

**Karim v Raju**

2020 NY Slip Op 30134(U)

January 17, 2020

Supreme Court, New York County

Docket Number: 100720/2014

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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SYED AFTAB KARIM, MD, FAANS,
Plaintiff,

- v -

RAMANATHAN RAJU, MD, MBA, FACS, FACHE, AS
PRESIDENT AND CHIEF EXECUTIVE OFFICER OF THE
NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION, NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION, MILTON NUNEZ, AS
EXECUTIVE DIRECTOR OF LINCOLN HOSPITAL AND
MENTAL HEALTH CENTER.

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69

were read on this motion to/for MODIFY ORDER/JUDGMENT.

Upon the foregoing documents and for the reasons set forth on the record at oral argument (1/17/2020), petitioner's motion pursuant to CPLR 5015(a) for relief from the judgment of the Appellate Division, First Department dated October 23, 2018 (the Appellate Decision) is denied, and the respondents' cross motion for an award of costs and attorneys' fees is granted.

Petitioner seeks to vacate the Appellate Decision which dismissed this action in its entirety (NYSCEF Doc. No. 60). Previously, petitioner brought a motion to reargue the Appellate Decision, based on the same arguments advanced now, and the Appellate Division denied said motion in order dated March 19, 2019 (Reargument Denial) (NYSCEF Doc. Nos. 61-63).

Thereafter, petitioner brought a motion for leave to appeal to the Court of Appeals and the Court of Appeals denied said motion, with \$100 costs and necessary disbursements (NYSCEF Doc.

Nos. 64-65). Petitioner now brings this motion pursuant to CPLR 5015(a) seeking the same relief here. However, petitioner is not entitled to this relief.

CPLR 5015(a) provides:

- (a) On motion. *The court which rendered a judgment or order*** [emphasis added] may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:
1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry; or
  2. newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or
  3. fraud, misrepresentation, or other misconduct of an adverse party; or
  4. lack of jurisdiction to render the judgment or order; or
  5. reversal, modification or vacatur of a prior judgment or order upon which it is based.

Thus, as an initial matter, this court lacks jurisdiction to direct the relief sought as it was not the “court which rendered [the] judgment or order” that petitioner seeks relief from. Furthermore, the instant motion, in effect, seeks to overturn the Reargument Decision and is asking this court to review and consider evidence that the Appellate Division has already reviewed and rejected. Such a motion is patently improper and the court declines to do so.

Turning to the respondents’ cross motion, respondents argue that costs and legal fees are warranted as the petitioner’s motion is frivolous and, thus, sanctions pursuant to CPLR 22 NYCRR 130-1.1 are appropriate. Although generally each side bears its own costs in litigation, costs may be awarded where a motion is patently frivolous as is the case here (CPLR 22 NYCRR 130-1.1). The First Department has held that frivolous conduct warranting sanctions includes

conduct that is clearly without legal merit, or that is undertaken primarily to harass or maliciously injure another (*Levy v Carol Mgmt. Corp.*, 260 AD2d 27 [1<sup>st</sup> Dept 1999]). Among the factors to be considered in determining whether the imposition of sanctions is appropriate is whether the conduct at issue was continued when it became apparent, or should have been apparent, that it was frivolous. Here, the petitioner should have become well-aware of the frivolity of this motion after his motion for reargument was denied by the First Department and leave to appeal was denied by the Court of Appeals. This is particularly so in light of the fact that the express language of CPLR 5015(a) plainly does not provide for the relief sought by petitioner, and permitting the relief requested would not only run afoul of the structure of our court system but would also lead to no repose following the determination of all available appeals. Under these circumstances, the respondents are entitled to their legal fees and costs in having to defend against this motion.

Accordingly, it is

ORDERED that the petitioner's motion is denied; and it is further

ORDERED that the respondents' cross motion is granted and the issue of respondents' reasonable attorneys' fees and costs is referred to a Special Referee or Judicial Hearing Officer ("JHO") to hear and determine such amount; and it is further

ORDERED that a JHO or Special Referee shall be designated to hear and determine the issue of reasonable attorneys' fees and costs payable to the respondents per this decision and order, which issue is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR unless; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or [spref@nycourts.gov](mailto:spref@nycourts.gov)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for the plaintiffs shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that, unless otherwise directed by the Special Referee, on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the

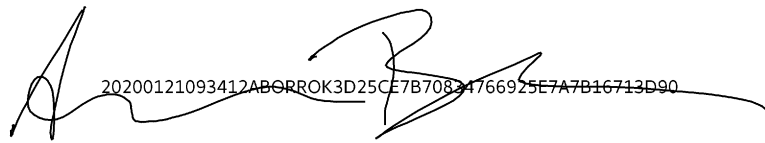
assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the hearing on the issue specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

1/17/2020

DATE

  
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ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE