Lally v Goldstien
2018 NY Slip Op 34284(U)
May 1, 2018
Supreme Court, Suffolk County
Docket Number: Index No. 008358/2016
Judge: Martha L. Luft

Short Form Order Index No. 8358/2016

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - COUNTY OF SUFFOLK

P R E S E N T:
Hon. Martha L. Luft
Acting Justice Supreme Court

_____x
REGAN LALLY,

Plaintiff,

-against-

GERALD GOLDSTIEN, ESQ., BERNICE K. LEBER, ARENT FOX, LLP, HOWARD B. LEFF, ESQ. and LEONARD . STEINMAN,

Defendants.
_____x

DECISION AND ORDER

Mot. Seq. No. **002 - MOT-D**
Orig. Return Date: 03/08/2017
Mot. Submit Date: 05/30/2017

Mot Seq. No. **003 - WDN**
Orig. Return Date: 02/23/2017
Mot. Submit Date: 05/30/2017

Mot. Seq. No. **004 - MG**
Orig. Return Date: 03/21/2017
Mot. Submit Date: 05/30/2017

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By: Daniel S. Hallak, Esq.

Upon the e-filed documents numbered 1 through 75 read on these motions, it is

ORDERED, that the motion to dismiss the First Amended Verified Complaint by defendants Gerald Goldstein Esq., Bernice K Leber, Arent Fox LLP, Howard B. Leff, Esq. ("Attorney Defendants") (Motion Seq. #2) is granted; and it is further

ORDERED, that the Attorney Defendants' motion for sanctions (Mot. Seq. #2) is granted and the Plaintiff shall pay $500.00 to the Lawyers' Fund for Client Protection within thirty days of service of this order with notice of entry and provide confirmation of such to all defendants and to the court; and it is further

ORDERED, that the Attorney Defendants' motion for civil contempt (Mot Seq. #2) is granted and reasonable attorney's fees and costs are awarded to the movants, together with a fine of $250; and it is further

ORDERED, that the Attorney Defendants shall submit, on notice, appropriate documentation of the aforementioned costs and attorney's fees within thirty days of service of this order with notice of entry; and it is further

ORDERED that should the plaintiff fail to purge herself of her contempt of court by payment of the fine and costs imposed, once such costs are fixed, within forty-five days after service of a copy of the order fixing such costs with notice of entry, an application may be made for a warrant directing the sheriff of any county of the State of New York wherein plaintiff may be found to seize and arrest her forthwith and bring her before this court for such further disposition as the court shall direct; and it is further

ORDERED, that the Attorney Defendants shall serve a copy of this order with notice of entry upon the Lawyers' Fund for Client Protection; and it is further

ORDERED, that the Attorney Defendants' motion for a permanent injunction and to require plaintiff to post a bond (Mot. Seq. #2) is denied; and it is further

ORDERED, that the motion to dismiss the original Verified Complaint by defendant Leonard D. Steinman ("Justice Steinman") (Mot. Seq. #3) is denied as moot; and it is further

ORDERED, that the motion to dismiss the First Amended Verified Complaint by defendant Justice Steinman (Mot. Seq. #4) is granted.

The allegations in this complaint arise from matrimonial litigation ("Divorce Case") commenced by the plaintiff's former husband in 2008. ***Aebly v Lally***, Supreme Court, Nassau County Index No. 202114/2008. The instant action was commenced on

August 26, 2016 by plaintiff Regan Lally, who was the defendant in the Divorce Case (referred to as "Plaintiff" or "Lally"). Thereafter, in January, 2017 the plaintiff filed the First Verified Amended Complaint. The defendant herein, Bernice Leber, was appointed a receiver to distribute the marital residence and other property in the Divorce Case. Defendant Gerald Goldstein is counsel to the receiver, Bernice Leber. Defendant Arent Fox LLP is defendant Bernice Leber's law firm. Defendant Howard Leff was the attorney for the plaintiff's ex-husband in the Divorce Case. Defendant Justice Steinman presided over the Divorce Case in Nassau Supreme Court.

Plaintiff, who is an attorney, brought two earlier *pro se* actions against the Attorney Defendants sued herein, raising the same allegations against them as she has raised here. Plaintiff eventually voluntarily discontinued both cases. The first earlier action, ***Lally v Leber***, (Supreme Court, Nassau County Index No. 8803/2015) was discontinued on November 23, 2015. The second prior action, ***Lally v Goldstein***, (Supreme Court, Suffolk County Index No. 3889/2016) was served but apparently never was filed with the Suffolk County Clerk. This second (but unfiled) case was discontinued by plaintiff by a notice of discontinuance dated August 23, 2016 and mailed on or about August 26, 2016.

In the meantime, on August 23, 2016, Justice Steinman issued a temporary restraining order, on notice, in the Divorce Case ("Justice Steinman's August 23 Order") pending a hearing and a determination of a motion for an injunction and other relief in the Divorce Case. Justice Steinman's August 23 Order: (1) stayed all proceedings in ***Lally v Goldstein*** Supreme Court Suffolk County, Index No. 3889/2016 (which plaintiff then discontinued by a notice of discontinuance dated the same day Justice Steinman's August 23 Order); and (2) required the Plaintiff to seek leave of Court before filing any new actions "related to or arising out of any conduct or proceeding" in the Divorce Case.

Three days later, on August 26, 2016 and despite the fact that Justice Steinman's Order prohibiting her from so doing was in place, Plaintiff filed the instant "new" action with the Suffolk County Clerk without having sought leave of Court. Justice Steinman was added as a defendant.

The allegations in the instant action are related to and arise out of the Divorce Case. For example, the Verified Complaint herein alleges, *inter alia*, that the Attorney Defendants acted with malice and willful intent to harm the plaintiff in the Divorce Case. It further alleges that Justice Steinman conspired with the Attorney Defendants in the Divorce Case to defame the plaintiff and to dispossess her children of their home, among other things.

Apparently unaware that Lally had filed the instant "new' Suffolk action, on

September 27, 2016, Justice Steinman extended the stay in the August 23 Justice Steinman Order and issued a preliminary injunction against Lally filing any action against the Attorney Defendants related to or arising out of the Divorce Case ("Justice Steinman's September 27 Order") without leave of court. Justice Steinman also noted that Lally's earlier attempt to file a Suffolk Action against the Attorney defendants constituted judge shopping and ordered Lally to submit papers explaining why she should not be sanctioned for frivolous conduct pursuant to 22 NYCRR 130-1.1 c (1) and(2). Notwithstanding the preliminary injunction in Justice Steinman's September 27 Order, the plaintiff nevertheless continued to pursue the instant case by amending her complaint in January, 2017.

This Court need look no further than Justice Steinman's August 23 and September 27 Orders in order to dismiss the instant First Amended Verified Complaint as against the Attorney Defendants. The First Amended Complaint, therefore, is dismissed.

Furthermore, the claims against Justice Steinman must be dismissed on the merits, even if they are accorded every favorable inference. ***Rovello v Orofino Realty Co.***, 40 NY2d 633, 389 NYS2d 314 [1976]. Since the claims for money damages brought against Justice Steinman as a member of the New York State Judiciary, may only be brought in the Court of Claims, this Court lacks subject matter jurisdiction thereof. Court of Claims Act Sections 8 and 9 (2); ***Niagra Falls Power Co. v White***, 292 NY472, 55 NE2d 742 [1944]; ***Liddy v DeStaso***, 2 AD3d 792, 769 NYS2d 406 [2d Dept 2003].

Moreover, even if there were jurisdiction in this Court, the case against Justice Steinman must be dismissed because he is entitled to absolute immunity. ***Mosher-Simons v County of Allegany***, 99 NY2d 214, 753 NYS2d 444 [2002]. Justice Steinman's decision not to recuse himself in the Divorce Case was twice upheld by the Appellate Division, so it cannot be said that he was acting outside the scope of his judicial function. *See, e.g.*, ***Aebly v Lally*** 140 AD3d 677, 31 NYS3d 889 [2d Dept 2016]; ***Liotti v Peace***, 36 Misc3d 1218 [A], 959 NYS2d 90 [Table] [Sup. Ct. Nassau Cty 2003].

In addition, the cause of action against Justice Steinman for conspiracy to defame Lally together with the Attorney Defendants must be dismissed because New York does not recognize this claim as an independent tort. ***Salvatore v Kumar***, 45 AD3d 560, 845 NYS2d 384 [2d Dept 2007]. Notably, Justice Steinman is not alleged to have personally defamed Lally.

The Attorney Defendants have moved the court to find plaintiff in contempt.[1] To

[1]The motion, brought on by order to show cause, seeking contempt was filed by Abrams Garfinkel Margolis Bergson, LLP, attorneys for defendant, Gerald Goldstein, Esq. However, the order to

sustain a finding of civil contempt, "a court must find that the alleged contemnor violated a lawful order which clearly expressed an unequivocal mandate, and that, as a result of the violation, a right or remedy of a party to the litigation was prejudiced." ***Matter of Hughes v Kameneva***, 96 AD3d 845, 846, 946 NYS2d 211 [2d Dept 2012], *quoting* ***Matter of Philie v Singer***, 79 AD3d 1041, 1042, 913 NYS2d 745[2d Dept 2010]. Here, the plaintiff knew of Justice Steinman's Order but, nevertheless, proceeded to file and serve the Verified Complaint and the Amended Verified Complaint, without seeking leave, all to the prejudice of the defendants who were forced to defend the unauthorized suit.

An application to adjudicate a party in contempt, such as the present one, "is treated in the same fashion as a motion, and a hearing need not be held if an issue of fact is not raised (*citation omitted*)." ***Riverside Capital Advisors, Inc. v First Secured Capital Corp.,***28 AD3d 455, 456, 811 NYS2d 592, 593 (2d Dept. 2006); *see also* ***El-Dehdan v El-Dehdan***, 114 AD3d 4, 978 NYS2d 239 (2d Dept. 2013); ***Brown v Mudry***, 55 AD3d 828, 800 NYS2d 301 (2d Dept. 2008); ***Jaffe v Jaffe***, 44 AD3d 825, 844 NYS2d 97 (2d Dept. 2007). Because there is no issue of fact with regard to plaintiff's actions in filing this action in contravention of Justice Steinman's Orders, the court need not conduct a hearing, and finds the plaintiff in civil contempt. In addition, the court finds that plaintiff's offense was calculated to and actually did defeat, impair, impede and prejudice the rights and remedies of the Attorney Defendants.

Section 773 of the Judiciary Law provides, in pertinent part, that when the contemnor's actions have not caused an actual loss or injury to the other parties to the action, "a fine may be imposed, not exceeding the amount of the complainant's costs and expenses, and two hundred and fifty dollars in addition thereto, and must be collected and paid, in like manner [as damages for actual loss or injury]." The statute "permits recovery of attorney fees from the offending party by a party aggrieved by the contemptuous conduct (*citation omitted*). The intent of that section is to indemnify the aggrieved party for costs and expenses incurred as a result of the contempt (*citation omitted*)." ***Children's Village v Greenburgh Eleven Teachers' Union Federation of Teachers, Local 1532, AFT, AFL-CIO***, 249 AD2d 435, 671 NYS2d 503, 504 (2d Dept. 1998).

Based upon the foregoing, the Attorney Defendants are awarded reasonable

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show cause indicates that the motion is brought on behalf of defendants Bernice Leber, Arent Fox LLP and Howard B. Leff, as well. They are collectively referred to as the "Moving Defendants." The court is relying upon correspondence from Allen G. Reiter of Arent Fox, attorney of record for Bernice Leber and Arent Fox LLP, and from Howard B. Leff, who appeared on his own behalf, as indication of those parties' have expressly conferred authority upon Abrams Garfinkel Margolis Bergson, LLP to move on their behalf. *See, e.g.,* ***Skyline Agency, Inc. V Ambrose Coppotelli, Inc.***, 117 AD2d 135, 502 NYS2d 479 (2d Dept. 1986).

attorney fees and costs associated with this motion having been brought by Abrams Garfinkel Margolis Bergson, LLP, together with a two hundred and fifty dollar fine. Appropriate documentation of such fees and costs shall be submitted to the court within thirty days of service of a copy of this order with notice of entry upon all parties. Following determination of the amount to be awarded, plaintiff may purge her contempt by payment of such amount within the time specified by the court. In the event she fails to do so, the matter will be set down for a hearing to determine what further sanctions are appropriate, including incarceration.

Further, this Court, in its discretion, "may award to any party . . . in any civil action . . . costs in the form of reimbursement for . . reasonable attorney's fees, resulting from frivolous conduct . . ." and additionally may "impose financial sanctions upon any party or attorney in a civil action ...who engages in frivolous conduct... ." 22 NYCRR 130-1.1(a). Frivolous conduct includes that which is completely without merit and cannot be supported by a reasonable argument for modification of existing law and is undertaken to harass another. 22 NYCRR 130-1.1[c]. The instant suit was commenced and pursued in defiance of existing law (Justice Steinman's Orders) and constituted the very sort of harassment by way of the repeated lawsuits Justice Steinman's Order sought to alleviate. Thus, 22 NYCRR 130-1.3 (a) provides an additional basis for awarding the Attorney Defendants reasonable attorney's fees. In addition, the court imposes a sanction of five hundred dollars upon the plaintiff for her frivolous conduct. Since the plaintiff is an attorney, pursuant to 22 NYCRR 130-1.3(c) these funds shall be deposited in the Lawyers' Fund for Client Protection, 119 Washington Avenue, Albany NY 12210.

The Attorney Defendants also seek an order permanently enjoining plaintiff from filing, commencing or serving any new actions against them, except with permission of this court, along with a requirement that she post a bond of $25,000. By its essence, a permanent injunction is an extraordinary remedy, and its issuance lies within the discretion of the court. ***Caren EE v Alan EE***, 124 AD3d 1102, 1105, 2 NYS3d 657, 661 (3d Dept. 2015). Such relief has been properly granted where a litigant has "forfeited her right to free access to the courts by abusing the judicial process through vexatious litigation." ***Dimery v Ulster Savings Bank***, 82 AD3d 1034, 1035, 920 NYS2d 144, 146 (2d Dept. 2011).

In the present matter, the original vexatious litigation occurred in Nassau Supreme Court. Justice Steinman's Orders were issued to address that very problem. Because there

is a prior matter in which this very issue is being addressed, the court will exercise its discretion to defer consideration of this issue to its sister court in the neighboring county.

ENTER

Dated: May 1, 2018
Riverhead, New York

Martha L. Luft
MARTHA L. LUFT, A.J.S.C.

___FINAL DISPOSITION

___NON-FINAL DISPOSITION