

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Joe A Games

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

The New York Public Library (NYPL), The Science
Industry & Business Library (SIBL), The City
of New York, The State of New York, The
United States of America, et al

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

11 Civ. 0367 (LAP) ()

REQUEST TO PROCEED
IN FORMA PAUPERIS
ON APPEAL

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I, Joe A. Games, (print or type your name) am the plaintiff/petitioner in the above entitled case and I hereby request to proceed *in forma pauperis* on appeal and without being required to prepay fees or costs or give security. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

The issues I desire to present on appeal are the following: The court erred in dismissing plaintiffs's 1983 claims based on the view that he did not establish a right violated by the defendants, the New York Public Library (NYPL) and its employees and security detail. Because it confused the meaning of the phrase "acting under the color of state law" with "constituting a state action," implying the two phrases are synonyms of one another. Plaintiff asserts they are not. Further,

1. If you are presently employed:
 - a) give the name and address of your employer
 - b) state the amount of your earnings per month

Joe A. Games, 390 9th Avenue, New York, NY 10001 - private investor
Earnings = \$75 a month (ROI)

2. If you are NOT PRESENTLY EMPLOYED:
 - a) state the date of start and termination of your last employment
 - b) state your earnings per month

YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED.

start date was / /1997, termination date was 12/25/1997
Earnings per month were approximately \$3000.00

the court completely ignored the plaintiff's First Amendment right to access, enjoy and use a public library as well as the internet and the internet-accessible computers thereof. Likewise, the court also chose to completely ignore the plaintiff's Fifth Amendment property interest in having access to, enjoying and using a public library as well as the internet and the internet accessible computers thereof.

The plaintiff also plans to show that the court was biased, prejudicial and unjust in its ill-conceived decisions based on its very narrow and wrong view with regards to dismissing the plaintiff's claims in accordance with the Fourteenth Amendment's right to due process. Where, the court, completely ignored the fact that plaintiff was never provided with either a pre-deprivation or post-deprivation hearing with regards to being expelled and excluded from the New York Public Library (NYPL) by the library staff and the library security detail. Furthermore, the court completely ignored the fact that neither the library staff nor the library security detail have any authority to expell or exclude the plaintiff from the library under the law of the State of New York. Such authority is reserved solely to the Board of Trustees of the New York Public Library. See C.L.S. Educ. Law §§ 253, 262.

Nevertheless, the plaintiff intends to show that the court was biased, prejudicial and unjust in its ill-conceived decision based on its narrow ~~view~~ and wrong view with regards to the plaintiff's section 1981 claims and Title III claims. Where, the court posited its argument for dismissal on the erroneous position that such claims must be founded only on the fact that they be motivated by a race based animus. By giving preference and special treatment to one of the traditionally known suspect class designations such as race and completely ignoring the other suspect class designations such as color, religion or national origin as well as non-suspect class designations such as the plaintiff being a white citizen, the court defeats the purpose of those

laws with respect to maintaining an equal status quo and does injustice to the legislatures intent for enacting section 1981 and Title II in the first place.

Additionally, the court erred in dismissing plaintiff's § 1982 claims based on the narrow and totally wrong view that the statute is not in anyway applicable to plaintiff's claim. Plaintiff asserts that the statute most assuredly is applicable and will show such.

The court also erred in dismissing the plaintiff's section 1985 claim based on its implied narrow view that the protection against conspiracy by the defendants via their conduct must be solely motivated by a race-based animus and that plaintiff's allegations are vague and conclusory and provide no factual basis. If being expelled and excluded from the New York Public Library by one or more members of the library staff and the library security detail in active consort and then denied access and use of the library on more than one different occasion at more than one different library branch is not a conspiracy then I do not know what the definition of conspiracy is. The dictionary definition is persons bonded together and resolved to accomplish an unlawful end. Expelling and excluding the plaintiff from the library and denying him access, enjoyment and use of the New York Public Library (NYPL) as well as the internet and the internet-accessible computers thereof is that unlawful end. Certainly, the court will not dispute the fact. As stated in the plaintiff's complaint, that such plaintiff was expelled and excluded from the library by persons without statutory authority to do so and such plaintiff was denied access, enjoyment and use of the New York Public Library (NYPL) as well as the internet and the internet-accessible computers thereof in violation of the First Amendment and the law of the state of New York pertaining to libraries C.L.S. Educ. Law ~~253~~, ~~2~~ §§ 253, 260, 262. These are not vague or conclusory allegations. But, an actual and factual deprivation of the plaintiff's rights under the law by the defendants

Finally, the court erred in dismissing plaintiff's claims against the City, State and Federal Governments. The facts from which the court can infer that the governmental actors had knowledge and were responsible for deprivation of the plaintiff's rights by the named governments and officials and thus liable for the alleged misconduct rests on the fact that such entities and officials have overwhelming influence over the operation of the New York Public Library (NYPL). "These governments are constitutionally responsible for setting education policy, standards and rules and are legally required to ensure that the entities they oversee carry them out." Furthermore, the public library under the law falls within that which applies to an educational institution. It is subject to the laws and rules pertaining to public libraries ~~under th~~ in accordance with the education law under the State University of New York.

Additionally, the city, state and federal governments combined provide nearly all of the operating funds of the New York Public Library (NYPL) with the City of New York providing 80% and the State of New York and the federal government making up the other 20%. Even though state law gives management and control to the Board of Trustees, the New York Public Library (NYPL) with regards to its functioning is the equivalent of that as a division of state or a sub-division of a division of state. Technically, the setup of the New York Public Library (NYPL) as a division or sub-division of the State is comparable to that of a subsidiary with its own management separate management team as a division or sub-division of a much larger corporate owner in the private sector. Even though the Board of Trustees of the New York Public Library (NYPL) is a separate entity responsible for the management and control of the library, the library and the board of trustees are still overseen, influenced and subject to the education policies, standards and rules of the named governments and the officials thereof.

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

Stocks, a return on investment (ROI) of \$225 or about 33%

a) Are you receiving any public benefits? No. Yes, \$ 0.

b) Do you receive any income from any other source? No. Yes, \$ 225.00 (ROI).

4. Do you have any money, including any money in a checking or savings account? If so, how much?

No. Yes, \$ 926.00.

5. Do you own any apartment, house, or building, stock, bonds, notes, automobiles or other property? If the answer is yes, describe the property and state its approximate value.

No. Yes, \$ 926.00 in stocks and return on Investment (ROI)

6. Do you pay for rent or for a mortgage? If so, how much each month?

No. Yes, N/A.

7. List the person(s) that you pay money to support and the amount you pay each month.

Not Applicable

8. State any special financial circumstances which the Court should consider.

I am unable to identify all other sources of income as well as the value of my personal and other property because of the strange unlawful nature of the circumstances I am have forced into, held in and forced to entertain and endure, which I have not been informed of or provided with notice. Under such strange circumstances makes it difficult to identify all other sources of income and the value of my property, personal or otherwise. My current situation, none of my own doing makes it extremely difficult to identify all sources of incom and the value of my property.

I understand that a false statement or answer to any question in this declaration shall subject me to the penalties for perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 5th day of April, 2011.
date month year


Signature

Let the applicant proceed on appeal without prepayment of cost or fees or the necessity of giving security therefor.

United States District Judge

DATED: _____, 2011
New York, New York