

Lipin v Danske Bank
2016 NY Slip Op 31620(U)
August 26, 2016
Supreme Court, New York County
Docket Number: 150972/2014
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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JOAN C. LIPIN,

Plaintiff,

DECISION AND ORDER

-against-

Index No. : 150972/2014
Mot. Seq. 014

DANSKE BANK, DAVID E. HUNT,
ULF BERGQUIST, EVELYN F. ELLIS,
JOSEPH R. MAZZIOTTI, DANA A. SAWYER,
KRAININ REAL ESTATE, ANN SUSAN
MARKATOS, ROBERT GARY LIPIN, DAVID
A. BERGER, ALLEGAERT BERGER & VOGEL
LLP, MARK A. ANESH, AND DEBORAH
LOVEWELL.

Defendants.

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HON. ANIL SINGH:

Joan C. Lipin, (“Lipin” or “Plaintiff”) moves, *inter alia*, for a recusal of this court, from the above captioned matter pursuant to 22 NYCRR §§ 100.1, 100.2, 100.3(A), 100.3(B)(7) and pursuant to the United States Supreme Court’s decision in Williams v. Pennsylvania, 136 S. Ct. 1899 (2016). Plaintiff also moves for the judgment and decisions to be vacated and for default judgments to be entered against the defendants. (Mot. Seq. 014). The defendants cross-move for sanctions against plaintiff pursuant to 22 NYCRR §130-1.1.

In the decision and order dated October 8, 2014, this court granted defendant's motion to dismiss plaintiff's complaint without leave to replead, denied plaintiff's motions for default judgments, and imposed a permanent injunction enjoining plaintiff from commencing any action in this court related to her deceased father's estate without approval of the Administrative Judge. See Lipin v. Danske Bank, 2014 WL 5302246 (Sup. Ct. N.Y. Cnty. Oct. 8, 2014). This decision and order was unanimously affirmed by the First Department. See Lipin v. Hunt, 137 A.D.3d 518 (1st Dept 2016).

Argument

Legal Standard

In New York, recusal is mandatory when a judge has violated Judiciary Law §14, which "requires a judge to disqualify himself/herself from a case where he/she: is a party; has been the attorney or counsel; has an interest; is related by consanguinity or affinity to the controversy within the sixth degree." Sorrenti v. City of New York, 17 Misc. 3d 1102(A) (1st Dept 2007). "Unless disqualification is required under Judiciary Law §14, a judge's decision on a recusal motion is one of discretion." People v. Glynn, 21 N.Y.3d 614, 618 (2013) (citing People v. Moreno, 70 N.Y.2d 403, 405 (1987)). Alternatively, the United States Supreme Court uses "an objective standard that requires recusal when the likelihood of bias on the part of the judge 'is too high to be constitutionally tolerable.'" Williams,

136 S. Ct. at 1903. “The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, “the average judge in his position is ‘likely’ to be neutral, or whether there is an unconstitutional ‘potential for bias.’” Id. at 1905.

Motion to Recuse

Plaintiff’s motion for recusal based on the allegations that this court is biased because it failed to perform judicial duties impartially and diligently, failed to uphold the integrity and independence of the judiciary, and engaged in impropriety and the appearance of impropriety, is denied.

Plaintiff’s reliance on the recent United States Supreme Court decision in Williams is misguided and without merit. There, the Chief Justice of Pennsylvania Supreme Court was both accuser and adjudicator in Williams’ case. Plaintiff requested that Castille, the Chief Justice of Pennsylvania Supreme Court, recuse himself from the matter as he was previously involved in plaintiff’s sentencing. Castille denied the recusal request. He joined the court majority in denying the PCRA court’s motion, and reinstated plaintiff’s death sentence. The U.S. Supreme Court held that Castille should have recused himself since he served as both accuser, in his role as district attorney, and adjudicator in his role as Chief Justice. “[U]nder the Due Process Clause there is an impermissible risk of actual bias when

a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." Id. at 905. Here, the court's role was limited to adjudicating the litigation.

Further, a judge is immune from recusal when such a motion is made solely on the basis of the judge's execution of his judicial duties. See Liteky v. United States, 510 U.S. 540, 555-556 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion," and judges remain immune even if they express "impatience, dissatisfaction, annoyance, or [] anger"); see also People v. Glynn, 21 N.Y.3d 614, 618 (2013) (if there are no statutory grounds for recusal, recusal is at a court's discretion, therefore the court's refusal to recuse itself was not an improvident exercise of discretion).

In addition, plaintiff's allegations that this court engaged in impropriety and failed "to dispose of all judicial matters promptly, efficiently and fairly" are without merit. See Plaintiff Affidavit of Amended Motion to Recuse, Vacate Judgment, and enter Default, ¶¶ 7, 8. In Schwartzberg v. Kingsbridge Heights Care Ctr. Inc., 28 A.D.3d 465, 466 (2d Dept 2006), the court held that the appearance of impropriety was without merit. Further, a review of the record revealed there was no reason, either alone or in combination, which suggested any judicial bias that would warrant recusal.

Here, plaintiff's sole basis for the allegation of failing to "dispose of all judicial matters promptly, efficiently and fairly" arose because Judge Singh "refused to make a finding or determination" against "defendants Berger, Allegaert Berger & Vogel LLP, and Anesh, and attorney Earley." Plaintiff Affidavit of Amended Motion to Recuse, Vacate Judgment, and enter Default, ¶ 8. However, in the court's decision dated October 14, 2016, the court held that despite plaintiff's claim that defendant Anesh violated the New York Penal Code, a private citizen cannot bring criminal charges against another citizen. That responsibility falls to the district attorney. See Ex. A, docket 409 at 6, 7. Therefore, plaintiff's allegation is meritless.

There are no grounds for mandatory recusal under Judiciary Law §14. Nor is there a basis for discretionary recusal. Plaintiff has not presented evidence of unethical behavior by the court, nor of the court's affinity to this litigation to substantiate plaintiff's claim of impropriety, the appearance of impropriety, lack of integrity and independence, and impartiality against the court¹. The motion for recusal is grounded in plaintiff's dissatisfaction with the court's disposition of the case.

Therefore, plaintiff's motion for this court's recusal is denied.

¹ Similarly, plaintiff's claim that the Judge's part clerk has violated her Due Process rights under Williams is meritless.

Vacating Judgment and imposing Default Judgment

Plaintiff's motion seeking the vacatur of defendants' motion to dismiss and a default judgment entered against the defendants is denied.

“[T]he general doctrine of res judicata gives binding effect to the judgment of a court of competent jurisdiction and prevents the parties to an action ... from subsequently relitigating any questions that were necessarily decided therein.” Landau P.C. v. LaRossa, Mitchell & Ross, 11 N.Y.3d 8, 13 (2008) (internal citations omitted). Furthermore, the Appellate Division affirmed this court's ruling and the New York Court of Appeals has dismissed plaintiff's appeal as there was no substantial constitutional issue. A lower court cannot vacate a decision that has been affirmed by a superior court as a lower court is bound by the decisions of a superior court. See Matter of Nonhuman Rights Project Inc. v. Stanley, 49 Misc. 3d 746, 771 (1st Dept 2015).

Therefore, plaintiff's motion to vacate previous decisions and to enter default judgments against defendants' is denied.

Sanctions

Defendants' motion for sanctions to be imposed on plaintiff pursuant to 22 NYCRR §130-1.1 is denied.

A court has the discretion to “award ... costs in the form of reimbursement for actual expenses” and/or impose financial sanctions for frivolous conduct. Ortega v. Rockefeller Ctr. N. Inc., 2014 N.Y. Misc. LEXIS 6079 at *4 (Sup. Ct. N.Y. Cnty. Oct. 3, 2014). 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. This determination is discretionary and the court will not impose sanctions.

Accordingly it is,

ORDERED that plaintiff’s motion for this court’s recusal is denied; and it is further

ORDERED that plaintiff’s motions to vacate this court’s decision and to enter default judgments against the defendants are denied; and it is further

ORDERED that defendants’ motion to impose sanctions against plaintiff is denied.

Date: August 26, 2016
New York, New York


Anil C. Singh