

|                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Eugenis v Credit Bur. of N.Y., Inc.</b>                                                                                                                                                                                                                       |
| 2016 NY Slip Op 32502(U)                                                                                                                                                                                                                                         |
| December 16, 2016                                                                                                                                                                                                                                                |
| Supreme Court, Kings County                                                                                                                                                                                                                                      |
| Docket Number: 504495/15                                                                                                                                                                                                                                         |
| Judge: Larry D. Martin                                                                                                                                                                                                                                           |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office. |
| This opinion is uncorrected and not selected for official publication.                                                                                                                                                                                           |

At an I.A.S. Trial Term, Part 41 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 16<sup>th</sup> day of December, 2016.

**PRESENT:**

Hon. LARRY D. MARTIN, J.S.C.



FOTIUS EUGENIS,

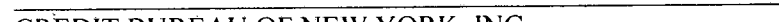
Plaintiff,

Motion Sequence #3  
INDEX No. 504495/15

-vs-

CREDIT BUREAU OF NEW YORK, INC.,  
RAPID REALTY 95 INC., MARIA GABRIELLA FALQUEZ,  
ROBERT THOMAS and SHERITA DELGADO,

Defendants.



CREDIT BUREAU OF NEW YORK, INC.,

Plaintiff,

INDEX No. 21443/12

-vs-

RAPID REALTY 95 INC., MARIA GABRIELLA  
FALQUEZ, FOTIUS EUGENIS,

Defendants.



|                                                          |                  |
|----------------------------------------------------------|------------------|
| The following papers numbered 1 to 3 read on this motion | Papers Numbered  |
| Notice of Motion -                                       |                  |
| and Affidavits (Affirmations) Annexed _____              | <u>1-2</u> _____ |
| Answering Affidavit (Affirmation) _____                  | <u>3</u> _____   |
| Reply Affidavit (Affirmation) _____                      | _____            |

Upon the foregoing papers, plaintiff/third-party defendant, Fotius Eugenis (“Mr. Eugenis”), moves for an order: (1) pursuant to CPLR 602(a), joining an action entitled *Eugenis v Credit Bureau of New York, Inc., et al*, under Index No. 504495/15 (hereinafter, “action #1”) with an action entitled *Credit Bureau of New York, Inc. v Rapid Realty 95 Inc., et al* under Index No. 21443/12 (hereinafter, “action #2”) for the purposes of trial; (2) pursuant to CPLR 3124, for an order compelling the

[\*2]

defendants in action #1 to appear for depositions; and (3) for an extension of the time to file the Note of Issue (hereinafter, "NOI") in action #1.

### **Background & Procedural History**

Mr. Eugenis commenced action #1 on April 15, 2015 seeking compensatory damages as well as nullification and cancellation of certain promissory notes and financing statements bearing his signature. In the complaint in Action #1, Mr. Eugenis alleges that defendants Rapid Realty 95 Inc. ("Rapid Realty"), Credit Bureau of New York, Inc. ("Credit Bureau"), Maria Gabriella Falquez ("Ms. Falquez"), Robert Thomas ("Mr. Thomas") and Sherita Delgado ("Ms. Delgado"; collectively, "action #1 defendants"), acting in concert, embarked upon a scheme wherein Rapid Realty (through Ms. Falquez) obtained several commercial loans from Credit Bureau. It is alleged that Ms. Falquez used the loan proceeds for her personal use rather than for business purposes. According to Mr. Eugenis, his initials and signature were forged onto several promissory notes and security agreements, depicting him as a guarantor for the full amount of each loan.

Mr. Eugenis further alleges that Ms. Delgado, a licenced notary public, affixed her notary stamp on each of the notes and agreements, certifying that Mr. Eugenis appeared before her and signed the documents in her presence. However, Mr. Eugenis asserts that he never executed any of the aforementioned documents, nor did he receive any consideration from any of the defendants, nor did he ever appear before Ms. Delgado for the purpose of getting the aforementioned documents notarized. Nonetheless, when the promissory notes fell into default for non-payment, Credit Bureau initiated action #2<sup>1</sup> seeking repayment of the monies allegedly due to it under the terms of the loan agreements. Mr. Eugenis, as the alleged guarantor for the loans taken out by Rapid Realty, is a

---

<sup>1</sup> Action #2 was commenced on November 1, 2012, prior to the initiation of action #1.

[\*3]

named defendant in action #2. Likewise, Credit Bureau, as the lending institution, is a named defendant in the instant action #1.

### Discussion

Pursuant to CPLR 602(a), “[w]hen actions involving a common question or law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue . . . .” (CPLR 602 [a]). Moreover, the Court notes that “the interests of justice and judicial economy are better served by joint trials wherever possible” (*Megyesi v Automotive Rentals, Inc.*, 115 AD2d 596, 597 [2d Dept 1985]), unless “the opposing party demonstrates prejudice to a substantial right” (*Clark v Clark*, 93 AD3d 812, 814 [2d Dept 2012]; *Alizio v Perpignano*, 78 AD3d 1087, 1088 [2d Dept 2010]).

In support of the instant motion, Mr. Eugenis proffers, inter alia, a copy of the complaint in action #1 and the complaint in action #2. Based upon these complaints, Mr. Eugenis avers that a joint trial is appropriate because the same set of factual circumstances gave rise to both of actions, and the validity of the aforementioned promissory notes are at issue in both actions. In opposition, Credit Bureau asserts that it will be prejudiced by a joint trial because action #1 is still in the discovery phase while action #2 is ready for trial. Specifically, Credit Bureau contends that in action #2 a NOI has already been filed and all discovery has been completed. However, as noted in the affirmation in support to Mr. Eugenis’s motion, the reason that discovery has not been completed in action #1 is because each of the defendants in action #1 failed to comply with Mr. Eugenis’s discovery demands<sup>2</sup>. Based upon a review of the record submitted by the parties, and the relevant law, the Court hereby grants Mr. Eugenis’s motion for joint trial of action #1 and action #2. In light of the

---

<sup>2</sup> The Court notes that pursuant to a Preliminary Conference Order dated June 28, 2016, Credit Bureau, Mr. Thomas, Ms. Delgado and Ms. Falquez were all scheduled to be deposed in August 2016.

fact that the two subject actions involve common questions of law and fact, the Court finds that “a joint trial will avoid unnecessary duplication of proceedings, save unnecessary costs and expenses, and prevent the injustice that would result from divergent decisions based on the same facts” (*Oboku v New York City Transit Authority*, 141 AD3d 708, 709 [2d Dept 2016]; see *Alizio*, 78 AD3d at 1088).

Accordingly, that branch of Mr. Eugenis’s motion seeking to join action #1 and action #2 for the purposes of trial is granted. Each action shall retain its own index number, file a separate RJI, separate NOIs, and separate judgments. That branch of Mr. Eugenis’s motion seeking to compel the defendants in action #1 to appear for a deposition is granted to the extent that depositions of the named defendants in action #1 are to be completed by January 31, 2017. Finally, the branch of defendants’ motion to extend the time to file a NOI in action #1 is also granted, and the time to file the NOI is extended to March 6, 2017. The parties in action #1 are reminded of their upcoming appearance in the **Central Compliance Part (CCP)** on **February 6, 2017**.

The foregoing constitutes the decision and order of the Court.

For Clerks use only  
MG   
MD   
Motion Seq. # 3

ENTER,

DEC 16 2016



HON. LARRY D. MARTIN

J.S.C.