

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----X
KIMBERLY DENISE JONES, p/k/a LIL' KIM,

Plaintiff,

Electronic Filing Case

-against-

Index No: 650824/2013

SUNNY J. BARKATS a/k/a SANNY BARKATS, JS
BARKATS PLLC, ANDREW RO, INTERNATIONAL
ROCK STAR CORP., and KBY PROPERTIES
GROUP LLC,**AFFIRMATION IN SUPPORT
OF MOTION FOR ORDER
DISMISSING COMPLAINT
PURSUANT TO CPLR §3216**Defendants.
-----X

Ira R. Abel, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I am the attorney for KBY Properties Group LLC ("KBY"), a defendant in the above-captioned action (the "Action"). As such, I am familiar with the facts that underlie this action and the instant motion.

2. I make this motion on behalf of KBY for an order dismissing the complaint, dated March 8, 2013 (the "Complaint"), pursuant to CPLR §3216. A true and correct copy of the Complaint, without exhibits, is annexed hereto and made a part hereof as Exhibit 1.

3. Pursuant to the Complaint, the Plaintiff, Kimberly Denise Jones, p/k/a Lil' Kim (the "Plaintiff") commenced the Action against KBY and others seeking, among other things, (a) rescission of an agreement entered into between Plaintiff and KBY, (b) a declaratory judgment that such agreement is null, void and unenforceable, (c) for money damages in an amount to be determined, but believed to be in excess of \$1,000,000, plus interest, attorneys' fees and costs, (d) punitive damages in an amount

to be determined, but believed to be in excess of \$1,000,000, plus interest, attorneys' fees and costs, and (e) a preliminary and permanent injunction restraining and enjoining all defendants, including KBY.

4. On behalf of KBY, on June 12, 2013, I filed and served an amended answer with affirmative defenses and counterclaims.¹ Plaintiff filed a reply to the counterclaims on July 19, 2013. No substantive pleadings or other papers have been served upon KBY since July 19, 2013.² No preliminary or compliance conference has been held. Copies of the answer and reply are annexed hereto and made a part hereof as Exhibits 2 and 3, respectively.

5. Issue has been joined and on July 19, 2014 the Action was pending for more than one year without prosecution against KBY.

6. CPLR 3216, entitled Want of Prosecution, states in relevant part as follows:

(a) Where a party unreasonably neglects to proceed generally in an action or otherwise delays in the prosecution thereof against any party who may be liable to a separate judgment, or unreasonably fails to serve and file a note of issue, the court, on its own initiative or upon motion, may dismiss the party's pleading on terms.

(b) No dismissal shall be directed under any portion of subdivision (a) of this rule and no court initiative shall be taken or motion made thereunder unless the following conditions precedent have been complied with:

- (1) Issue must have been joined in the action;
- (2) One year must have elapsed since the joinder of issue;
- (3) The court or party seeking such relief, as the case may be, shall have served a written demand by registered or certified mail requiring the party against whom such relief is sought to resume prosecution of the action and to serve and file a note of issue within ninety days after receipt of such demand, and further stating that the default by the party upon whom such notice is served in complying with such demand within said ninety day period will serve as a basis

¹ The original answer, affirmative defenses and counterclaims was filed on or about May 13, 2013 and was amended to correct a factual error.

² On August 19, 2014, Plaintiff's law firm filed a change of address notice.

for a motion by the party serving said demand for dismissal as against him for unreasonably neglecting to proceed.

7. By certified letter, dated May 19, 2014 (the "Letter"), I made a written demand upon Plaintiff, by her attorney, that (a) she resume prosecution of the Action and (b) serve and file a note of issue within ninety (90) days after receipt of the Letter. I further notified Plaintiff that if she defaults in complying with that demand, that such default will serve as the basis for a motion by KBY for dismissal of the Action against it for unreasonably neglecting to proceed. The 90 day period expired on August 19, 2014. A copy of the Letter, with proof of mailing and delivery, is annexed hereto as Exhibit 4.

8. KBY has complied with all requirements of CPLR §3216 in that (a) issue has been joined, (b) one year has elapsed since the joinder of issue and (c) a written demand was served upon Plaintiff to resume prosecution of the action and serve and file a note of issue within 90 days after receipt of the demand, and further stating that the default by the Plaintiff would serve as the basis for a motion by KBY for dismissal of the complaint for unreasonably neglecting to proceed.

9. No other application has been made to this or any other Court.

WHEREFORE, KBY respectfully requests that the Complaint be dismissed, and that it have such other and further relief as is just and proper.

Dated: New York, New York
August 28, 2014


Ira R. Abel