

Brown v Albany Crossings Apts. LP
2026 NY Slip Op 31378(U)
March 19, 2026
Supreme Court, Kings County
Docket Number: Index No. 524598/2023
Judge: Katherine A. Levine
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 92

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MOZELLE BROWN,

Plaintiff,

– against –

ALBANY CROSSINGS APARTMENTS LP, et al.,

Defendants.
-----X

Index No. 524598/2023
DECISION/ORDER

Hon. Katherine A. Levine

Mot. Seq. 3 & 4

The following e-filed papers read herein:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and

Affidavits (Affirmations) Annexed.....

Opposing Affidavits (Affirmations).....

Reply Affidavits (Affirmations).....

NYSCEF Doc. Nos.

79-85, 98-102

94-97

88-91, 103, 104, 105

FACTUAL BACKGROUND

In this premises liability action arising from an incident alleged to have occurred on August 1, 2022, defendants Albany Crossings Apartments LP and Shinda Management Corp. (collectively, “Moving Defendants”) move pursuant to 22 NYCRR § 130-1.1 for an order imposing sanctions and awarding attorneys’ fees in the amount of \$23,354.20 against plaintiff’s counsel, Harris, Keenan & Goldfarb, PLLC, (“Plaintiff”) based on the alleged frivolous continuation of claims against them after counsel received documentary proof bearing on Moving Defendants’ connection to the subject premises. Plaintiff cross-moves pursuant to the same provision for sanctions and costs against Moving Defendants. The motion and cross-motion are consolidated for disposition.

For the reasons set forth below, both motion and cross-motion are denied in their entirety.

By Decision and Order dated April 9, 2025, this Court granted Moving Defendants' motion for summary judgment, dismissing the complaint with prejudice on the grounds that they neither owned nor managed the subject premises at the time of the accident, and directed that Moving Defendants could make an application for attorneys' fees and sanctions. (NYSCEF Doc. No. 69.)¹

Moving Defendants now so move, pursuant to 22 NYCRR § 130-1.1, for an order imposing sanctions and awarding \$23,354.20 in attorneys' fees against plaintiff's counsel, Harris, Keenan & Goldfarb, PLLC. Moving Defendants contend that plaintiff's counsel received the Deed via email as early as August 31, 2023, placing counsel on notice that the property had been transferred before the accident, yet continued to prosecute the claims through the filing of the Note of Issue and summary judgment proceedings despite repeated requests for a voluntary discontinuance. (NYSCEF Doc. No. 80; NYSCEF Doc. No. 82.) Moving Defendants further contend that, following the Gonzalez deposition on November 7, 2024, it was "apparent" that Moving Defendants had no ownership or management interest in the property, and that plaintiff's counsel nonetheless refused to discontinue. (NYSCEF Doc. No. 82.)

Plaintiff opposes and cross-moves for sanctions and costs pursuant to the same provision. Plaintiff's counsel contends that while the Deed established a transfer of title, it was silent as to management, maintenance, or operational control of the premises, and that this ambiguity justified continued prosecution pending resolution of the management question through discovery. (NYSCEF Doc. No. 94; NYSCEF Doc. No. 105.) Plaintiff further notes that Moving Defendants themselves fully participated in the litigation—filing a Verified Answer, participating in

¹ The summary judgment motion was predicated on a Bargain and Sale Deed dated October 21, 2020, recorded November 24, 2020, reflecting a transfer of the subject premises from Albany Crossings Apartments L.P. to Albany Kingston Housing Development Fund Corporation, as Nominee of Albany Kingston LLC. The Deed is a "Bargain and Sale Deed Without Covenant Against Grantor's Acts" and contains no provisions addressing management, control, or maintenance obligations. (NYSCEF Doc. No. 83) The alleged incident occurred on August 1, 2022, nearly two years after the recorded property transfer.

depositions, and litigating through the Note of Issue (NYSCEF Doc. No. 94; NYSCEF Doc. No. 105)—and that once the management question was resolved, plaintiff offered to discontinue and did not oppose summary judgment on the merits. (NYSCEF Doc. No. 94) Plaintiff’s cross-motion contends that Moving Defendants’ sanctions application is itself frivolous under § 130-1.1(c).

Following the April 9, 2025 summary judgment order, Moving Defendants filed their sanctions motion on September 23, 2025. (NYSCEF Doc. Nos. 79–85.) Moving Defendants filed supplemental billing records on October 30, 2025. (NYSCEF Doc. Nos. 88–91.) Plaintiff filed opposition papers and a cross-motion on December 22, 2025 (NYSCEF Doc. Nos. 94–102), Moving Defendants replied on December 23, 2025 (NYSCEF Doc. Nos. 103–104), and plaintiff filed a reply on January 6, 2026. (NYSCEF Doc. No. 105.) The motion and cross-motion are consolidated for disposition.

DISCUSSION

I. Legal Standard

Pursuant to 22 NYCRR § 130-1.1(a), the court, in its discretion, may award costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorneys’ fees resulting from frivolous conduct, and may impose financial sanctions upon any party or attorney who engages in such conduct. *Yinuo Yin v. Xiao Feng Qiao*, 203 A.D.3d 996, 998 (2d Dep’t 2022); *Chicas v. Cassar*, 212 A.D.3d 704, 706 (2d Dep’t 2023). Conduct is “frivolous” within the meaning of the rule 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. 22 NYCRR § 130-1.1(c).

In determining whether conduct was frivolous, the court must consider the totality of the circumstances, 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.” 22 NYCRR § 130-1.1(c); *Lombardi v. Lombardi*, 229 A.D.3d 537, 539 (2d Dep’t 2024); *M&T Bank v. Friedmann*, 217 A.D.3d 934, 936 (2d Dept 2023). The rule further provides that “[f]rivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section.” 22 NYCRR § 130-1.1(c).

To avoid sanctions, at the least, “the conduct [at issue] must have a good faith basis.” *Dank v. Sears Holding Mgt. Corp.*, 69 A.D.3d 557, 558 (2d Dep’t 2010) (citing *Kamruddin v. Desmond*, 293 A.D.2d 714, 715 [2d Dep’t 2002]). A party’s ultimate lack of success on the merits does not, without more, render its prior litigation conduct frivolous. *See 1450 Gun Hill Rd. LLC v. Capital Hill Partners, LLC*, 18 Misc 3d 1121(A), 1121A, 2008 NY Slip Op 50150(U), *5 (Sup Ct, NY County 2008). These principles govern both motions at issue in this order.

II. Moving Defendants’ Motion for Sanctions and Attorneys’ Fees

After careful review of the full record and the totality of the circumstances, the Court concludes that plaintiff’s counsel’s conduct, while ultimately unsuccessful, does not rise to the level of “frivolous” within the meaning of 22 NYCRR § 130-1.1. The motion is denied for the following reasons.

A court dismissing a claim on the merits does not necessarily compel a finding that the claim was frivolous for sanctions purposes. *See Cassagnol v. Village of Hempstead*, 214 A.D.3d 766 (2d Dep’t 2023); *Talmidov Inc. v. Marina Holding Corp.*, 82 Misc. 3d 790 (Sup. Ct, Kings County 2024).

A. The Deed established a title transfer but did not resolve the management or control question.

The Bargain and Sale Deed conclusively showed a pre-incident transfer of title, but it did not on its face address whether Moving Defendants retained any management, maintenance, or operational role at the premises. In premises liability actions, a duty to maintain the property in a reasonably safe condition may be predicated on ownership, occupancy, control, or special use, not ownership alone. *Maher v. White*, 184 A.D.3d 630, 632 (2d Dep't 2020); *Velez v. Captain Luna's Mar.*, 74 A.D.3d 1191, 1192 (2d Dep't 2010) (same). The Deed, while certainly probative of the ownership question, was silent as to management or control, and the information available to the plaintiff's counsel "was sufficiently ambiguous to justify [the plaintiff's] reluctance to discontinue the action [...]." *See Glenn v. Annunziata*, 53 A.D.3d 565, 566 (2d Dep't 2008).

B. Plaintiff was actively pursuing management and control discovery.

Plaintiff's counsel's November 6, 2024 email demanding production of the maintenance contract (sent the day before the Gonzalez deposition) demonstrates that the management and control issue was actively being pursued in discovery. (NYSCEF Doc. No. 82.) The Part 130 inquiry is temporal and fact-sensitive: it asks what the party knew or should have known, and when. *See Robinson v. In & Out Deli, Inc.*, 173 A.D.3d 791, 793 (2d Dep't 2019). Here, the record does not establish that plaintiff knew or should have known, prior to the November 2024 deposition and subsequent motion proceedings, that the management question was definitively resolved.

C. The picture crystallized around the November 7, 2024, deposition and subsequent motion practice.

The critical dates in this analysis are: (1) the August 2023 Deed notice; (2) plaintiff's continued focus on management discovery as of November 6, 2024; (3) the Gonzalez deposition

on November 7, 2024; (4) the December 3, 2024 final discontinuance demand; (5) Moving Defendants' December 27, 2024 summary judgment motion; and (6) plaintiff's March 28, 2025 discontinuance offer and non-opposition on the merits. Once the relevant discovery record had been developed and Moving Defendants moved for summary judgment, plaintiff did not oppose dismissal on the merits and affirmatively offered to discontinue. (NYSCEF Doc. No. 94.) That conduct is fundamentally inconsistent with the type of bad faith or vexatiousness that Part 130 sanctions are designed to deter. *See Glenn*, 53 A.D.3d at 566; *Robinson*, 173 A.D.3d at 791.

D. The fee request is overbroad and causally deficient.

The billing submissions reflect that Moving Defendants seek fees for work performed in connection with both the defense of the underlying action and the preparation of the sanctions motion itself. (NYSCEF Doc. No. 88; NYSCEF Doc. No. 90.) Section 130-1.1 authorizes an award of attorneys' fees "resulting from frivolous conduct." The fee submission is overbroad on its face because it includes underlying-defense work and sanctions-motion work, but the record does not isolate fees caused solely by the allegedly sanctionable conduct.

The Court has considered the authorities cited by Moving Defendants and finds them distinguishable. *Pickens v. Castro*, 55 A.D.3d 443 (1st Dep't 2008)² involved sanctions for a single frivolous motion to modify an order that the party had already accepted; it did not address the continued prosecution of a premises liability claim where management and control issues remained in active discovery. *Matter of Gordon v. Marrone*, 202 A.D.2d 104 (2d Dep't 1994), involved a retaliatory Article 78 proceeding brought to punish an adversary for its role in a land-use fight.

² Moving Defendants cite this case as Second Department authority. It is a First Department decision.

To the extent Moving Defendants also rely on alleged comments made by plaintiff's counsel outside the courtroom (NYSCEF Doc. No. 80), this Court finds that disputed, uncorroborated allegations are insufficient to warrant sanctions.

The sanctions standard under § 130-1.1 requires more than mere negligence or imperfect lawyering; it requires conduct that is “completely without merit,” that is “undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another,” or that “asserts material factual statements that are false.” *See Dank*, 69 A.D.3d at 557 (citing 22 NYCRR § 130-1.1(c)(1)–(3)). Moving Defendants do not establish any of those bases with respect to plaintiff's conduct.

Accordingly, Moving Defendants' motion for sanctions and attorneys' fees is denied.

III. Plaintiff's Cross-Motion for Sanctions

Plaintiff's cross-motion fares no better. Section 130-1.1(c) provides that “[f]rivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section.” By necessary implication, a motion for sanctions that is not itself frivolous does not give rise to counter-sanctions merely because it is ultimately denied. *See Southern Blvd. Sound, Inc. v. Felix Storch, Inc.*, 167 Misc 2d 731, 732 (App Term 1st Dep't 1996).

Here, Moving Defendants' sanctions application was expressly preserved by this Court's April 9, 2025 Decision and Order. (NYSCEF Doc. No. 69.) It was grounded in a recorded Deed reflecting a pre-incident property transfer, email communications placing plaintiff's counsel on notice of the transfer, repeated requests for a discontinuance that went unanswered, and a subsequent order granting summary judgment in Moving Defendants' favor. Although this Court has determined above that the showing does not ultimately warrant sanctions, the application had a colorable good-faith basis. *See Dank*, 69 A.D.3d at 558. The record does not support the finding

that the motion was brought primarily to harass or injure, or that it rested on material falsehoods. 22 NYCRR § 130-1.1(c)(1)–(3).

To the extent plaintiff relies on *Sangaray v. West River Associates, LLC*, 26 N.Y.3d 793 (2016), and *Kittay v. Moskowitz*, 95 A.D.3d 451 (1st Dep’t 2012),³ those authorities address the merits of premises liability claims (respectively, proximate cause under Administrative Code § 7-210 and the limited duty of an out-of-possession landlord). Neither case suggests that a sanctions motion grounded in a recorded Deed and an unopposed summary judgment motion is, without more, frivolous.

As for Moving Defendants’ delays and deficiencies in substantiating their fee request, the Court notes that the initial submissions proved insufficient and required supplementation. That procedural history does not, however, establish on this record that Moving Defendants engaged in conduct undertaken primarily to delay, harass, or maliciously injure within the meaning of Part 130. Accordingly, plaintiff’s cross-motion for sanctions is denied.

CONCLUSION

Part 130 motion practice should be reserved for conduct that clearly satisfies the rule’s stringent standard. On this record, neither side has demonstrated that the other’s conduct crossed the threshold from unsuccessful or imperfect lawyering into frivolous conduct within the meaning of 22 NYCRR § 130-1.1.

Accordingly, it is hereby

ORDERED, that the motion (Mot. Seq. 3) of defendants Albany Crossings Apartments LP and Shinda Management Corp. for sanctions and attorneys’ fees pursuant to 22 NYCRR § 130-1.1 is denied in its entirety; and it is further

³ Plaintiff incorrectly cites this case as a Second Department decision. The correct citation is 95 A.D.3d 451 (1st Dep’t 2012).

ORDERED, that the cross-motion (Mot. Seq. 4) of plaintiff Mozelle Brown for sanctions and costs pursuant to 22 NYCRR § 130-1.1 is denied in its entirety; and it is further

ORDERED, that any requested relief not expressly addressed herein is denied.

Dated: 03/19/2026

KAL HON. KATHERINE A. LEVINE
Hon. Katherine A. Levine, J.S.C.