

Le-Cadre v Lockwood Realty, LLC
2015 NY Slip Op 32696(U)
July 21, 2015
Supreme Court, Westchester County
Docket Number: 56875/12
Judge: David S. Zuckerman
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DISPO Post-Trial Motion and Case

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
YANIQUE D. LE-CADRE, DMD., M.S.,

Plaintiff,

-against-

LOCKWOOD REALTY, LLC, GREENRIDGE
MANAGEMENT CORP., and MALKA SHALIT,

Defendants.

-----X
ZUCKERMAN, J.

DECISION/ORDER

Index No:
56875/12

Motion Date:
05/08/15

The following papers numbered 1 to 3 were considered in connection with this motion by counsel for Plaintiff for an ORDER granting attorney's fees in the instant matter:

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION/AFFIRMATION/EXHIBITS	1
AFFIRMATION IN OPPOSITION/EXHIBITS	2
REPLY/EXHIBITS	3

In this contract action, Plaintiff sought damages and legal fees for Defendants' breach of a commercial lease agreement. After issue was joined, Defendants moved for summary judgment. In their moving papers, they alleged that Plaintiff would be unable to prove damages and that there was no provision in the commercial lease for attorney's fees. Plaintiff opposed the motion for summary judgment but did not oppose "dismissal" of the claim for attorney's fees.

In a Decision and Order dated July 1, 2014 ("the prior decision"), the Court (Giacomo, J.) denied Defendants' motion for summary judgment and noted

Defendant also seeks to dismiss plaintiff's claim for attorney's fees.

To the extent defendant seeks to dismiss plaintiff's claim for legal fees, that application is GRANTED. Plaintiff did not specifically oppose this part of defendant's motion.

Based on the foregoing, defendant's motion for summary judgment dismissing the complaint is DENIED except that plaintiff's claim for attorney's fees is DISMISSED.

On April 8, 2015, the parties entered into a stipulation wherein they settled the underlying claim. Presently before the court is Plaintiff's demand for sanctions pursuant to 22 NYCRR 130-1.1. More specifically, Plaintiff seeks an award of attorney's fees for Defendants' denial, in their Answer, of certain allegations set forth in the Complaint.

Defendants first argue that, in the prior decision, the court addressed the issue of attorney's fees and denied any relief. They conclude that, whether characterized as the doctrine of Law of the Case or the broader proscription of res judicata (claim preclusion) the instant motion is barred. *People v Evans*, 94 NY2d 499 (2000); *Certain Underwriters at Lloyds London v North Shore Signature*, 125 AD3d 799 (2nd Dept 2015); Siegel, New York Practice, §448, at 756 (4th ed.) (describing law of the case as "intra-action res judicata"). This argument has no merit. The prior decision addressed Plaintiff's demand for attorney's fees in connection with her breach of contract cause of action. As there was no provision for awarding attorney's fees in the commercial lease agreement, Plaintiff correctly did not oppose that portion of Defendants' motion seeking to "dismiss" the claim. Contrary to Defendants' present assertion, however, the prior decision did not address Plaintiff's present demand for sanctions pursuant to 22 NYCRR 130-1.1. Since the issue was not addressed in the prior decision, Plaintiff is not collaterally estopped from raising it here. See generally *Schwartz v. Public Administrator*, 24 NY2d 65 (1969).

Defendants next assert that Plaintiff, by failing to seek sanctions pursuant to 22 NYCRR 130-1.1 in her response to Defendants' motion to "dismiss" the claim for attorney's fees, waived any and all claims for same. This argument also has no merit. Defendants' motion to "dismiss" the claim for attorney's fees arose in connection with their summary judgment motion. In it, Defendants primarily argued that Plaintiff was unable to prove damages on her breach of contract claim and, therefore, there was no remaining question of fact. In addition, Defendants similarly asserted that there were no factual issues regarding Plaintiff's claim for attorney's fees because the commercial lease did not provide for same. Thus, the issue before the court at that time

was limited to Defendants' claim that there were no factual issues remaining in connection with the single cause of action set forth in the Complaint. In responding to the motion, Plaintiff would not have been expected to interpose her present claim seeking relief for frivolous conduct. Rather, to her credit, Plaintiff did not oppose "dismissal" of her demand for attorney's fees on summary judgment grounds. Lastly, the court notes that there is no time limit for seeking relief pursuant to 22 NYCRR 130-1.1. Therefore, the instant motion is not untimely.

Finally, Defendants assert that, even if the court were to address the merits of Plaintiff's present 22 NYCRR 130-1.1 claim, relief should be denied. As relevant herein, 22 NYCRR 130-1.1 provides

(a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Subpart.

(c) For purposes of this Part, conduct is frivolous if:

(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or

(3) it asserts material factual statements that are false.

It has long been held that "sanctions under 22 NYCRR 130-1.1 are intended to limit frivolous and harassing behavior." *Doe v. Karpf*, 58 AD3d 669 (2d Dept 2009). In addition, "[t]he authority to impose sanctions or costs is committed to the court's sound discretion..." *McHue v. McHue*, 225 AD2d 975, 977 (3d Dept 1996).

Here, Plaintiff asserts that Defendants should be sanctioned because, in their Answer, they denied certain allegations which they knew to be true. This court disagrees. There is no indication that Defendants' denials were intended to harass or delay the litigation. Moreover, some of the denials address paragraphs in the Complaint which contain inappropriate conclusions of law. In addition, the denials asserted in the Answer merely

fulfilled the traditional role of joining issue. They were neither frivolous nor causes of delay.

The cases cited by Plaintiff do not compel a different result. In *Rodrigues v. Occhipinti*, 49 AD3d 708 (2d Dept 2008), the court affirmed imposition of sanctions where the plaintiff did not take any steps to discontinue a concededly meritless action. In *Mascia v. Maresco*, 39n AD3d 1081 (2d Dept 2010), the court approved sanctions because the plaintiff commenced a wholly frivolous action against a process server for doing his job. In *Kaygreen Realty Co., LLC v. IG Second Generation Partners, L.P.*, 78 AD3d 1008 (2d Dept 2010), sanctions were affirmed where a landlord frivolously continued its claims, leading to a wholly unnecessary trial, long after it was apparent that they had no merit. Each of these appellate decisions affirmed awards against plaintiffs who instituted or continued actions which had no merit. Here, Defendants merely interposed denials in their Answer. There is no indication that they intended to harass or delay.

Other cases cited by Plaintiff are similarly inapposite. *Yenon Corp. v. 155 Wooster Street Inc.*, 33 AD3d 67 (1st Dept 2006) is a case where the plaintiff was sanctioned for a frivolous appeal. In *Finkelman v. SBRE, LLC*, 71 AD3d 1081 (2d Dept 2010), the court reversed an award of attorney's fees for allegedly frivolous conduct. Each of these cases is clearly distinguishable on its facts and does not compel the court to exercise its discretion to sanction Defendants. In sum, Plaintiff simply has not convinced this court that Defendants' conduct in providing an Answer containing denials of allegations set forth in the Complaint was, in any way, frivolous.

Finally, the court notes that, in her original Complaint, Plaintiff inappropriately sought, as a component of damages for breach of a commercial lease, attorney's fees from Defendants. This claim had absolutely no merit in law or fact. In doing so, Plaintiff compelled Defendants to move to "dismiss" that frivolous portion of the damages claim. Ironically, in the instant motion, Plaintiff seeks to recover for what she denominates Defendants' frivolous litigation strategy. Plaintiff's lack of "clean hands" further militates against her recovering attorney's fees from Defendants.

Based upon the foregoing, it is hereby

ORDERED, that Plaintiff's motion for an award of attorney's fees pursuant to 22 NYCRR 130-1.1 is denied.

The foregoing constitutes the Opinion, Decision and Order of the court.

Dated: White Plains, New York
July 21, 2015



HON. DAVID S. ZUCKERMAN, A.J.S.C.

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