

MB Fin. Bank, N.A. v 56 Walker LLC
2023 NY Slip Op 33937(U)
November 4, 2023
Supreme Court, New York County
Docket Number: Index No. 105617/2009
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48-----X
MB FINANCIAL BANK, N.A.,

Plaintiff,

- v -

56 WALKER LLC, GUY MORRIS, WEXFORD/HPC
MORTGAGE FUND LP, NYC DEPT OF
ENVIRONMENTAL PROT, CRIMINAL COURT OF THE
CITY OF NEW YORK, VCD CONSTRUCTION, A A
INTERIOR CONSTRUCTION INC, DAVIS & WARSHOW
INC, THE PEOPLE OF THE STATE OF NEW YORK, THE
CITY OF NEW YORK, JOSEPH PELL LOMBARDI &
ASSOCIATES, ADVANCED PLUMBING HEATING &
SPRINKLERS, DOE JOHN 1 THRU 5, DOE JANE 1 THRU
5, and HPC MANAGEMENT LLC,Defendants.
-----X

INDEX NO. 105617/2009

MOTION DATE

MOTION SEQ. NO. 039 040

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 039) 838, 839, 840, 847,
849, 850, 851

were read on this motion to/for RENEWAL

The following e-filed documents, listed by NYSCEF document number (Motion 040) 852, 853

were read on this motion to/for SANCTIONS

In motion seq. no. 039, nonparty Rey Olsen seeks to renew and reargue the court's decision (NYSCEF 834/835, Decision and Order [mot. seq. no. 037 and 038]) denying (1) his motion to vacate the judgment and dismiss the action (mot. seq. no. 037) and (2) his motion to renew and reargue his motion seeking to vacate the judgment in this action and restore the action to the calendar (mot. seq. no. 036).

In motion seq. no. 040, plaintiff moves for sanctions against Olsen under 22 NYCRR §130-1.1 for frivolous conduct.

Motion Seq. No. 039

This motion is Olsen's fourth attempt to vacate the judgment in this action and dismiss the action. (See NYSCEF 803, Notice of Motion [seq. no. 036], NYSCEF 829, Notice of Motion [seq. no. 037], NYSCEF 821, Notice of Motion [seq. no. 038].) In motion seq. no. 036, Olsen asserted he was assignee of nonparties Leonard Labanco and INN World Report, Inc. (INN), tenants of defendant 56 Walker LLC. (NYSCEF 805, Memo in Support at 4¹.) The court denied the motion on the ground that it was bound by Judge Oing's decision that any purported assignment was after the claims were resolved and adjudicated and rejected Olsen's additional arguments. (NYSCEF 812, So Ordered Tr at 26-28.) The court warned Olsen not to file more motions on the grounds already rejected by the court. (*Id.*)

In motion seq. no. 037, Olsen asserted that he was assignee of defendants 56 Walker, LLC and Guy Morris. (NYSCEF 830, Memo in Support at 1.) This motion was denied on the ground that Olsen presented no evidence of this assignment. (NYSCEF 834, Decision and Order [mot. seq. no. 037].) In motion seq. no. 038, Olsen again asserted that he was assignee of INN and Labanco and sought to reargue and renew the court's decision on motion seq. no. 036. (NYSCEF 822, Memo in Support.) The court denied this motion holding that

"on July 13, 2016, this court (Oing, J.) denied Olsen's motion seeking to be substituted for INN and Labanco. (NYSCEF 731, Decision and Order [mot. seq. no. 032].) Judge Oing found that Olsen failed to proffer a valid assignment. (*Id.*; see also NYSCEF 751, tr at 17:14-16, 18:19-19:3.) At oral argument on motion seq. no. 036 on November 15, 2022, this court held, in regard to this alleged assignment, 'I have to rely on Judge Oing's reasoning here. If the date was too late in 2016, in 2022, it's even later. So I can't change the law of the case with a later assignment.' (NYSCEF 812,

¹ NYSCEF pagination

tr at 26:11-14.) Again, this court is bound by Judge Oing's ruling as to the assignment."

(NYSCEF 834, Decision and Order [mot. seq. no. 038].)

Now Olsen seeks to renew and reargue the court's decisions on motion seq. nos. 037 and 038. In support of his motion, Olsen submits the affidavits of Morris and Labanco. Morris states that "In February 2023, I provided Olsen with an oral partial assignment of all chose-in-action and all other rights that I and 56 Walker LLC ... Prior to April of 2023, I provided Olsen with a written confirmation of the above." (NYSCEF 840, Morris aff ¶ 4.) Labanco states that

"In May 2022 I provided Olsen with an oral partial assignment of all chose-in-action and all other rights that I and INN, may have against Plaintiff MB National Bank, NA, its agents, employees, and attorneys. Prior to June of 2022 I provided Olsen with a written confirmation of the above. To avoid confusion, I had previously provided Olsen with a written assignment that was referred to in transcript so-ordered by J. Oing on 9/21/2016, NYSCEF Doc No. 751. That assignment did not and could not have comprehended the subsequent fraud upon the court by MB and its attorneys in entering a judgment against INN by a court user on 6/20/2018, NYSCEF Doc No. 798. My assignments to Olsen in 2022 did."

(NYSCEF 840, Labanco aff ¶¶ 7-9.) These affidavits do not change the court's decision. Again, Judge Oing already held that the assignments dated after the after the bankruptcy court made its final decision with respect to any claims are not sufficient to prove Olsen has standing to pursue any claims here. (NYSCEF 751, tr. at 17 [August 22, 2016].) There is also no evidence that a fraud has been committed on the court.

Motion Seq. No. 040

22 NYCRR §130-1.1(a) provides, in part,

"The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law,

costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part."

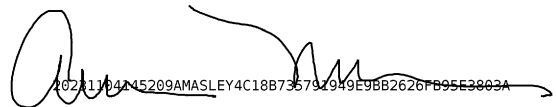
This court warned Olsen not to file motions based on arguments that were previously rejected, but he did not heed that warning. Motion seq. no. 039 is frivolous as it lacks merit. (*Burr v Burr*, 51 AD3d 433, 434 [1st Dept 2008] [affirming sanctions where movant's "arguments' lack of merit were apparent or should have been apparent"].) A failure to sanction Olsen "would leave repeated frivolous motion practice undeterred and would wrongly give the impression that such improper conduct will be tolerated." (*Gassab v R.T.R.L.L.C.*, 22 Misc 3d 1140[A], 1140A, 2009 NY Slip Op 50519[U], *5 [Sup Ct, NY County 2009], citing *Tsabbar v Auld*, 26 AD3d 233, 234 [1st Dept 2006].) Olsen is directed to pay plaintiff's legal fees and costs incurred in connection with both motion seq. nos. 039 and 040.

Accordingly, it is

ORDERED that motion seq. no. 039 is denied; and it is further

ORDERED that motion seq. no. 040 is granted; and it is further

ORDERED that plaintiff's counsel shall submit an affirmation of services, bios, and invoices within 14 days of the date of this decision or waived.



11/4/2023
DATE

CHECK ONE:

☒	CASE DISPOSED	
☐	GRANTED	☐ DENIED
☐	SETTLE ORDER	
☐	INCLUDES TRANSFER/REASSIGN	

APPLICATION:

CHECK IF APPROPRIATE:

ANDREA MASLEY, J.S.C.

NON-FINAL DISPOSITION

☒	GRANTED IN PART	☐ OTHER
☐	SUBMIT ORDER	
☐	FIDUCIARY APPOINTMENT	☐ REFERENCE

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