

<b>Vashovsky v Zablocki</b>
2023 NY Slip Op 30113(U)
January 12, 2023
Supreme Court, Kings County
Docket Number: Index No. 507373/21
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8  
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CHANA VASHOVSKY, individually and  
derivatively on behalf of  
HUDSON VALLEY NY HOLDINGS LLC,

Plaintiffs,

Decision and Order

-against-

Index No. 507373/21

YOSEF ZABLOCKI and NATIONAL JEWISH  
CONVENTION CENTER,

Defendants,

And

January 12, 2023

HUDSON VALLEY NY HOLDINGS LLC,

Nominal Defendant,

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YOSEF ZABLOCKI and NATIONAL JEWISH  
CONVENTION CENTER,

Counterclaim Plaintiffs,

-against-

CHANA VASHOVSKY and EPHRAIM VASHOVSKY,

Counterclaim-Defendants,

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PRESENT: HON. LEON RUCHELSMAN

Third party defendants Elliot Zemel, Ephraim Vashovsky, ZVG@Palisades LLC and Vasco Ventures LLC have moved seeking sanctions. The defendant opposes the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

The facts underlying this lawsuit have been recited in numerous prior decisions and need not be repeated herein.

On August 12, 2022 the defendant filed a third party complaint against four parties, two individuals and two corporations (NYSCEF Doc. No. 250). The third party complaint

asserted claims against Elliot Zemel, Ephraim Vashovsky, ZVG@Palisades LLC and Vasco Ventures LLC. Specifically, the third party complaint asserted causes of action including fraud, breach of fiduciary duty, breach of duty of good faith and fair dealing, unjust enrichment, misappropriation, tortious interference with contracts, conversion and injunctive relief against all the third party defendants. In an order dated November 7, 2022 the court dismissed all the causes of action against third party defendants Elliot Zemel, ZVG@Palisades LLC and Vasco Ventures LLC finding that none of the allegations of the third party complaint raised any claims against these third party defendants.

These third party defendants now move seeking to sanction the defendant for filing a frivolous pleading. The movants argue that the causes of action against them "were so clearly meritless, it is apparent that Zablocki's motive in filing the TPC [third party complaint] was not to assert genuine claims in good faith. Rather, it is evident that Zablocki's true purposes were: a) to slow the progress of the underlying action by injecting unnecessary new parties and issues into this litigation; and b) to injure the business reputations of the Dismissed TPDs and of their fellow Third Party Defendant Ephraim Vashovsky - reputations that Zablocki well knows are of special importance in the close-knit Orthodox Jewish community in which

they all chiefly operate" (see, Memorandum of Law in Support, pages 5,6 [NYSCEF Doc. No. 373]). The defendant opposes the motion arguing the third party complaint was filed in good faith and the mere fact a motion to dismiss against these three parties was granted does not warrant sanctions.

#### Conclusions of Law

22 NYCRR 130-1.1 states that a state court may award costs including reasonable attorney's fees when a party engages in "frivolous conduct" (*id.*). 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" (*id.*). Indeed, Rule 11 of the Federal Rules of Civil Procedure has been interpreted to impose sanctions for similar grounds as NYCRR 130-1.1(c)(1). Thus, in Morley v. Ciba-Geigy Corp., 66 F3d 21 [2d Cir 1995] the court explained that a frivolous pleading or legal position is one where considering an "objective standard of reasonableness, it is clear ... that there is no chance of success and no reasonable argument to extend, modify or reverse the law as it stands" (*id.*).

There is scant authority in New York State for the

proposition that where a complaint is dismissed so thoroughly then sanctions are proper. However, the Federal Courts, guided by similar standards, have dealt with this issue. Thus, in Ho Myung Moolsan Company Ltd., v. Manitou Mineral Water Inc., 665 F.Supp2d 239 [S.D.N.Y. 2009] the court, citing earlier authority, explained that "claims are not frivolous simply because they were dismissed" (id). However, sanctions are "appropriate in cases where a plaintiff files a claim that is clearly deficient and where he advances no plausible argument in favor of validity" (de la Fuente v. DCI Telecommunications Inc., 259 F.Supp2d 250 [S.D.N.Y. 2003]). In that case the court explained that claims that are clearly deficient involve claims that are barred by legislative acts or where plaintiff clearly has no standing. Thus, where an action is based upon "legal contentions warranted by existing law, and factual contentions having evidentiary support or that will likely have evidentiary support upon further inquiry" then sanctions are not proper (E. Gluck Corporation v. Rothenhaus, 252 F.R.D. 175 [S.D.N.Y. 2008]). However, sanctions would be appropriate where allegations are "utterly lacking in support" (O'Brien v. Alexander, 101 F3d 1479 [2d Cir 1996]).

Reviewing the third party complaint reveals that, as noted in the previous decision (NYSCEF Doc. No. 316), there are hardly any factual allegations alleged against the moving third party defendants. As recorded in the prior decision, other than

introducing the parties, the third party complaint "hardly mentions these third party defendants at all. Paragraph 18 of the third party complaint asserts that "Mr. Vashovsky indicated that TPD ELLIOT ZEMEL and the corporation he formed TPD ZVG@PALISADES LLC, were for some reason, financially backing Mr. Vashovsky for his investment in the hotel and he introduced the parties by email" and that Zemel was a silent partner of Vashovsky (see, Verified Third Party Complaint, ¶18 [NYSCEF Doc. No. 260, {the correct Document Number is #250}]). The next paragraph asserts that Zemel "laid out the terms of the agreement through emails amongst the parties" (id at ¶19) and that all parties agreed to the terms of the arrangement. The next paragraphs assert that Vashovsky and Zemel would contribute an extra \$350,000 for renovations and that in total Zemel and Vashovsky would contribute the \$350,000 noted plus an additional \$625,000 and that the property would be owned equally by Zablocki and ZVG (id ¶¶20,21). Paragraph 24 asserts that Zemel and ZVG were never joined as investors (id). Paragraph 25 asserts that "the contract from the seller HNA was apparently in the name of TPD VASCO VENTURES and was assigned to Hudson Valley NY Holdings. Further, Mr. Vashovsky executed this transfer by signing on behalf of TPD VASCO (his company), and then somehow signing on behalf of Hudson Valley without authority" (id). The only other mention of these third party defendants is that Zemel held

himself out to third parties that he had authority to install solar panels on the property (§28) and that ZVG filed for bankruptcy (§29)" (id).

Those scattered facts could not possibly support allegations the moving third party defendants committed any of the torts contained in the third party complaint, namely, allegations of fraud, breach of any duty, breach of good faith and fair dealing, unjust enrichment, misappropriation, tortious interference with contracts, conversion of the awarding of any injunctive relief. In truth, the allegations leveled at the moving third party defendants seemed really to further assert claims and damaging facts against Vashovsky. There was no basis to assert eight distinct causes of action based upon the facts alleged in the third party complaint against the moving third party defendants.

However, when considering whether any sanction is appropriate an examination of the burden any improper or frivolous pleading placed upon the other parties must be explored. In this case the third party defendants filed a motion to dismiss the third party complaint (see, NYSCEF Doc. No. 268). The overwhelming majority of the arguments seeking dismissal were directed at the dismissal of Ephraim Vashovsky and no such motion for sanctions has been filed based upon the allegations against him. To be sure, there were arguments made seeking the dismissal of the moving third party defendants but, as noted, that did

comprise a significant portion of the arguments. Thus, while the third party complaint should not have been filed against the moving defendants any harm suffered thereby was negligible since in any event a motion to dismiss was substantively filed on behalf of Vashovsky. To the extent any extra arguments were raised on behalf of the moving defendants, the court declines to award any sanctions at this time.

Therefore, based on the foregoing, the motion seeking sanctions is denied.

So ordered.

ENTER:

DATED: January 12, 2023  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC