

**Stone v Beltrani**

2012 NY Slip Op 33425(U)

November 16, 2012

Sup Ct, New York County

Docket Number: 156180/2012

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN J.S.C. Justice

PART

Index Number : 156180/2012
STONE, BARBARA
vs.
BELTRANI, MARIA
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause -- Affidavits -- Exhibits No(s).
Answering Affidavits -- Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 11/16/12

CYNTHIA S. KERN J.S.C.

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
BARBARA STONE,

Plaintiff,

Index No. 156180/2012

-against-

**DECISION/ORDER**

MARIA I. BELTRANI, WOLF HALDENSTEIN  
ALDER FREEMAN & HERZ LLP, 205 E. 77  
ST. TENANTS CORP. and JOSEPH MANFREDI,

Defendants.

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Cross-Motion and Affidavits Annexed.....	<u>          </u>
Answering Affidavits to Cross-Motion.....	<u>          </u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Plaintiff commenced the instant action alleging, among other things, malicious prosecution, abuse of process and fee extortion under false pretenses against defendants arising from litigation over plaintiff's occupancy of an apartment. Defendants Maria I. Beltrani and Wolf Haldenstein Alder Freeman & Herz LLP (hereinafter "Beltrani") now move for an order pursuant to CPLR § 3211(a)(1), (5) and (7) dismissing plaintiff's complaint on the ground that plaintiff's claims are barred by two general releases and, in the alternative, on the ground that plaintiff's complaint is legally insufficient for failure to state a cause of action. For the reasons set forth below, Beltrani's motion to dismiss is granted.

The relevant facts are as follows. Plaintiff's brother, Alan Stone, was the owner and shareholder of an apartment (hereinafter the "Premises") in the cooperative building owned by defendant 205 E. 77 St. Tenants Corp. (hereinafter "Tenants Corp."). It is undisputed that Mr. Stone never actually resided at the Premises and that after the closing in April of 2005 plaintiff took up residence and remained the sole occupant up until the spring of 2012. In December 2008, a dispute arose between Tenants Corp. and plaintiff, as well as between plaintiff and her brother Mr. Stone, regarding plaintiff's occupancy of the Premises. Thereafter, plaintiff commenced an action against Mr. Stone seeking a preliminary injunction to stop him from taking any steps to remove her from the Premises or to sell the Premises. At or about the same time, Tenants Corp., represented by Beltrani, issued default and termination notices requiring plaintiff to vacate the Premises and eventually initiated a holdover proceeding in August 2010.

Ultimately, on or about December 19, 2011, on the date set for trial in the holdover proceeding, plaintiff, represented by Mohammad Billah, entered into a stipulation of settlement (the "Settlement") with Tenants Corp. wherein plaintiff agreed, among other things, to pay to Beltrani legal fees in the amount of \$75,000. Thereafter, plaintiff executed a general release in favor of Tenants Corp. and its attorneys on December 28, 2011. Several months later, on July 31, 2012, plaintiff sold the Premises, paid the legal fees she had agreed to and executed a second general release in favor of Tenants Corp. and its attorneys.

"It is well established that a valid release constitutes a complete bar to an action on a claim which is the subject of the release." *Global Mins. & Metals Corp. v. Holme*, 35 A.D.3d 93 (1<sup>st</sup> Dept 2006). Thus, "in the absence of fraud, duress, illegality or mistake, a general release bars an action on any cause of action arising prior to its execution." *Hack v. United Capital Corp.*, 247 A.D.2d 300, 301 (1<sup>st</sup> Dept 1998) (internal quotations omitted). "It is plaintiff['s]

burden, in seeking to set aside the release, either to demonstrate that it does not apply to [its] claim or to establish an equitable basis to vitiate its effect.” *Id.*

In the instant action, it is clear that plaintiff’s claims fall within the ambit of the two general releases and plaintiff has failed “to establish an equitable basis to vitiate [their] effect.” *See id.* The releases clearly state that plaintiff, as releasor, agrees to release Tenants Corp. and its attorneys, as releasees, from:

all actions, causes of action, suits, . . . claims, and demands whatsoever, in law, admiralty or equity, which against RELEASEE, the RELEASOR . . . ever had, now have, or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever . . .

The only difference between the two releases is that the first release applies to and releases all claims existing as of December 19, 2011, while the second release applies to and releases all claims existing as of July 31, 2012. The alleged misdeeds which give rise to plaintiff’s claims all arose in the litigation process with defendants, which culminated in the execution of the Settlement on December 19, 2011 and the subsequent payment of legal fees on July 31, 2012. Thus, plaintiff’s claims are clearly barred by the terms of the two releases.

Plaintiff argues that the releases should be set aside due to fraud in the inducement. However, plaintiff has failed to establish that there was fraud in the inducement of either release to nullify their effect. Plaintiff alleges that “she appeared without counsel in the housing court action and was bullied into paying a bill for Beltrani’s participation in a Supreme Court action that she was not a party to for fear of becoming homeless.” However, the stipulation of settlement annexed to Beltrani’s moving papers clearly shows that plaintiff was indeed represented by counsel at the time of entering into the Settlement. Plaintiff can hardly claim with any credibility that she, a lawyer herself, represented by counsel at the time she entered into the

