

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

PRESENT: HON. MARCY S. FRIEDMAN  
Justice

PART 57

Suttan, Burton S.

INDEX NO. 101986/07

MOTION DATE \_\_\_\_\_

- v -  
Connery, Sean

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for dismiss

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-5

6

7,8

Cross-Motion:  Yes  No Memo of Law M1

Upon the foregoing papers, it is ordered that this motion and cross motions are

**FILED**

DEC 13 2007

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER NEW YORK  
CLERK'S OFFICE**

REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

MOTION/CASE IS RESPECTI

Dated: 12-7-07

HON. MARCY S. FRIEDMAN J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

\_\_\_\_\_ x

BURTON S. SULTAN, M.D., et al.,

*Plaintiff,*

- against -

SEAN CONNERY, et al.,

*Defendants.*

Index No.: 101986/07

DECISION/ORDER

**FILED**  
DEC 13 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

\_\_\_\_\_ x

In this action between the owners of a two-unit condominium townhouse, the plaintiff Dr. Burton Sultan, the owner of Unit 1, and his wife Marilyn Sultan and their adult daughters, who occupied apartments in Unit 1, seek recovery for property and other damages allegedly caused by defendants Stephane and Tania Connery, the owners of Unit 2, and Sean and Micheline Connery, the occupants of Unit 2, their attorneys, and the contractors who were retained by the Connerys to make repairs to the Connery unit and the roof of the building. The Connery defendants, all represented by Robert Lynn of the firm Lynn & Gartner, LLP (the "Lynn defendants"), move to dismiss the complaint pursuant to CPLR 3211, to preclude plaintiffs from commencing any further actions against defendants without prior leave of court, and for costs and sanctions. The same relief is sought by cross-motion by the Lynn defendants, and by separate motion by Sarah Parker, a former associate with the Lynn firm. Cross-motions for the same relief are also brought by the defendants who were retained by the Connery defendants in connection with work performed at the building – Peter Cicognani, Ann Kalla and Cicognani Architects, P.C. ("Cicognani defendants"); R. Douglass Rice, Richard Moon and R.D. Rice

Construction Inc. ("Rice defendants"); and defendant CSH Supply Corp. ("CSH").

The complaint alleges twelve causes of action: the first for constructive eviction or ejection; the second for intentional destruction of property; the third for intentional infliction of emotional distress; the fourth for negligent infliction of emotional distress; the fifth for prima facie tort; the sixth for nuisance; the seventh for trespass; the eighth for negligent injury to property; the ninth for negligent injury to property - res ipsa loquitur; the tenth for personal injury; the eleventh for non-payment of common charges of the condominium; and the twelfth for treble damages for ejection. With the exception of the eleventh cause of action which is pleaded only against the Connerys, all of the causes of action are pleaded against all of the defendants.

All of the causes of action are based on two principal claims: first, that the Connery defendants' renovation to their unit and repairs on the roof caused damages to the Sultans' unit and personal injury to members of the Sultan family; and second, that the Connerys' attorneys brought frivolous lawsuits against the Sultans in an effort to force them to vacate the building.

As to the claims based on renovation work that occurred in 2001, the complaint pleads the following allegations: Work performed by defendants in September and October, 2001 caused damages to Unit 1, including cracks, water damage, mold, and mildew. (Complaint, ¶¶ 94, 95.) Work performed on November 21, 2001 to the Unit 1 chimney caused a "puff back" to the fireplaces in Unit 1, which required the Sultans to vacate their home and caused damage to personal property. (*Id.*, ¶¶ 99-103.) Work on December 4, 2001 to the heating pipes in Unit 2 caused water damage to Unit 1. (*Id.*, ¶107.) As to post-2001 claims, the complaint makes the following allegations: Defendants' failure to maintain the gutters caused water damage to Unit 1

on July 2, 2002. (Id., ¶¶109-111.) Defendant Jepol Construction, working under the direction of defendant Rice Construction, caused a second puff back on January 10, 2005, and Jepol's work also caused water damage and cracks. As a result of this work, Lorna Sultan was forced to vacate and Marla Sultan sustained personal injury. (Id., ¶¶ 114-122.) On February 15, 2005, workers under the supervision of Rice Construction caused dust and dirt to infiltrate Unit 1, and on March 17, 2005, the use of cleaning chemicals caused foul odors, as a result of which the Sultans were forced to vacate and their grandson sustained personal injury. (Id., ¶¶ 123-127.) Finally, on July 20, 2006, as a result of negligence by Rice Construction workers in storing construction debris, the basement was flooded. (Id., ¶¶ 129-130.) The complaint alleges that defendants, acting "together and separately," intentionally and negligently performed the construction in a wrongful manner in order to cause plaintiffs to be ejected from their home. (See id., ¶¶ 154-155.)

As to the claim of attorney misconduct, the complaint alleges that the Connery defendants and defendant Lynn and his law firm brought six lawsuits against plaintiffs (id., ¶ 178), and that the litigation was "excessive, repetitive and frivolous," and brought in order to eject plaintiffs from their home or to induce them to sell their unit at depressed value. (See id., ¶¶ 154-155, 174, 179.)

The dispute between the parties dates back to 2001 when the Connerys made renovations to their unit and sought Dr. Sultan's agreement to make repairs to the roof. As a result of the parties' inability to reach agreement, they arbitrated the dispute pursuant to the by-laws of the condominium. At the arbitration, the Connerys sought an award directing repairs to the roof and other exterior portions of the building. The Sultans asserted counterclaims for damages

occasioned by repairs that the Connerys had performed. The arbitrator rendered an award, dated August 1, 2002 and modified on September 10, 2002, which was confirmed by order of this court dated February 25, 2003. The arbitrator's award ordered the requested repairs, and directed the cost to be paid 65 percent by the Sultans and 35 percent by the Connerys, based on the allocation of expenses for common area repairs provided for by the by-laws. The award also found that the Sultans were entitled to \$25,000 damages for loss of quiet enjoyment and damage to their unit as a result of work performed by the Connerys, but denied damages for alleged fraud by the Connerys. The award further held that neither party was a "prevailing party" and that each party should therefore bear its own legal fees and expenses for the arbitration.

To the extent that plaintiffs' claims are based on repair work performed prior to August 2002, the date of the arbitrator's award, they are barred, under the doctrines of res judicata or collateral estoppel, because the arbitrator considered such claims. As the complaint was filed on February 9, 2007, the claims based on repair work on January 10, February 15 and March 17, 2005, and July 20, 2006 are timely, and may be the basis for the sixth cause of action for nuisance, and the eighth and tenth causes of action for negligently caused damage to property and negligently caused personal injury, respectively. The repair work on the above three 2005 dates also may be the basis for the first cause of action to the extent it alleges constructive eviction. The first, sixth, eighth, and tenth causes of action are maintainable solely based on the allegations as to defectively performed repair work on the four dates identified above. With respect to the contractor defendants named in the complaint, these causes of action may be maintained only against the contractor defendants specifically identified in connection with the work on these dates – namely, Jepol Construction, Inc. with respect to the work on January 10, 2005, and R.D.

Rice Construction, Inc. with respect to the work on January 10, February 15, and March 17, 2005, and July 20, 2006. There are no allegations tying any of the other contractor defendants to the work on these dates or providing any support for relief against the principals or employees of the corporate contractor defendants in their individual capacity. The first, sixth, eighth, and tenth causes of action may also be maintained against the Connery defendants. The allegations of the complaint as to the Connery defendants' supervision and control over the repair work on these dates are sufficient, for pleading purposes, to withstand the motion to dismiss. The Sultans have not advanced a factual basis on which to maintain these four causes of action against any of the other defendants. The court will grant leave to plaintiffs to replead the complaint to assert the four causes of action subject to the limits set forth in this decision.

The court finds that the complaint does not otherwise state causes of action. The allegations as to the repair work do not support any of the other causes of action. The remaining allegations as to attorney misconduct, and the allegations which in substance charge defendants with a conspiracy, do not constitute a legally cognizable basis for any of the causes of action of the complaint.

The first cause of action, to the extent it alleges ejectment, and the twelfth cause of action for treble damages for ejectment, are not maintainable based on the pleaded allegations. At most, the allegations regarding the improper performance of repairs plead a cause of action for constructive eviction.

The second cause of action for intentional destruction of property is also not maintainable as the complaint rests solely on conclusory allegations, without any supporting factual detail that defendants intentionally caused physical damage to the property. (See e.g. Welsh v West Haven

Manor Health Care Ctr., 15 AD3d 572 [2d Dept 2005]; Moskowitz v General Accident Ins. Co., 179 AD2d 722 [2d Dept 1992].) Moreover, there is no cause of action for civil conspiracy. (85 Fifth Ave. 4<sup>th</sup> Floor, LLC v I.A. Selig, LLC, \_\_\_ AD3d \_\_\_, 2007 NY Slip Op 08744, 2007 WL 3342708 [1<sup>st</sup> Dept]; Steier v Schreiber, 25 AD3d 519 [1st Dept 2006], lv denied 6 NY3d 714.)

The third and fourth causes of action for intentional and negligent infliction of emotional distress, respectively, are both required to be premised on conduct “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” (Murphy v American Home Prods. Corp., 58 NY2d 293, 303 [1983] [internal quotation marks and citation omitted] [intentional infliction]; Wolkstein v Morgenstern, 275 AD2d 635 [1<sup>st</sup> Dept 2000] [negligent infliction].)

The repair allegations do not rise to the level of such conduct. The attorney misconduct allegations also do not as a matter of law support this or any of the other pleaded causes of action. An attorney’s conduct does not give rise to liability to third parties unless it falls within an acknowledged category of tort or contract liability. (Shapiro v McNeill, 92 NY2d 91, 97 [1998]; Drago v Buonagurio, 46 NY2d 778 [1978].) Thus, the mere threat of litigation, or even the filing of litigation “with malicious intent,” does not support a cause of action against an attorney for another party. (See I.G. Second Generation Partners, L.P. v Duane Reade, 17 AD3d 206, 207 [1<sup>st</sup> Dept 2005].) Rather, litigation is not actionable unless it is prosecuted in a tortious or fraudulent manner or is “objectively baseless” or “sham.” (See id. at 207-208.) While plaintiffs’ attorney’s affirmation in opposition claims that the complaint pleads abuse of process, malicious prosecution, and fraud (see Aff. of Thomas Weiss in Opp., ¶¶ 19-22, 43), the complaint does not by its terms plead these torts, and does not set forth factual allegations that

would be sufficient to set forth the elements of these torts or any other tort on the part of defendants' attorneys.

The fifth cause of action for prima facie tort also cannot withstand this motion to dismiss. A claim for prima facie tort cannot be used to avoid pleading the elements of traditional torts such as malicious prosecution. (See Engel v CBS, Inc., 93 NY2d 195, 203 [1999].) Nor can this tort be premised on the mere non-tortious, prosecution of litigation. (See Arts4All Ltd. v Hancock, 25 AD3d 453 [1<sup>st</sup> Dept 2006], lv dismissed 6 NY3d 891.)

The seventh cause of action for trespass is duplicative of the constructive eviction and nuisance causes of action. The allegations fail to support the ninth cause of action for negligent injury to property based on res ipsa loquitur. Plaintiffs lack standing to maintain the eleventh cause of action for common charges, as a temporary receiver has been appointed for the building.

The court now turns to defendants' requests for costs and sanctions and for an order precluding the Sultans' commencement of future lawsuits without prior leave of court. Under Part 130 of the Rules of the Chief Administrator, sanctions may be awarded for "frivolous conduct" (22 NYCRR § 130-1.1[a]) which is defined, in pertinent part, as conduct that "is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law." (Id., § 130-1.1[c][1].)

This is the third action brought by plaintiffs for the causes of action alleged in the complaint. The first of the actions (Sultan v Connery, Sup Ct, New York County, Index No. 113715/04) was dismissed against various defendants by order of this Court (James, J.), dated October 5, 2005, for failure to effectuate service of process. In the second (Sultan v Connery, Sup Ct, New York County, Index No. 114141/05), motions to compel plaintiffs to serve a new

complaint with a more definite statement and to strike scandalous matter were granted by order of the Court (James, J.), dated January 27, 2006. By subsequent order dated December 14, 2006, this court granted defendants' motions to dismiss based on plaintiffs' failure to serve the new complaint. The complaint in the instant action asserts the same causes of action and is based on substantially the same facts as the complaints in the two prior actions. It thus cures none of the pleading defects of the prior complaints.

As to the contractor defendants, the instant complaint appears to name every architect, engineer and contractor, and many of the principals of such parties, who performed services or work in connection with the Connery defendants' renovation starting in 2001. The complaint fails to set forth any facts to support any claim that is not time-barred against CSH and the Cicognani defendants, who are not alleged to have performed any work after 2001. In addition, as held above, the causes of action for egregious wrongdoing (e.g., intentional and negligent infliction of emotional distress) which are asserted against these defendants are unsupported by any factual allegations in the complaint and plainly fail under settled law to plead cognizable claims. As plaintiffs' counsel, Thomas Weiss, thus could not reasonably have believed that these causes of action could be supported against these defendants by a reasonable argument for an extension of existing law, sanctions will be awarded against him for \$1000. Sanctions of \$1000 will also be awarded against Dr. Sultan. He is clearly in control of the litigation, has attended every court appearance, has appeared pro se at times, and had retained at least five different attorneys in actions before this court as of the time he commenced the instant litigation. In addition, the court will award CSH and the Cicognani defendants their actual costs reasonably incurred and reasonable attorney's fees in defending this action, in an amount to be determined

after a hearing. (Sec 22 NYCRR § 130-1.1[a].)

As to the Rice defendants, the complaint also pleads numerous causes of action against them that are time-barred or, as in the case of the causes of action for egregious wrongdoing, otherwise plainly fail to state cognizable claims on the facts alleged. However, the court will deny costs and sanctions in its discretion, as the first, sixth, eighth, and tenth causes of action may be properly maintained, as limited in this decision, against the corporate defendant Rice Construction, Inc. In declining to award the attorney's fees in defending this action to the Rice defendants, the court also notes that their motion to dismiss did not require substantial effort as it mainly relied on the papers submitted by the Connery defendants.

The court will also, in the exercise of its discretion, deny costs and sanctions in favor of the Connery defendants and the attorney defendants. Regrettably, both parties to this dispute have engaged in a "slash and burn" litigation strategy that has at times been duplicative and exceedingly burdensome to their adversaries and the courts.

The Sultans have brought the instant damage action and the two prior damage actions in which, as found above, they have sought to re-litigate damages for pre-2002 repairs already considered by the arbitrator, and, in blunderbuss fashion, named apparently every contractor or professional who performed services for the Connerys in connection with their renovation. In the name of the condominium, Dr. Sultan also commenced a nonpayment eviction proceeding against the Connerys which has been dismissed. (St. Condominium v Cosman-Connery, Civil Court, New York County, Housing Part Index No. 980479/04.)

The Sultans' continuing opposition to the repairs which were ordered by the arbitrator has unquestionably necessitated litigation by the Connerys to effectuate the arbitrators' award, both

in the context of the proceeding to confirm the award (see Connery v Sultan, Sup Ct, New York County, Jan. 30, 2004, Index No. 100709/02 [granting the Connerys' motion for an order compelling the Sultans to execute a permit so that the repairs directed by the arbitrator could be performed]), and in a separate action for a receiver. (See Connery v Sultan, Sup Ct, New York County, Feb. 2, 2006, Index No. 401336/05 [appointing temporary receiver to effectuate the repairs ordered by arbitrator, and discussing the instances of Dr. Sultan's refusal to cooperate with repairs and attempt to relitigate cause of leaks ordered by arbitrator to be repaired].)

On the other hand, the Connerys have commenced six lawsuits against the Sultans, and continually forced them to litigate over the townhouse not only in New York County, but also in Nassau County based on a residence there of Dr. Sultan's. The Connerys initially brought the proceeding to confirm the arbitrators' award in Nassau County, but then agreed to refile it here. (See Connery v Sultan, Sup Ct, Nassau County, Index No. 014359/02.) They initially also commenced an action in Nassau County for appointment of a receiver. By order of the Nassau County court dated February 25, 2005, the Sultan defendants' motion to change venue of the action to New York County was granted. (Connery v Sultan, Sup Ct, Nassau County, Index No. 007497/04, assigned New York County Index No. 401336/05 upon transfer ["receiver action"].) During the time it took to transfer the file from Nassau after venue was changed, the Connerys commenced a separate action in New York County (Connery v Sultan, Sup Ct, New York County, Index No. 107384/05), also for appointment of a receiver. The RJI for this action lists three related cases: Sultan v Connery, New York County, Index No. 113715/04 (a predecessor damage action by the Sultans), L. Condominium v Connery, Civ Court, New York County, Index No. L&T 080479/04 (the eviction proceeding brought by Dr. Sultan against the

Connerys in the name of the condominium), and Connery v Sultan, Index No. 013122/04 (an action brought in Nassau County but mistakenly shown on the RJI as having a New York County Index No.) Notably, the RJI does not list as related cases either of the two prior matters heard by the undersigned: Connery v Sultan, New York County, Index No.100709/02 (the proceeding for confirmation of the arbitrators' award in which court enforcement of the award was also sought), and Connery v Sultan, Nassau County, Index No. 007497/04 and, upon transfer, New York County Index No. 401336/05 (the receiver action). These cases were omitted notwithstanding that the RJI was dated May 25, 2005, and the February 25, 2005 Nassau County order transferring venue of the receiver action expressly noted that there was prior litigation before the undersigned concerning completion of repairs ordered by the arbitrator. The receiver action, which upon transfer had been assigned to Justice James to whom the Sultan damage actions had been assigned, was ultimately transferred to the undersigned by order of that Justice, dated January 27, 2006, which held that the receiver action was related to the action to confirm the arbitration award before the undersigned.

The Connerys acknowledge that, while represented by the Lynn defendants, they also filed two additional actions against the Sultans in Nassau County. The court does not have information about the relief sought in the first such action, Connery v Sultan (Sup Ct, Nassau County, Index No. 13122/04), but has been able to ascertain from the orders maintained in the court computer file of the action that it was dismissed for lack of personal jurisdiction by order of the Court (Parga, J.), dated January 6, 2005. This order made a point of providing: "In the event the plaintiff re-commences this action, his attorney is directed to inform the Clerk on the 'Request for Judicial Intervention' form that there is a related case before the Hon. Daniel Martin

in Supreme Court, Nassau County, as well as any related actions pending in New York County.”

The second of the actions, Connery v Sultan (Sup Ct, Nassau County, Index No. 000651/05) was brought by Stephane Connery against Burton Sultan and the lawyers who had represented him in the New York County eviction proceeding referred to above. Like the complaint by the Sultans in the instant action against the Connery attorneys, the complaint by the Connerys in the Nassau County action pleads causes of action against Dr. Sultan’s attorneys, there alleging malicious prosecution, abuse of process and prima facie tort. These causes of action were dismissed against the attorneys, by orders of the Nassau County Court (Martin, J.), dated December 23, 2005 and September 22, 2006, for failure, just as in the instant action, to plead essential elements or facts in support of the claims against the attorneys. In a separate order dated September 26, 2007, the same court notes that 14 motions have been brought in the action, and describes its history as “tortured.”

Given the litigation history detailed above, the court declines to award expenses to the Connery and Lynn defendants in connection with this action. The court reaches the same result as to defendant Parker. In seeking her expenses, Ms. Parker, who joined the Lynn firm upon receipt of her J.D. in 2003 and voluntarily resigned in 2006, points out that at all times during her employment, Mr. Lynn “made all the strategic decisions” concerning the Connery litigation. (Parker Aff., ¶ 5). The court notes that there is not a single allegation connecting Ms. Parker to any wrongdoing or, in particular, to Mr. Lynn’s alleged threat to commence bad faith lawsuits against Dr. Sultan to drive him from the building. However, while Ms. Parker may not have been in a position to control the litigation given her inexperience, she concededly worked on the lawsuits at Mr. Lynn’s directive, and is therefore associated with litigation which, as held above,

was often duplicative and burdensome. Under these circumstances, the court declines to award her the expenses of this motion to dismiss.

As to the branch of the parties' motions to preclude the Sultans from commencing any further litigation without prior leave of court, the court agrees with defendants that administrative oversight of future litigation is proper. However, as the litigation by both parties has been duplicative and burdensome, the court concludes that the oversight should extend to both parties. Therefore, in the event any future litigation relating to the townhouse is brought, both parties will be directed notify the Clerk that there are related or potentially related actions before the undersigned.

Finally, the court again urges the parties to mediate their dispute. The court cannot imagine that it is not the goal of both the Sultans and the Connerys to restore normalcy to this regrettable situation in which the two neighbors have wholly lost the ability to cooperate in the management of the building in which they or their family reside. Unfortunately, the litigation, as it has been conducted, is interfering with, not advancing, that goal. The parties would be well advised to reconsider their decisions not to mediate.

It is accordingly hereby ORDERED that the motion of the Connery defendants to dismiss the complaint is granted to the following extent: 1) The complaint is dismissed with leave to replead the complaint, within 20 days after service of a copy of this order with notice of entry, to assert solely the first cause of action for constructive eviction, not ejection; the sixth cause of action for nuisance; the eighth cause of action for negligent injury to property; and the tenth cause of action for personal injury. These causes of action may be based solely on the allegations in the original complaint as to work performed at the premises on January 10, February 15 and

March 17, 2005 and July 20, 2006. These causes of action may be asserted only against the Connery defendants with respect to work on these four dates, against defendant Jepol Construction, Inc. with respect to work on January 10, 2005, and against defendant R.D. Rice Construction Inc. with respect to work on these four dates; and 2) plaintiffs and their attorneys are advised that sanctions may be imposed in the event of their failure to adhere to the limitations set forth in sub-paragraph 1 above – for example, in the event that they plead any allegations in addition to those specifically identified in sub-paragraph 1 above, or name any defendants on such causes of action other than the defendants specifically identified in sub-paragraph 1 above, or add any causes of action not specifically authorized in sub-paragraph 1 above; and 3) all causes of action in the complaint not identified in sub-paragraph 1 above are dismissed with prejudice against the Connery defendants; and 4) the branch of the motion by the Connery defendants for costs and sanctions is denied; and it is further

ORDERED that the cross-motion of the Lynn defendants is granted to the following extent: 1) All causes of action in the complaint are dismissed with prejudice against the Lynn defendants; and 2) the branch of the motion by the Lynn defendants for costs and sanctions is denied; and it is further

ORDERED that the cross-motion of Sarah Parker is granted to the following extent: 1) All causes of action in the complaint are dismissed with prejudice against said defendant; and 2) the branch of the motion by defendant Parker for costs and sanctions is denied; and it is further

ORDERED that the cross-motions by the Cicognani defendants and by defendant CSH are granted to the following extent: 1) All causes of action in the complaint are dismissed with prejudice against the Cicognani defendants and against defendant CSH; and it is further

ORDERED that the branches of the motions by the Cicognani defendants and defendant CSH for costs and sanctions are granted to the following extent: 1) Within ten days after service of a copy of this order with notice of entry, Dr. Burton Sultan shall deposit the sum of \$1,000 in sanctions with the Clerk of the Court for transmittal to the Commissioner of Taxation and Finance, the person to whom payment must be made pursuant to 22 NYCRR § 130-1.3; and 2) within ten days after service of a copy of this order with notice of entry, Thomas Weiss, Esq. shall pay the sum of \$1,000 in sanctions to the Lawyers' Fund for Client Protection, the entity to which payment must be made pursuant to 22 NYCRR § 130-1.3; and 3) the Clerk shall enter judgment for the sanctions awarded in sub-paragraphs 1 and 2 hereof, as authorized by 22 NYCRR § 130-1.2; and 4) Dr. Burton Sultan and Thomas Weiss, Esq., jointly and severally, shall pay the Cicognani defendants' and defendant CSH's actual expenses reasonably incurred and reasonable attorney's fees in defending this action; and 5) the issue of said defendants' actual expenses reasonably incurred and reasonable attorney's fees in defending this action is referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and 6) the action as to the Cicognani defendants and defendant CSH is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special Referee or the designated referee; and 7) the Cicognani defendants and defendant CSH shall serve a copy of this order with notice of entry, together with the information sheet required by the Special Referee's office, on the Clerk of the Judicial Support Office (Room 311) to arrange a date for the reference to a Special Referee; and

it is further

ORDERED that the cross-motion of the Rice defendants is granted to the following extent: 1) The complaint is dismissed with leave to replead the complaint, within 20 days after service of a copy of this order with notice of entry, to assert solely the first cause of action for constructive eviction, not ejectment; the sixth cause of action for nuisance; the eighth cause of action for negligent injury to property; and the tenth cause of action for personal injury. The pleading of these causes of action shall be subject to the limitations set forth in the provisions of this order determining the Connery defendants' motion. Sanctions may be imposed as set forth in the provisions of this order determining the Connery defendants' motion; and 2) all causes of action in the complaint not identified in sub-paragraph 1 above are dismissed with prejudice against the Rice defendants; and 3) the branch of the motion by the Rice defendants for costs and sanctions is denied; and it is further

ORDERED that in the event any of the Sultan plaintiffs or any of the Connery defendants commences any action or proceeding in any court related to the parties' townhouse condominium, whether for injunctive or declaratory relief or for damages, such party shall advise the Clerk on the Request for Judicial Intervention, or on any other forms as may be provided by the Clerk, that there are related or potentially related actions pending before the undersigned; and it is further

ORDERED that defendant Connerys' attorneys shall serve a copy of this order on the Hon. Daniel Martin, the Justice presiding over the pending Nassau County action; and it is further

ORDERED that Thomas Weiss, Esq., attorney for the Sultan plaintiffs, shall serve a copy

of this order on each of the Sultans whom he represented in this action; and that Robert Lynn, Esq., attorney for the Connery defendants, shall serve a copy of this order on each of the Connerys whom he represents in this action.

This constitutes the decision and order of the court.

Dated: New York, New York  
December 7, 2007

  
MARCY FRIEDMAN, J.S.C.

TMZ

**FILED**  
DEC 13 2007  
NEW YORK  
COUNTY CLERKS OFFICE