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| <b>Gonzalez v Post Apt. Corp.</b>                                                                                                                                                                                              |
| 2024 NY Slip Op 35203(U)                                                                                                                                                                                                       |
| July 8, 2024                                                                                                                                                                                                                   |
| Supreme Court, Westchester County                                                                                                                                                                                              |
| Docket Number: Index No. 50017/2024                                                                                                                                                                                            |
| Judge: Charles D. Wood                                                                                                                                                                                                         |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

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SUZETTE GONZALEZ,

**Plaintiff,**

-against-

POST APARTMENT CORP., GHASSAN SAYEGH;  
ALAN R. GRAY, JR.; JERMAINE NICKS; KATHERINE  
RAMJATTAN; ELISSA SANTANA; and FELIX RODRIGUEZ,

**Defendants.**  
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**WOOD, J.**

**DECISION & ORDER**  
**Index No. 50017/2024**  
Seq Nos. 1, 2, & 4

New York State Courts Electronic Filing (NYSCEF) document numbers 12-105 were read in connection with Seq 1- brought by defendant Alan R. Gray, Jr. pursuant to CPLR §3211 (a) (7) and (g), Civil Rights Law §§ 70-a and 76-a, and Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1, for an order dismissing the complaint as against Gray, and awarding him costs, compensatory and punitive damages, and sanctions against plaintiff and her attorney; Seq 2-brought by Gray to vacate the notice of discontinuance of action (NYSCEF #58), and pursuant to Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1, sanctioning plaintiff and her attorney for alleged frivolous conduct; Seq 3-was subsequently withdrawn; and Seq 4 - Gray's motion to strike sur-reply and for sanctions.

According to the complaint, plaintiff, was, and still is, a shareholder of defendant Post Apartment Corp., located at 60 Post Street in Yonkers ("the premises"), and a resident and proprietary lessee at the premises owned by Post. Plaintiff had alerted Post of excessive noise

emanating from Gray's apartment above the one occupied by plaintiff, which said noise continued throughout the day and night affecting her ability to sleep, and well-being. These complaints were purportedly ignored by defendants. Plaintiff also claims that she has been injured "in her good name and reputation" arising from a special meeting of Post's shareholders ("the meeting") on or about January 14, 2023. At that meeting, plaintiff's removal from the premises was discussed due to her alleged objectionable conduct. Plaintiff was not present at said shareholders meeting and is thus, unaware of the exact language spoken by defendants, Sayegh, Gray, Nicks, Ramjattan, Santana and Rodriguez, who were the members of the Board of Directors of Post at that time. These defendants allegedly continued and condemned plaintiff and ostracized her to all attendees at said meeting with misrepresentations, and said malicious words were reduced to a writing.

Notably, within a week of Gray's filed motion to dismiss (Seq 1), plaintiff filed a notice of discontinuance seeking to discontinue this action against Gray without prejudice. This was followed by the filing by plaintiff of an Amended Verified Complaint on April 26, 2024, that did not name Gray as a defendant (NYSCEF#74). Gray subsequently moved to vacate the notice of voluntary discontinuance, and for sanctions on the grounds of prejudice.

At the conference before this court on May 23, 2024, ("the conference") with the parties present, plaintiff's counsel agreed that the voluntary discontinuance can be changed to be with prejudice. As such, the claims against Gray in the original complaint are discontinued with prejudice, and as he is not named as a defendant in the amended complaint, this court denies the branch of Gray's motion Seq 2- to vacate the notice of discontinuance, as academic <sup>1</sup>.

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<sup>1</sup> At the conference, and in the papers submitted on these motions before the court, plaintiff's counsel raises that Gray is an attorney employed by and with the Appellate Division, First Department, and accuses Gray pursuant to 22 NYCRR Rule 603.32 (Practice of law by nonjudicial personnel) of allegedly inappropriately interjecting himself

This resolves the majority, but not all, of the issues raised in Gray's motions. At the conference, Gray reserved the branch of his motions that demand expenses and costs Gray allegedly incurred in this matter, and those mandated pursuant to Civil Rights Law 70-a in actions involving public petition and participation, and on the grounds of prejudice regarding plaintiff's voluntary discontinuance.

Civil Rights Law §§ 70-a, 76-a (commonly referred to as the "anti-SLAPP" legislation), involves an action brought by a plaintiff that has minimal legal merit to purposely burden opponents with legal defense costs and the threat of liability, and that attempts to silence free speech (*Abbey Family Tr. No. Four v Matthews*, 217 AD3d 1158 [3d Dept 2023]). The November 2020 amendments to the Civil Rights Law expanded its protection to a broader class of individuals, by presently defining "public petition and participation" to a claim involving (1) "any communication in a place open to the public or a public forum in connection with an issue of public interest" or (2) "any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition" (Civ Rights Law § 76-a [1] [a]); (*VIP Pet Grooming Studio, Inc. v Sproule*, 224 AD3d 78, 84 [2d Dept 2024]). The term "public interest" is construed broadly and has been interpreted as any subject other than a purely private matter (*id.* §76-a[1][d]).

It is true that a party that wins a dismissal of a case as an anti-SLAPP lawsuit will be entitled to seek reimbursement of costs and attorneys' fees, and possibly compensatory and

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in all the actions and proceedings regarding plaintiff under Index #58491/24, and the action under Index #62924/23, both of which are pending before this court. Plaintiff's counsel represented that these allegations against Gray are being investigated. Accordingly, this court will not address said allegations against Gray.

punitive damages (Civ Rights Law §70-a [1][a]). However, because of this potential redress, the moving party has the burden to demonstrate that the alleged anti-SLAPP lawsuit or cause of action is one that involves “public petition and participation” and if so shown, then the plaintiff must demonstrate that “the cause of action has a substantial basis in law” (CPLR 3211 [g][1]).

Here, Gray argues that this action involves public petition and participation because its basis is defendants’ lawful conduct in furtherance of the exercise of their right of petition, i.e., to access the courts, because the vote at the shareholders meeting (that plaintiff’s tenancy was undesirable because of objectionable conduct on her part) was a condition precedent to Post terminating her tenancy and, thereafter, commencing the holdover action against her. Moreover, Gray believes that this action involves public petition and participation because it is based on a communication in a place open to the public or a public forum, and lawful conduct in furtherance of the exercise of the right of free speech, in connection with an issue of public interest.

Gray’s contention that he is entitled to an award of costs under Civil Rights Law §70-a is without merit, as Gray did not show that this is an action involving public petition and participation (*VIP Pet Grooming Studio, Inc. v. Sproule*, 224 AD3d 78, 92 [2d Dept 2024]). The subject shareholder meeting of January 14, 2023 involved a limited, private audience of 13 shareholders (present or present only by proxy), and are “matters of purely private concern.” That is, the discussion at the meeting amongst shareholders of Post, regarding plaintiff’s alleged disruptive behavior at Post, and her eventual ouster from Post, was not aimed at the public at large. Gray’s attempt to transform a purely private matter into one involving a matter of public interest fails. The court finds that the anti-SLAPP legislation does not apply since plaintiff’s complaint is not a SLAPP suit, and it cannot be said that this matter is one of “public interest.”

Further, taking into consideration these principles, there is also no basis for an award of the other costs as requested. This court also declines the invitation to award costs and impose financial sanctions against plaintiff, her attorney, or both, for purportedly engaging in frivolous conduct (22 NYCRR § 130-1.1 [a]-[b])<sup>2</sup>. Accordingly, it is hereby

ORDERED that as for Seq 2- Gray's motion to vacate plaintiff's voluntary discontinuance is denied as moot, as the parties at the conference agreed that the voluntary discontinuance of the claims against Gray in the original complaint are discontinued with prejudice, and it is so Ordered, and Seq 1-Gray's motion to dismiss the original complaint is denied as academic, and denied in its entirety as to costs and expenses, punitive damages, and any request for sanctions; and it is further

ORDERED that Motion Seq 4 brought by Gray to strike sur-reply and for sanctions is denied as academic; and it is further

ORDERED that within twenty days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order electronically with notice of entry, upon all parties and file proof of service on NYSCEF within five days of service. The Clerk shall mark his records accordingly.

All matters not specifically addressed are denied. This constitutes the decision and order of the court.

Dated: White Plains, New York  
July 8, 2024

  

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HON. CHARLES D. WOOD  
Justice of the Supreme Court

To: All Parties by NYSCEF

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<sup>2</sup> The court notes that if in fact, Mr. Gray's time were to be compensated, significant disclosure of his electronic research would be necessary for the court to determine whether his claimed expended time was in fact his time, or the time and resources of the State of New York.