

Sabo v Leftwick

2007 NY Slip Op 34596(U)

June 7, 2007

Supreme Court, New York County

Docket Number: 109658/2004

Judge: Jane S. Solomon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----x
JAMES PAUL SABO and CROWS MILL TRUST,

Plaintiff,

Index No. 109658/2004

-against-

DENNIS LEFTWICK and ROSEMARY MACMILLAN
and ROMAC GENERAL CONTRACTING, INC.,

DECISION AND ORDER

Defendants.

-----x
Jane Solomon, J.:

In this action to domesticate a New Jersey judgment, plaintiffs move, pursuant to CPLR §§ 3211(a)(7) and 3212, for an order dismissing defendants' counterclaims and, also, pursuant to CPLR § 3217, for an order dismissing their Complaint. Defendants Dennis Leftwick and Rosemary MacMillan cross-move pursuant to CPLR § 3212, for an order granting summary judgment on their counterclaims.

FILED

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NEW YORK

On March 18, 2004, a judgment was entered in the New Jersey Superior Court in favor of James Sabo and Crows Mill Trust for \$127,657.09 against the moving defendants and Romac General Contracting, Inc. Plaintiffs commenced this action in July 2004, and on November 3, 2004, a judgment was entered in this court based on the New Jersey judgment.

In an order dated January 21, 2005, the New Jersey court vacated its judgment and, thereafter, by order dated March 24, 2006, this court vacated the November 3, 2004 judgment, and

awarded defendants costs and disbursements, including \$100 for the costs of the motion to vacate the judgment.

Plaintiffs now seek to discontinue their claim voluntarily under CPLR § 3217. That portion of the motion is granted without opposition.

Plaintiffs also move to dismiss defendants' counterclaims. The first counterclaim is based upon plaintiffs' alleged "bad faith in bringing this suit and/or failing to withdraw claims that have no merit and/or violation of 22 NYCRR Section 130-1.1A." It is undisputed that when plaintiffs commenced this action there was a valid New Jersey judgment. That the judgment was later vacated does not demonstrate that plaintiffs commenced this action in bad faith, and defendants have not put forth any additional evidence that it was.

To the extent that defendants seek to assert a claim for sanctions pursuant to 22 NYCRR § 130-1.1(A), that claim also is dismissed. New York does not recognize a separate cause of action under those rules. See Ocean Side Institutional Indus., Inc v. Superior Laundry, 2007 NY Slip Op 50822U (Sup. Ct. Nassau County 2007); Aurora Loan Services, LLC v. Cambridge Home Capital, LLC, 12 Misc3d 1152(A) (Sup. Ct. Nassau County 2006) (Rule 130 contemplates a motion made in the context of a pending action and not an independent cause of action); Murphy v. Smith, 798 N.Y.S.2d 346 (Sup. Ct. New York County 2004) (sanctions

may not be pleaded as a distinct cause of action); Yankee Trails, Inc. v. Jardine Ins. Brokers, Inc., 145 Misc2d 282 (Sup. Ct. Rensselaer County 1989).

Defendants also assert that the New Jersey action was not properly instituted because the matters at issue in that court had previously been ruled upon in arbitration. However, whether the New Jersey action was properly instituted is not for this court to decide. Defendants' second counterclaim asserts that "[p]laintiffs know or should have known that this action is not proper." It further states that "[p]laintiffs brought this suit merely to harass defendants as the matter has been arbitrated years ago by the American Arbitration Association."

Defendants' third counterclaim is a request that the court enjoin plaintiff from bringing any additional actions against defendants without prior court approval. Defendants state that injunctive relief is necessary to protect them from harassment and "future bad acts".

The second and third counterclaims are dismissed. As noted above, plaintiff commenced this action to domesticate a then valid New Jersey judgment.

Accordingly, it hereby is

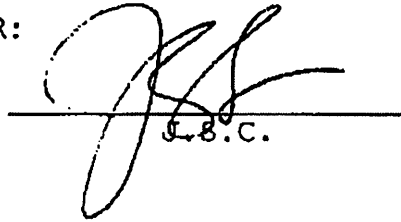
ORDERED that plaintiffs' motion to dismiss defendants' counterclaims is granted and the counterclaims are dismissed; and plaintiffs' motion to dismiss the Complaint pursuant to CPLR §

3217 is granted and the Complaint is dismissed, and the Clerk is directed to enter judgment accordingly; and it further is

ORDERED that defendants' cross-motion for summary judgment is denied.

Dated: June 7, 2007

ENTER:



J.G.S.

JANE G. SOLOMON
J.S.C.

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