

Shmueli v Savoy Condominium, LLC

2021 NY Slip Op 30274(U)

January 29, 2021

Supreme Court, New York County

Docket Number: 160302/2016

Judge: Barbara Jaffe

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12

Justice

-----X

SARIT SHMUELI,

Plaintiff,

- v -

THE SAVOY CONDOMINIUM, LLC,
MAXWELL-KATES, INC.,

Defendants.

-----X

**DECISION + ORDER ON
MOTION**

INDEX NO. 160302/2016

MOTION DATE _____

MOTION SEQ. NO. 008 009

The following e-filed documents, listed by NYSCEF document number (Motion 008) 163-171, 194-220 were read on this motion to _____ discharge attorney _____.

The following e-filed documents, listed by NYSCEF document number (Motion 009) were read on this motion for _____ sanctions _____.

By notice of motion, plaintiff moves for an order terminating her attorney, Gershon Abramoff and his law firm Alan Ripka & Associates, from representing her in this action and directing the firm to transfer her case file to her (mot. seq. 008). By notice of cross motion, defendants move pursuant to: (1) CPLR 3124 and 3126 for an order dismissing the complaint for failure to provide discovery; (2) CPLR 3211, for an order dismissing plaintiff's claims as against defendant Maxwell-Kates, Inc. (MK) based on lack of subject matter jurisdiction, for failure to state a cause of action upon which relief may be granted, and based on documentary evidence; and (3) for an order dismissing the complaint and declaring plaintiff to be a vexatious litigant, or in the alternative barring her from filing any further motions without prior approval of the court. Plaintiff opposes the cross motion.

By notice of motion, plaintiff moves for an order imposing sanctions against defense

counsel and his law firm, their insurance company, and MK for various alleged misconduct (mot. seq. 009). Defendants oppose.

The motions are consolidated for disposition.

I. PERTINENT BACKGROUND

Plaintiff's action arises from injuries she allegedly sustained while slipping and falling in premises owned by defendant The Savoy Condominium LLC (Savoy) and managed by MK; plaintiff is a shareholder in Savoy. (NYSCEF 136).

On September 11, 2018, I declined to sign, as without legal basis, a proposed order to show cause filed by plaintiff *pro se* in which she sought relief related to Savoy's management (NYSCEF 105).

By decision and order dated December 19, 2018, I denied in its entirety plaintiff's motion, filed by her *pro se*, for leave to amend her complaint to add various new claims related to Savoy's board of managers and building management, including corruption, criminal activity, harassment, threats, obstruction of justice, abuse of power, and retaliation. (NYSCEF 136). On the same date, I denied plaintiff's motion, also filed *pro se*, for various relief, including a restraining order against certain defendants, production of documents, and a preliminary injunction. (NYSCEF 137). On January 3, 2019, Abramoff and his law firm filed a notice of appearance on plaintiff's behalf. (NYSCEF 139).

By decision and order dated March 8, 2019, I denied in its entirety plaintiff's motion, filed *pro se*, for a permanent restraining order barring defendants and Savoy's board members and secretary from representing the Savoy doing business on its behalf, for permission to add a claim for intentional infliction of emotional distress, and for the appointment of someone to "control the ongoing disarray of three decades in Savoy." (NYSCEF 140).

II. PLAINTIFF'S MOTION TO TERMINATE (MOT. SEQ. 008)

A party has the right to the counsel of her choice, and an unfettered right to fire her counsel. (*Demov, Morris, Levin & Shein v Glantz*, 153 NY2d 553 [1981]). Therefore, and especially in light of Abramoff's failure to oppose her motion, the motion is granted.

III. DEFENDANT'S CROSS MOTION

A. Motion to compel

Absent any dispute that plaintiff has failed to provide discovery responses as outlined by defendants' letter of August 28, 2020 (NYSCEF 198), plaintiff must do so.

B. Motion to dismiss against MK

MK denies that its agreement with the Board was so comprehensive and exclusive as to displace entirely the Board's duty to maintain the premises. Moreover, its contract was solely with Savoy, and plaintiff was neither a party nor a third-party beneficiary of that contract. (NYSCEF 195). Plaintiff argues that MK is liable for various negligent and acts related to the Savoy's management, none of which is in issue in this action. (NYSCEF 200).

The management agreement between MK and the Savoy establishes that while MK's responsibilities included hiring and supervising all building employees in order to maintain and operate the Savoy, it was agreed that all such employees were Savoy employees and that MK would not be held liable for the employees' acts or omissions. Moreover, the agreement limits MK's ability and responsibility to maintain the building and make repairs, and the Savoy agrees therein to indemnify MK for any claims arising from or related to any personal injuries sustained in, about, and in connection with the building. (NYSCEF 199).

Given the limitations on MK's responsibilities related to the building, it demonstrates that it may not be held liable to plaintiff here. (*See McMahon v Cobblestone Lofts Condominium*, 161

AD3d 536 [1st Dept 2018] [tort and contract claim properly dismissed against condominium's managing agent as it acted as disclosed agent for condominium, no evidence that agent intended to substitute its liability for condominium's, and it was not in exclusive control of building]).

C. Motion related to plaintiff's vexatious litigation

Defendants contend that plaintiff should be sanctioned for her litigation practices, as her motions have had no legal merit, contain falsehoods, and have been filed to harass and injure them and their counsel. They also observe that plaintiff has filed a new lawsuit against them, by which she asserts claims against the board and the Savoy's management. Defendants thus maintain that plaintiff's vexatious conduct warrants the dismissal of her complaint. (NYSCEF 195).

Plaintiff offers no arguments against defendants' request for her to be sanctioned, other than accusing defendants and their counsel of various misconduct. (NYSCEF 200). Her opposition is also untimely and over this Part's permitted page limits.

Pursuant to 22 NYCRR § 130-1.1(d), sanctions may be imposed or costs awarded a party for an adversary's frivolous conduct. Upon a finding that a party has engaged in frivolous and vexatious conduct, that party may also be enjoined from filing additional motions without court approval. (*Capogrosso v Kansas*, 60 AD3d 522, 523 [1st Dept 2009]; *Sud v Sud*, 227 AD2d 319, 319 [1st Dept 1996]).

Plaintiff's motion practice has been unsuccessful, mostly without legal or factual basis, and almost entirely unrelated to the negligence claim at issue here, and she has engaged in frivolous and vexatious conduct. Her conduct has delayed this simple slip-and-fall negligence case for the last four years, and she is seemingly, and singularly, preoccupied with her allegations against the Savoy, board, and management, despite being repeatedly told that those

allegations are not in issue here.

Plaintiff is thus advised, again, that the only claim at issue here is negligence and the only possible damages relate to her personal injuries as a result of her accident. Given plaintiff's propensity to file orders to show cause and motions, she is henceforth prohibited from filing any motions or applications without prior written permission of the court, which must be obtained by e-filing a letter request.

IV. PLAINTIFF'S MOTION FOR SANCTIONS (MOT. SEQ. 009)

A. Contentions

Plaintiff seeks sanctions against defendants, their counsel and an insurance company that she characterizes as defense counsel's "boss," for "misconduct, altering record[s], altering documents, altering [her] March 13, 2020 deposition transcript to cover up their misconduct, stealing [her] identity and trying to obtain a fraudulent loan under [her] name, obstruction of justice, ordering retaliations and dangerous actions against [her] caused permanent injuries and damaged many parts of [her] life and [her] everyday life dealing with the defendants' ongoing retaliations injuring [her] . . ." She seeks sanctions under various statutes and rules, as follows:

- (i) 18 USC section 1519, which prohibits the obstruction of justice, obstruction for altering or destroying document, or any other "tangible object," with the intent of influencing or obstructing justice;
- (ii) 18 USC section 1510, which prohibits preventing witnesses and victims from reporting crimes;
- (iii) sections 130-1, 130.1a, CPLR 2214 or 2215 in civil litigation, section 130-2.1 costs; sanctions section 130-2.2;
- (iv) pursuant to rule 56(g);

- (v) pursuant to 22 NYCRR § 130-1.1;
- (vi) pursuant to section 130-1.3;
- (vii) pursuant section 130-2.2;
- (viii) pursuant to CPLR 2214, 2215;
- (ix) pursuant to rule 11 and 28 USC §§ 1912, 1927, and rule 38; and
- (x) pursuant to the 18 US Code § 1513, prohibiting the obstruction of justice, retaliating against a witness, victim, or an informant.

(NYSCEF 175).

Defendants deny plaintiff's accusations and again urge that she be sanctioned and prevented from filing frivolous motions. (NYSCEF 221).

B. Analysis

As this court lacks the jurisdiction to adjudicate federal law, plaintiff's request for sanctions pursuant to any federal statutes or rules is denied.

While the court may assess sanctions pursuant to 22 NYCRR § 130-1.1, plaintiff does not establish that they are warranted as her own submissions establish that defense counsel gave her a copy of her transcript (NYSCEF 177), and there is no evidence it was altered in any way as the two transcripts she submits are identical (NYSCEF 177, 178). While plaintiff characterizes counsel's request that she sign and return the transcript within 60 days as "extortion," there is nothing improper or illegal about his request; CPLR 3116 permits him to do so.

Plaintiff offers no evidence that defendants or counsel stole her identifying personal information and took out a loan in her name, or that they urged the board and/or others to retaliate against her. Her allegations against the building's workers or defendants' insurance company or related to the building's alleged mismanagement and fraud are irrelevant to this

action. The remainder of her allegations are too incomprehensible or outlandish, and entirely unsupported. Thus, they merit no consideration.

Plaintiff is also reminded that this Part's rules limit the number of pages on motions. The rules are available at <https://www.nycourts.gov/legacypdfs/courts/1jd/supctmanh/Rules/part12-rules.pdf>. Plaintiff is warned that any future motions that exceed these limits will be rejected and not considered.

V. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion for an order terminating her attorney's representation of her (mot. seq. 008) is granted, and the attorney's representation is deemed terminated upon service on him of a copy of this order with notice of entry, and he and his law firm are directed to transfer plaintiff's file to her within 15 days of service on them of a copy of this order with notice of entry; it is further

ORDERED, that defendant's cross motion is granted to the following extent:

- 1) plaintiff is directed to provide responses to defendants' demands, as set forth in counsel's August 28, 2020 letter (NYSCEF 198), within 45 days of the date of this order;
- 2) the motion to dismiss is granted, and the complaint is severed and dismissed as against Maxwell-Kates, Inc., and the clerk is directed to enter judgment accordingly; and
- 3) plaintiff is hereby enjoined from filing any further motions in this matter without prior approval by this court;

And it is further

ORDERED, that plaintiff's motion for sanctions (mot. seq. 009) is denied in its entirety.

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1/29/2021

DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: