

Craft v Ocwen Loan Serv., LLC
2024 NY Slip Op 35278(U)
March 21, 2024
Supreme Court, Nassau County
Docket Number: Index No. 608767/2023
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

WANDA CRAFT,

Plaintiff,

- against -

OCWEN LOAN SERVICING, LLC,
U.S. BANK TRUST NA, AS TRUSTEE FOR THE
LSF9 MASTER PARTICIPATION TRUST and
U.S. BANK TRUST NA, AS TRUSTEE FOR
IGLOO SERIES IV TRUST,

Defendants.

TRIAL/IAS PART 30
NASSAU COUNTY

Index No.: 608767/2023
Motion Seq. Nos.: 02, 03
Motion Dates: 09/26/2023
09/26/2023

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The following papers have been read on these motions:

	Papers Numbered
Notice of Motion (Seq. No. 02) and Affirmation	1
<i>Pro Se</i> Notice of Cross-Motion (Seq. No. 03), Affidavit and Exhibits	2
Affirmation in Opposition to Cross-Motion (Seq. No. 03) and Affidavit and Exhibits	3
<i>Pro Se</i> Memorandum of Law in Further Support of Cross-Motion (Seq. No. 04)	4

Upon the foregoing papers, it is ordered that the motions are decided as follows:

Defendant U.S. Bank Trust, N.A., as Trustee for the Igloo IV Trust ("Igloo IV Trust") moves (Seq. No. 02), pursuant to CPLR § 3211(a)(1), (5), (7) and (8), for an order dismissing *pro se* plaintiff's Complaint; and moves, pursuant to 22 NYCRR 130, for an award of attorney's fees and costs for this motion (Seq. No. 02).

Pro se plaintiff opposes the motion (Seq. No. 01) and cross-moves (Seq. No. 03), pursuant to CPLR § 306-b, for an order denying defendant Igloo IV Trust's motion (Seq. No. 02) for failure to comply with CPLR § 320(b); and cross-moves for an order directing defendant Igloo IV Trust's counsel to file written authority with the clerk and serve it on *pro se* plaintiff within ten (10) days and allowing *pro se* plaintiff to serve subsequent service on defendant Igloo IV Trust's counsel of a copy of the Summons and Complaint pursuant to CPLR § 305, CPLR § 306-b and CPLR § 312-a(e) once defendant Igloo IV Trust's counsel complies with CPLR § 320(b); and cross-moves for an orders striking defendant Igloo IV Trust's motion (Seq. No. 02) if such authority is not timely filed and served; and cross-moves for an order denying defendant Igloo IV Trust's motion (Seq. No. 02) based on the reasons set forth in her Affidavit in Support due to said causes of action being meritorious; and cross-moves for an order allowing the her to amend her Complaint to plead a cause of action against and adding the named party U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE BUNGALOW SERIES IV TRUST that has an interest in this matter through an assignment of mortgage, and serve a copy of the Summons and Amended Complaint via CPLR § 305, CPLR § 312-a or CPLR § 308 service. Defendant Igloo IV Trust opposes the cross-motion (Seq. No. 03).

The Court takes judicial notice of the fact that the same arguments made by counsel for defendant Igloo IV Trust in the instant motion (Seq. No. 02) were proffered by counsel for defendants PHH Mortgage Corporation, successor by merger to Ocwen Loan Servicing, LLC and U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust in support of their motion (Seq. No. 01). *See* NYSCEF Document Nos. 7-12 and 15.

Based upon this Court's March 20, 2024 Decision and Order on the motion (Seq. No. 01) by defendants PHH Mortgage Corporation, successor by merger to Ocwen Loan Servicing, LLC and U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, the Court finds that the same law and findings of the Court in its March 20, 2024 Decision and Order on motion (Seq. No. 01) are applicable to defendant Igloo IV Trust's instant motion (Seq. No. 02). See NYSCEF Document No. 59.

Therefore, the branch of defendant Igloo IV Trust's motion (Seq. No. 02), pursuant to CPLR § 3211(a)(1), (5), (7) and (8), for an order dismissing *pro se* plaintiff's Complaint, is hereby **GRANTED**.

Pro se plaintiff's cross-motion (Seq. No. 03), pursuant to CPLR § 306-b, for an order denying defendant Igloo IV Trust's motion (Seq. No. 02) for failure to comply with CPLR § 320(b); and for an order directing defendant Igloo IV Trust's counsel to file written authority with the clerk and serve it on *pro se* plaintiff within ten (10) days and allowing *pro se* plaintiff to serve subsequent service on defendant Igloo IV Trust's counsel of a copy of the Summons and Complaint pursuant to CPLR § 305, CPLR § 306-b and CPLR § 312-a(e) once defendant Igloo IV Trust's counsel complies with CPLR § 320(b); and for an order striking defendant Igloo IV Trust's motion (Seq. No. 02) if such authority is not timely filed and served; and for an order denying defendant Igloo IV Trust's motion (Seq. No. 02) based on the reasons set forth in her Affidavit in Support due to said causes of action being meritorious; and for an order allowing the her to amend her Complaint to plead a cause of action against and adding the named party U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE BUNGALOW SERIES IV TRUST that has an interest in this matter through

an assignment of mortgage, and serve a copy of the Summons and Amended Complaint via CPLR § 305, CPLR § 312-a or CPLR § 308 service, is hereby **DENIED**.

With respect to the branch of defendant Igloo IV Trust's motion (Seq. No. 02), pursuant to 22 NYCRR 130, for an award of attorney fees and costs for this motion (Seq. No. 02), 22 NYCRR 130-1.1 deals with Costs and Sanctions. It reads, in pertinent part, that

“(a) 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. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Subpart....

(b) The court, as appropriate, may make such award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both....

(c) For purposes of this Part, conduct is frivolous if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument 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.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, Including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.”

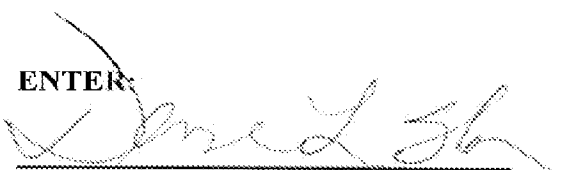
“Pursuant to 22 NYCRR 130-1.1, sanctions may be imposed against a party or the party's attorney for frivolous conduct.” *Keyspan Generation, LLC v. Nassau County*, 118 A.D.3d 949, 991 N.Y.S.2d 46 (2d Dept. 2014). “Conduct during litigation, ... is frivolous and subject to

sanction and/or the award of costs when it is completely without merit in law or fact and cannot be supported by a reasonable argument for the extension, modification, or reversal of existing law; it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or it asserts material factual statements that are false.” *Id. quoting Mascia v. Maresco*, 39 A.D.3d 504, 833 N.Y.S.2d 207 (2d Dept. 2007). “The decision of whether to award sanctions and the amount or nature of those sanctions is generally entrusted to the trial court’s sound discretion.” *Matter of Khan-Soleil v. Rashad*, 111 A.D.3d 727, 974 N.Y.S.2d 798 (2d Dept. 2013). The Court has carefully reviewed the record before it and, guided by the foregoing precepts, hereby declines to award attorney fees and costs to counsel for defendant Igloo IV Trust. *See id.*

However, it is hereby **ORDERED** that, going forward, **before filing any additional motions, pro se plaintiff must make a written request** to the Court (via the Judge Sher remote e-mail – judgesherremote@nycourts.gov) **to obtain permission to file any further motions** with respect to this action.

This constitutes the Decision and Order of this Court.

ENTER:


DENISE L. SHER, A.J.S.C.

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Dated: Mineola, New York
March 21, 2024

ENTERED

Mar 25 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE