

1050 Tenants Corp. v Lapidus

2013 NY Slip Op 31124(U)

May 21, 2013

Supreme Court, New York County

Docket Number: 108653/2005

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ANIL C. SINGH
SUPREME COURT JUSTICE
PRESENT: _____
Justice

PART 67

Index Number : 108653/2005
1050 TENANTS
vs.
LAPIDUS, STEVEN R.
SEQUENCE NUMBER : 005
RESTORE ACTION TO CALENDAR

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1
Answering Affidavits — Exhibits _____ | No(s). 2
Replying Affidavits _____ | No(s). 3

Upon the foregoing papers, it is ordered that this motion ^{and cross-motion} ~~is~~ decided in accordance with the annexed memorandum opinion.

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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

FILED

MAY 23 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/21/13

[Signature]
HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

- 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 61

-----X
1050 TENANTS CORP.,

Plaintiff,

-against-

STEVEN R. LAPIDUS and IRIS R. LAPIDUS,

Defendants.
-----X

DECISION AND
ORDER

Index No.
108653/2005

FILED

MAY 23 2013

HON. ANIL C. SINGH, J.:

COUNTY CLERK'S OFFICE
NEW YORK

Plaintiff moves to restore this case to the active calendar and for an award of supplemental attorneys' fees for legal expenses incurred after an ejection judgment dated June 19, 2006, and a money judgment for legal fees was entered in favor of plaintiff 1050 Tenants Corp. and against defendants Steven R. Lapidus and Iris R. Lapidus dated April 25, 2007, in the sum of \$34,269.99.

The shares for defendants' cooperative sold on May 30, 2008.

An accounting for the sales proceeds prepared by plaintiff reflects that the monies deducted by the co-op for the ejection action included, inter alia: the \$34,269.99 judgment for attorneys' fees; the \$3,379.25 interest on the judgment; and \$197,714.26, which were additional recoverable attorneys' fees and expenses not covered by the judgment. A satisfaction of judgment for \$34,269.99 was

executed on May 30, 2008.

The additional fees and expenses relate to post-judgment activities and litigation. It is plaintiff's position that these costs and expenses were incurred as a result of defendants' obstreperous conduct while the Lapiduses continued to litigate rather than accept the findings by the various courts. Therefore, based on earlier findings that the plaintiff is the prevailing party, plaintiff should be awarded its additional expenses and legal fees for a total of \$222,068.52.

Although the monies were withheld by the co-op after the sale in May 2008, plaintiff waited until four years later to bring this application.

It is plaintiff's view that this action has not terminated by issuance of the prior judgments. Plaintiff argues that a supplemental fee request is analogous to supplemental proceedings to enforce a judgment.

I disagree. First, I note that plaintiff cites to no provision in the CPLR that would allow a party four years after the litigation has terminated by judgment and satisfaction of judgment to make an application for a supplemental award.

The CPLR specifically provides for the post-judgment award of attorneys' fees in certain situations (see, for example, Parker v. New York State Department of Social Services, 199 A.D.2d 928 [2d Dept., 1993] (holding that while CPLR article 86 authorizes post-judgment counsel fees, petitioner failed to submit a post-

judgment application as required by statute)). Likewise, in the arena of domestic relations law, “a post-judgment award of counsel fees is proper where the application therefor was made prior to the entry of judgment and the court specifically retained continuing but limited jurisdiction to entertain a reapplication” (48 N.Y.Jur. 2d Domestic Relations section 2582). It is clear, however, that these statutory provisions have no relevance in the present context.

Plaintiff’s characterization that this motion is akin to a supplemental proceeding is off the mark because the judgment has been satisfied; thus, there is nothing to enforce. Further, supplemental proceedings are explicitly permitted in Article 52 of the CPLR.

As Professor Siegel states:

A judgment is the resolution of the dispute and the note on which the action or proceeding ends.

(Siegel, NY Prac at section 409, at 716 [5th ed]).

In short, the judgment terminated this ejectment action. Plaintiff got the relief it sought – ejectment as well as an award of attorneys’ fees.

Subsequent to obtaining the judgments, there were additional disputes between the parties. Those disputes are being litigated in the Supreme Court of Suffolk County. In 2009, Lapidus brought the Suffolk County action against the

co-op challenging the decision by the co-op to withhold the monies after the sale of the shares in the sum of \$901,270.61.

Lapidus further asserts in paragraph 15 of the Suffolk County complaint that:

The additional amounts withheld for reimbursement of attorney's fees provided for in the lease were also a clear violation of the provisions of the lease in paragraph "35" providing that "the lessee shall have no further liability for sums thereafter accruing..." and further said claims were merged in the judgments which included attorney's fees and do not survive the judgments, and thereafter any attempt to collect additional attorney's fees after judgment are clear violations of the so called "American Rule" that each party must bear his own attorney's fees and further that any attempt to collect additional attorney's fees after judgment is barred by the doctrine of res judicata and other applicable provisions of law.

The parties have actively litigated the issues raised in the Suffolk County complaint.

Plaintiff's attempts to seek the same attorneys' fees here – which are the subject of the Suffolk County case – is an end run of the litigation in Suffolk County. The issue of whether or not the co-op is entitled to the additional legal fees under the proprietary lease must be litigated in the forum chosen by Lapidus. While plaintiff complains of forum shopping, its attempt to move the Suffolk County proceeding to New York failed.

Plaintiff maintains that it must make the application for post-judgment legal

fees here as it may be subject to an argument that fees are not available in the Suffolk County action on the ground that it is splitting its cause of action. At oral argument, defendants agreed not to raise fee splitting in the Suffolk County litigation. In the event the argument is raised, plaintiff may renew its motion for additional legal fees before this Court.

For these reasons, the motion to restore is denied.

The cross-motion for sanctions is denied as the conduct by the co-op is not frivolous within the meaning of Rule 130.

The foregoing constitutes the decision and order of the court.

Date: 5/20/13
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**

FILED

MAY 23 2013

**COUNTY CLERK'S OFFICE
NEW YORK**