeal from the January 2023 Decision and Order. Rosenblatt submits a memorandum of law arguing that the NYAG would suffer no prejudice if this action were stayed, yet with “Meltzer serving as the plaintiff’s advocate, there is more than the appearance of unfairness, there is the potential reality of bias influencing the entire process” (NYSCEF # 109 at 8).

The NYAG, in opposition, submits a memorandum of law arguing that “[i]t would be an abuse of discretion to grant . . . a stay pending appeal as the Order to Show Cause is devoid of any real argument why a stay is proper” and Rosenblatt “fail[s] to provide any

legitimate argument why they believe they will be successful on appeal” (*see* NYSCEF # 153 at 17). The NYAG argues that “Defendants have taken no steps to perfect their appeal . . .” and “[w]here a party has no interest in timely pursuing an appeal, the court should not grant a stay” (*id.* at 19).

Defendant Rosenblatt’s Cross Motion to Amend His Answer

On July 5, 2023, Defendant Rosenblatt cross-moved for an order, pursuant to CPLR 2004 and 3025, granting him leave to amend his answer to the complaint (NYSCEF # 169).

Rosenblatt submits an affirmation explaining that:

“[d]uring conference with the Court in June 2023, it became apparent that *the defense of selective prosecution was not clearly stated in the original answer*, and that a motion would be needed *to clarify and make clear that additional defense*. Defendant hereby makes that motion now.

The proposed amended answer, *which is not redlined to reflect the amendments*, seems to be nearly identical to Rosenblatt’s original answer and contains some of the same affirmative defenses (i.e., the ninth affirmative defense) that were dismissed by the January 2023 Decision and Order (*see* NYSCEF # 170).

The NYAG, in opposition, submits a memorandum of law arguing that the motion does not illuminate any of the alleged new claims. The NYAG further argues that “[s]ubstantively, the motion must be denied as the one added defense identified in Rosenblatt’s affirmation – styled as selective prosecution – does not plead the required elements of the defense” (*id.* at 2 and 7). The NYAG also contends that “the proposed amended defense of selective prosecution is predicated entirely upon Rosenblatt’s

allegation that Plaintiff's attorney AAG Meltzer has commandeered the OAG to commence this litigation in order to further his animus and vendetta against Rosenblatt" despite the fact that the court has already found those claims unavailing (*id.* at 9-10).

Discussion

The NYAG's Motion to Reargue

"A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221 [d] [2]).

The NYAG is correct that the court rejected Defendants' unsupported allegations regarding a personal vendetta by Meltzer against Defendant Rosenblatt based on a single phone call 15 years ago. For this reason, the January 2023 Decision and Order dismissed Defendants' ninth affirmative defense. The tenth through thirteenth affirmative defenses asserted by Defendants and Rosenblatt should similarly be dismissed since they too are based on an alleged vendetta by Meltzer, as Rosenblatt explicitly confirmed.

Rosenblatt's OSC For a Stay Pending Appeal

CPLR 5519 (c) provides that "[t]he court from or to which an appeal is taken or the court of original instance may stay all proceedings to enforce the judgment or order appealed from pending an appeal[,] may grant a limited stay or may vacate, limit or modify any stay . . ." "In considering whether to grant a stay . . . the court's discretion is the guide" and "[it] will be influenced by any relevant factor, including the presumptive merits of

the appeal and any exigency or hardship confronting any party” (Siegel, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C5519:4).

Rosenblatt failed to provide any reason to stay the January 2023 Decision and Order pending his appeal from that branch of the January 2023 Decision and Order that denied his motion to disqualify Meltzer from representing the NYAG, and he has failed to demonstrate that his appeal has been timely perfected, has merit and/or is warranted to prevent hardship. For the foregoing reasons, Rosenblatt’s OSC for a stay is denied in its entirety.

Rosenblatt’s Cross Motion to Amend His Answer

“Applications for leave to amend pleadings under CPLR 3025 (b) should be freely granted unless the proposed amendment (1) would unfairly prejudice or surprise the opposing party, or (2) is palpably insufficient or patently devoid of merit” (*Favia v Harley-Davidson Motor Co.*, 119 AD3d 836, 836 [2014]). “[T]he decision to allow or disallow an amendment is left to the motion court’s sound discretion” (*Buckholz v Maple Garden Apartments, LLC*, 38 AD3d 584, 584 [2007]). “Distilled to its essence, courts should be liberal in permitting the amendment of pleadings unless there is a reason grounded in prejudice to a party or the absence of merit to warrant a different result” (*Lennon v. 56th & Park (NY) Owner, LLC*, 199 AD3d 64, 71 [2021]). “For evaluating merit or the lack thereof, CPLR 3025 (b) has required, since January 1, 2012 . . . that the proposed amended pleading accompany the moving papers *and clearly show the changes or additions to be made to the incumbent pleading*” (*id.* at 72).

Defendant Rosenblatt's cross motion for leave to amend his answer to the complaint is defective because the proposed amended answer is not redlined and does not otherwise reflect the changes and additions made to Rosenblatt's original answer (NYSCEF # 170). This defect is sufficient to deny Rosenblatt's cross motion for leave to amend his answer.

However, Rosenblatt's cross motion is also denied because the proposed amended answer fails to plead the requisite elements of selective prosecution. "To establish such a [defense], a litigant must show that the law was enforced with both an 'unequal hand' and an 'evil eye'; 'to wit, there must be not only a showing that the law was not applied to others similarly situated but also that the selective application of the law was deliberately based upon an impermissible standard such as race, religion or some other arbitrary classification'" (*People v Blount*, 90 NY2d 998, 999 [1997], quoting *Matter of 303 W. 42 St. v Klein*, 46 NY2d 686, 693 [1979]).

The thirteenth affirmative defense in Rosenblatt's proposed amended answer labeled "selective prosecution" alleges that Meltzer (during settlement discussions) "demanded that Defendant submit to rules and regulations that no other landlord tenant lawyer follows," "has made these unreasonable demands of the Defendant for the sole purpose of putting the Defendant out of business to settle an 'old score'" and "plaintiff's actions were motivated by malice, political animus and a desire to harass, intimidate, threaten, oppress, coerce, injure and/or retaliate against the Defendant and his business" (NYSCEF # 170 at ¶¶ 39, 41 and 46). Rosenblatt's proposed defense based on settlement

discussions with Meltzer fails to state a valid defense for selective prosecution. Accordingly, it is hereby


ORDERED that the NYAG's motion (M.S. 3) for an order granting it leave to reargue the January 2023 Decision and Order is granted, and, upon reargument, Defendants' tenth, eleventh and twelfth affirmative defenses and Defendant Rosenblatt's tenth through thirteenth affirmative defenses are dismissed; and it is further

ORDERED that Defendant Rosenblatt's OSC (M.S. 4) for a stay of the January 2023 Decision and Order pending the determination of his appeal is denied; and it is further

ORDERED that Defendant Rosenblatt's cross motion (M.S. 8) for leave to serve and file an amended answer is denied.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.