

Huan Wang v Garnett
2017 NY Slip Op 30154(U)
January 23, 2017
Supreme Court, New York County
Docket Number: 160488/15
Judge: Kathryn E. Freed
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2**

-----X
HUAN WANG,

Plaintiff,

-against-

DECISION AND ORDER
Index No.: 160488/15
Mot. Seq. No. 001

RONALD L. GARNETT,

Defendant.

-----X
HON. KATHRYN E. FREED, J.S.C. :

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

MOT. SEQ. 001

PAPERS	NUMBERED
PLAINTIFF'S NOTICE OF MOTION AND AFF. IN SUPPORT	1-2 (Table of Contents and Exs. A-W)
DEFENDANT'S MEMO. OF LAW IN OPP.	3
PLAINTIFF's REPLY AFF.	4

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this action by plaintiff Huan Wang against defendant Ronald L. Garnett to recover monies allegedly owed on a promissory note, as well as for damages for infliction of physical and mental injuries, plaintiff moves, pursuant to Federal Rule of Civil Procedure ("FRCP") 11, for sanctions against defendant for filing a frivolous answer. Defendant opposes the motion. After oral argument, and after consideration of the parties' motion papers and the relevant statutes and case law, the motion is **denied**.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff pro se commenced this action against defendant on October 14, 2015. Ex. A. In her complaint, plaintiff alleged, inter alia, that defendant failed to repay a promissory note in the amount of \$45,300 (Ex. A at pars. 10, 37) and that defendant caused her physical and mental injuries. Id., at pars. 29-34. Defendant thereafter served an answer dated and filed with this Court on November 2, 2015, in which he essentially denied all allegations of wrongdoing and asserted as affirmative defenses, inter alia, culpable conduct and unclean hands. Ex. B.

On June 11, 2016, plaintiff filed the instant motion seeking sanctions against defendant pursuant to FRCP Rule 11 due to what she claims are blatantly false denials in his answer. In support of the motion, plaintiff submits documentation, including, among other things, letters and emails which, she claims, establish the falsity of the responses in defendant's answer. Defendant submits a memorandum of law in opposition to the motion.

THE PARTIES' CONTENTIONS:

Plaintiff argues that her motion for sanctions must be granted because the evidence she submits establishes that defendant's answer contained false and/or baseless responses which rose to the level of frivolous conduct pursuant to FRCP 11.

In opposition, defendant argues that FRCP 11 is inapplicable to this matter and that the responses in his answer were proper pursuant to CPLR 3018. He further asserts that he has already paid back plaintiff the money she loaned him and thus this matter is moot.

In her reply affidavit, plaintiff mainly reiterates her contention that defendant wilfully lied in his answer.

LEGAL CONCLUSIONS:

Initially, FRCP is inapplicable to this action, which is in New York State Supreme Court. See *Myers v City of New York*, 2011 NY Slip Op 31871(U) (Sup Ct New York County 2011); *Gross v Newburger, Loeb & Co.*, 103 Misc 2d 417 (Sup Ct Nassau County 1980).

Pursuant to 22 NYCRR 130-1.1(a), this Court, in its discretion, may award “costs in the form of reimbursement for actual expenses and reasonable attorney’s fees” as a result of frivolous conduct. In addition to or instead of such costs, the court may impose a sanction against a party and/or an attorney to the litigation. See 22 NYCRR 130-1.1(a), (b). Such sanction may not exceed \$10,000 (22 NYCRR 130-1.2), although there is no limit on the amount the court may award as costs.

“Frivolous conduct” encompasses 1) conduct completely without merit in law, which cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; 2) conduct undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; and 3) the assertion of material factual statements that are false. 22 NYCRR 130-1.1 (c). In determining whether conduct is frivolous, the court “shall consider, among other issues, 1) the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and 2) 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.” *Id.*

Upon consideration of the foregoing factors, this Court determines that defendant’s conduct was not frivolous. As defendant contends, he was permitted by CPLR 3018 (a) to “deny those statements known or believed by him to be untrue” and “specify those statements as to the truth of which he lacks knowledge or information sufficient to form a belief” which “shall have the effect

of a denial.” Here, defendant not only denied certain allegations outright and based on insufficient knowledge, but also admitted that he executed a promissory note in the amount of \$45,300. Ex. B, at par. 10. He further pleaded, however, that the note was executed under duress. *Id.* Thus, it is evident that there is a dispute between the parties regarding the circumstances under which the promissory note was issued. Despite what appears to be a bona fide dispute as to whether the debt in question is owed, plaintiff seeks to resolve the issue on the instant motion for sanctions. This, of course, is not the proper procedural vehicle for such a resolution, as it is not a dispositive motion such as one for summary judgment pursuant to CPLR 3212.

Further, the motion must be denied given plaintiff’s equivocal and speculative accusations regarding several specific examples of defendant’s alleged frivolity. For example, plaintiff claims that:

1. “a reasonable conclusion can be drawn that [d]efendant’s denial to [her] statement in [paragraph 11] of the [c]omplaint is frivolous and has no basis.” Plaintiff’s Aff. In Supp., at p. 11.
2. “a reasonable conclusion can be made [that her] statement in [paragraph] 12 of the [c]omplaint is truthful” and “[t]hus, [d]efendant’s denial was frivolous and has no factual basis. *Id.*, at p. 12.
3. Since “[i]t can be proved that [p]laintiff did [not] make [up facts] when drafting the [c]omplaint . . . [d]efendant’s denial to [p]aragraph 13 is frivolous and has no factual basis.” *Id.*, at p. 13.
4. “Plaintiff has reasons to believe that [d]efendant willfully distorted the truth by denying the fact that [she] stated in [paragraph 15] of the [c]omplaint.” *Id.*, at p. 15.
5. “Plaintiff believes there is no logic in [paragraph 22 and 23 of the answer].”
6. “Paragraph 23 [of the answer] shows [d]efendant’s probable infidelity to his wife” and that he concealed his marriage from plaintiff. *Id.*, at p.24.

Plaintiff's speculative and equivocal claims are insufficient to give rise to sanctions. Although plaintiff submits substantial documentation in support of the motion, a great deal of the same is comprised of hearsay and unsupported by proper foundation.

In light of the foregoing, it is hereby:

ORDERED that the motion by plaintiff Huan Wang seeking to sanction defendant Ronald L. Garnett for frivolous conduct is denied in all respects; and it is further,

ORDERED that the parties are to appear for a compliance conference on January 31, 2017, at 2:30 p.m. at 80 Centre Street, Room 280, as previously ordered by this Court; and it is further,

ORDERED that this constitutes the decision and order of the court.

Dated: January 23, 2017

ENTER:


HON. KATHRYN E. FREED, J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**