

Marquez v Difiore

2021 NY Slip Op 32573(U)

December 6, 2021

Supreme Court, New York County

Docket Number: Index No. 159136/2020

Judge: Frank P. Nervo

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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. FRANK NERVO PART 04

Justice

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ALEXIS MARQUEZ,

Plaintiff,

- v -

JANET DIFIORE, LAWRENCE MARKS, GEORGE SILVER,
DOUGLAS HOFFMAN, SALIANN SCARPULLA, LORI
SATTLER, JOHN MCCONNELL, LAUREN DESOLE, KAY-
ANN PORTER, LISA EVANS, DENIS REO, LUCIAN
CHALFEN, EUGENE FAHEY, PAUL FEINMAN, MICHAEL
GARCIA, JENNY RIVERA, LESLIE STEIN, ROWAN
WILSON, JANET DIFIORE, THE NEW YORK STATE
UNIFIED COURT SYSTEM, THE STATE OF NEW YORK,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 146, 147, 160

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 148, 149, 161, 162

were read on this motion to/for DISMISSAL.

**DECISION + ORDER ON
MOTION**

In these motions, defendants move to dismiss the complaint, alleging, inter alia, want of personal jurisdiction, failure to state a claim, collateral estoppel, and expiration of the statute of limitations. In opposition, plaintiff contends that she lacks the resources to litigate this state action while a related federal action remains pending.

As an initial matter, CPLR § 306-b requires service of the complaint within 120 days of commencement of an action. Such service is completed, in accordance with CPLR § 307, when the complaint is received by the defendant-agency's office. Notwithstanding that the time to serve may be extended for good cause or in the interest justice, plaintiff has not applied for such relief here (see generally *Leader v. Maroney, Ponzini & Spencer*, 97 NY2d 95 [2001]).

Here, the action was commenced on October 16, 2020 (see NYSCEF Doc. Nos. 1 & 2) and service was completed against the State Agency on February 16, 2021 (see NYSCEF Doc. No. 5). This is a period of 123 days, three days beyond the limit imposed by the CPLR. Accordingly, the action must be dismissed as against the State Agency, New York State Unified Court System for want of jurisdiction.

As against all other defendants, and as an alternative holding as to the State Agency, plaintiff's complaint violates CPLR § 3014, and is therefore dismissed. CPLR § 3014 requires a pleading be concise. "The court should not be compelled to wade through a mass of verbiage and superfluous matter in order to pick out an allegation here and there, which, pieced together with other statements taken from another part of the complaint, will state a cause of

action. The time of the court should not be taken in a prolonged study of a long, tiresome, tedious, prolix, involved and loosely drawn complaint in an effort to save it” (*Barsella v. City of New York*, 82 AD2d 747, 748 [1st Dept 1981] quoting *Issacs v. Washougal Clothing Co.*, 233 App Div. 568, 572 [4th Dept 1931]).

Here, the complaint comprises 725 paragraphs across 133 pages, many of which are entirely irrelevant to plaintiff’s claims.¹ As in *Barsella*, the complaint contains “many obviously prejudicial allegations as well as much trivia” (*id.* at 748).

In opposition to these motions, plaintiff once again advises she lacks the resources to litigate this state action simultaneously with her federal action. This Court has rejected this exact claim on prior applications no fewer than three times. As the Court has previously stated, and reiterates here, “a pro se litigant acquires no greater rights than those of any other litigant and cannot use such status to deprive defendant of the same rights as other defendants” (*Stewart v. ARC Development, LLC*, 138 AD3d 413 [1st Dept 2016] quoting *Brooks*

¹ The Court is further constrained to note that much of the ultimate relief sought is unavailable, including directing a state agency promulgate “a state-wide sexual harassment policy specifically tailored to the New York State court system and designed to eliminate ongoing violations of the equal protection guarantee of the Fourteenth Amendment”.

v. Inn at Saratoga Ass'n, 188 AD2d 921 [3d Dept 1992]; see also *Davis v. Mutual of Omaha Ins. Co.*, 167 AD2d 714 [3d Dept 1990]). Plaintiff, by filing the instant complaint while her federal action remains pending has charted her own course of simultaneous state and federal action; she cannot now be heard that her own litigation strategy is too burdensome.

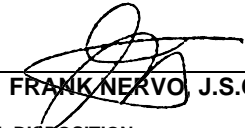
Having determined that the complaint fails to comply with CPLR § 3014, the Court need not reach the remainder of the defendants' motions.

Accordingly, it is

ORDERED that motion sequence 006 is granted to the extent of dismissing the complaint against the New York State Unified Court System for want of jurisdiction; and it is further

ORDERED that motion sequences 006 and 007 are granted to the extent of dismissing the complaint for failure to comply with CPLR § 3014.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

12/06/2021 DATE	 FRANK NERVO, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>	