

**Jordan v Bates Advertising Holdings, Inc.**

2006 NY Slip Op 30402(U)

October 11, 2006

Supreme Court, New York County

Docket Number: 118785/99

Judge: Rolando T. Acosta

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. ROLANDO T. ACOSTA

PART 61

Index Number : 118785/1999

JORDAN, KATHRYN

vs

BATES ADVERTISING HOLDINGS

Sequence Number : 011

REFER TO ANOTHER JUDGE

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-2 (I-III)

3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**

OCT 23 2006

COURT OF THE STATE OF NEW YORK

**MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.**

Dated: 10/11/06

SO ORDERED

[Signature]  
ROLANDO T. ACOSTA, J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: PART 61

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Kathryn Jordan,

Plaintiff,

– against –

Bates Advertising Holdings, Inc., f/k/a AC&R  
 Advertising, Inc. and Bates Advertising  
 Holdings (USA), Inc.,

Defendant.

**DECISION/ORDER**

Index No. 118785/99

Seq. Nos. 11 & 12

**Present:**

**Rolando T. Acosta**  
**Supreme Court Justice**

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Motion sequence numbers 11 and 12 have been consolidated for disposition. Plaintiff seeks an order vacating the Court's Decision and Judgment dated August 10, 2006, which inter alia, granted plaintiff legal fees, cost and disbursements in the amount of \$257,428.71 (Seq. No. 11), and an order by this Court recusing itself from this matter (Seq. No. 12):

<b>Papers</b>	<b>Numbered</b>
<b>Notice of Motion &amp; Affidavits (Seq. 11)</b>	<b>1- 2 (Exhibits I - III)</b>
<b>Affirmation in Opposition (Lebowitz)</b>	<b>3</b>
<b>Notice of Motion &amp; Affidavit (Seq. No. 12)</b>	<b>1-2 (Exhibits 1-39)</b>

Motion to Recall Decision/Judgment

By its motion for "Recall of Decision/Judgment," pro se plaintiff appears to be moving for reargument pursuant to CPLR § 2221. Plaintiff's motion to reargue is denied. Plaintiff's major contention is that legal fees were not awarded for the attorneys who worked on her failed federal court litigation. Pursuant to the New York City Human Rights Law, "the court, in its discretion, may award the prevailing party costs and reasonable attorneys fees." (emphasis added). See also Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); McGrath v. Toys "R" Us, Inc., 3 N.Y.3d 421, 428-29(2004). Since plaintiff was not the prevailing party in the federal litigation, this Court does not have the discretion to award her fees for that litigation. Plaintiff also argues that the Court did not award her litigation expenses, which she estimates to be \$99,496. The problem with this argument is that most of those

expenses were incurred in her federal litigation. To the extent that this Court was able to discern from the record that costs and expenses were incurred with respect to the state litigation, the Court provided for those costs in its August 10, 2006, judgment.

### Recusal Motion

Plaintiff's motion for an order of this Court recusing itself from this matter is denied. Plaintiff's motion is premised on her baseless claim that this Court has had ex parte conversations with Mr. Lebowitz and her belief that the Court is biased against her. The Court does not have a relationship of any kind with Mr. Lebowitz. In fact, the Court had never met Mr. Lebowitz until this matter was assigned to this Part for trial in 2005. Plaintiff's assertions notwithstanding, the Court has never engaged in any improper communications with Mr. Lebowitz. Nor has Mr. Lebowitz been present in this Part except when this case has been properly before the Court.

The Court had previously addressed plaintiff's claim that the Court had engaged in ex parte communications with Mr. Lebowitz. Specifically, on June 29, 2006, the Court asked plaintiff on the record whether by ex parte communication, plaintiff meant documents (such as the proposed judgment) or actual conversations. Plaintiff's response was that "like setting up faxes, like coming in to talk to you, whatever it is he does, its not right." June 29, 2006 Transcript at p. 17). Plaintiff was unable to cite to any specific evidence of ex parte communication.

By fax dated July 18, 2006,<sup>1</sup> however, plaintiff accused the Court of ex parte

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1. The fax stated in relevant part:

It has been apparent from Your Honor's remarks during the June [29]th conference, and from the "Proposed Judgment" documents forwarded to the Court, that discussions about this critical subject have occurred without my knowledge, input and participation. Your Honor has entertained a proposed Judgment from my "former attorney", Mr. Lebowitz, who has no sanctioned role in this litigation, and whose recommendations are completely objectionable to me. It is also clear that Your Honor has accepted these recommendations and reached a despositive conclusion based on the statements you made at the June [29]th conference. Notwithstanding Your Honor's rationalization that Mr. Lebowitz's proposal was "more encompassing" than mine, it was not proper for Mr. Lebowitz to have submitted any proposal to either you or my adversary.

She then went on to further accuse the Court of ex parte communications:

At the April 12<sup>th</sup> conference you agreed to hold a conference on the issue of the Judgment, but at the last conference June [29]th you indicated that you felt this was not necessary. It is now apparent why. You have been conducting informal discussions with the

communications with Lebowitz and counsel for defendant. Given the plaintiff's direct violations of Court orders as well as the tone and content of the July 18<sup>th</sup> fax, the Court sanctioned her \$5,000. See Decision and Judgment dated August 10, 2006. Now, in plaintiff's moving papers, plaintiff claims that an improper ex parte conversation between the Court and Mr. Lebowitz took place off the record on April 3, 2006. See Plaintiff's Affidavit p. 4, ¶ 10. According to plaintiff, while she was outside the court room using the telephone, Mr. Lebowitz remained in the room and "presented [the Court] with evidence regarding the contingent legal fee dispute." Contrary to plaintiff's assertions, and as Mr. Lebowitz stated in his Affirmation in Opposition to this motion, this Court has never engaged in any ex parte communication with Mr. Lebowitz regarding this or any other case.

It is clear to this Court that plaintiff is merely trying to intimidate this Court into awarding legal fees to the lawyers she deems more deserving than Mr. Lebowitz. Indeed, in her August 20, 2006 fax, she told the Court that it had the "option of either opting out of

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defendants and Mr. Lebowitz on this issue. I have also become aware of a plan afoot to [bifurcate] the Judgment so that Mr. Lebowitz can get paid while I, the seriously ill Plaintiff in this matter, would be left with out relief pending the threatened appeal.

This scheme is not surprising, given everything that has transpired during this litigation, but I would like to remind everyone that I have the option of vetoing anything proposed by the attorneys and to appeal anything ordered by this Court. It is extremely unlikely that the First Department would view such a scheme with favor.

There is nothing "emotional" about any of my requests or communications to you. Everything I have sent you has been necessitated by your actions during and after the April 3rd "conference", the false accusation you made about me in your subsequent letter, and the fact that you have continued to encourage an ex parte dialogue with my "former attorney" Mr. Lebowitz, and between Mr. Lebowitz and the defendants, over my strong objections. I have exercised great restraint while this shameful charade has transpired and while you looked the other way when I was subjected to gender biased remarks and disparaging exclusionary behavior by the attorneys in this matter.

I have only one request [at] this point. If you Honor is so beleaguered by your caseload that you cannot bring this case to Judgment by the end of the month, and if you cannot refrain from continuing a dialogue with Mr. Lebowitz while this litigation is pending, and if you cannot afford me the respect and rights that I am due, then I would petition you to transfer this case to another judge on the basis of administrative convenience.

As far as the Judgment, since you have threatened "sanctions" if I communicate my positions and objections to you, instead of holding a conference so we could discuss this critical issue, I really have no choice now but to wait for you to enter Judgment so that I can make my concerns known to the First Department.

the case or entertaining [plaintiff's] motion to amend the judgment." She has also explicitly threatened to file a complaint with the Judicial Ethics Commission. This Court, however, will not and cannot be intimidated. Plaintiff is neither entitled to her own facts nor to her own judge. Plaintiff should pursue whatever remedies she has available and stop threatening to pursue them simply to gain an advantage in this litigation.

Accordingly, based on the foregoing, it is hereby

ORDERED that plaintiff's motion for reargument (Seq. No. 11) is DENIED; and it is further

ORDERED that plaintiff motion for this Court to recuse itself from this matter (Seq. No. 12) is also DENIED.

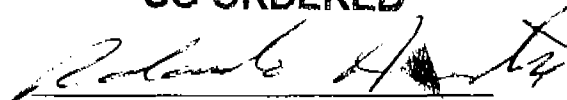
The Court will sua sponte vacate the August 10, 2006 Decision and Judgment and substitute it with a new Decision and Judgment to correct a few technical errors.

This constitutes the Decision and Order of the Court.

Dated: October 11, 2006

ENTER

SO ORDERED



Rolando T. Acosta, J.S.C.  
**ROLANDO T. ACOSTA**  
— J.S.C.

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**FILED**

OCT 23 2006

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