

Vadney v Ross

2007 NY Slip Op 31707(U)

June 11, 2007

Supreme Court, Greene County

Docket Number: 0020070/2331

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT
HAROLD W. VADNEY, III,

COUNTY OF GREENE

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 07-0233
RJI NO. 19-07-2873

JOAN ROSS, JOHN LUCKACOVIC,
BLEEZARDE PUBLISHING COMPANY,
PUBLISHER OF THE NEWS HERALD
NEWSPAPER and RICHARD BLEEZARDE
and UNKNOWN DEFENDANTS JOHN and
MARY DOE a/k/a VOTERS4RJUSTICE,
and JOHN and MARY DOE a/k/a CONCERNED
CITIZENS OF NE W BALTIMORE,

Defendants.

Supreme Court Albany County All Purposes Term, April 5, 2006
Reassigned to Justice Joseph C. Teresi

APPEARANCES:

Harold W. Vadney, III
Plaintiff Pro Se
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National Historic District
New Baltimore, New York 12124

Tobin and Dempf. LLP
Attorneys for Defendant Luckacovic
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Attorneys for Defendants Bleezarde and The News Herald
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TERESI, J.:

The plaintiff moves pursuant to Article 31 of the CPLR and seeks 1) to vacate defendant's Luckacovic's Demands for Discovery, 2) for an Order of Protection to limit the scope and time of discovery, 3) to have the Court supervise discovery and 4) for a preliminary conference to limit discovery and to establish a scheduling order. The defendant, Luckacovic's opposes the motion. The defendants' Bleezarde Publishing Company and Richard Bleezarde move pursuant to CPLR 3211(a)(5) for an order dismissing the complaint alleging the second cause of action is untimely pursuant to the statute of limitations. The plaintiff opposes the motion to dismiss.

The plaintiff commenced this action pro se alleging causes of action in defamation (intentional tort), injury to reputation, infliction of severe emotional distress, tortious interference and negligence. When the defendant Luckacovic served his Answer he also served discovery demands which included a Notice of Deposition, Demand for Witnesses, Notice for Discovery and Inspection and a Demand for a Verified Bill of Particulars. Plaintiff now moves to limit the scope of discovery for the time period of October 27, 2005 to November 3, 2005. Plaintiff also seeks a protective order pursuant to CPLR § 3103(a) limiting disclosure and for the court to supervise disclosure pursuant to CPLR § 3104(a).

The defendant Luckacovic alleges the defendant failed to comply with 22 NYCRR § 202.7(a) and (c). 22 NYCRR § 202.7(a) requires discovery motions to contain an affirmation

from the moving attorney stating that he conferred with opposing counsel in good faith to resolve the issues raised in the motion. The attorney for the defendant alleges the plaintiff's application does not allege that he undertook a good faith effort to resolve the issues in the motion. The defendant also alleges the defendant failed to comply with 22 NYCRR § 202.7(c) which requires that "the affirmation of the good faith effort to resolve the issues raised by the motion shall indicate the time, place and nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral with counsel for opposing parties was held." The defendant contends the plaintiff failed to comply with the Uniform Rules of the Supreme Court and the motion is premature as a matter of law.

A review of the motion indicates the plaintiff did not comply with the requirements of 22 NYCRR § 202.7 nor has he established grounds for the issuance of a protective order. The plaintiff has not established by any evidence the need for the court to limit or supervise discovery. The Supreme Court is vested with broad discretion in supervising disclosure, and its determination will not be disturbed absent an improvident exercise of that discretion. See, Nieves v. City of New York, 35 AD3d 557 (2nd Dept. 2006). Plaintiff's motion is denied. The parties are directed to attend a preliminary conference at the Catskill Courthouse, Catskill, New York on June 22, 2007 at 9:15 a.m. to establish a scheduling order for discovery in this action.

The Bleezarde defendants move to dismiss the complaint pursuant to CPLR 3211(a)(5) alleging the action is untimely pursuant to CPLR 215(3). On May 15, 2006 the plaintiff commenced an action for defamation that occurred on November 3, 2005 by the publication of a letter to the editor of defendant's newspaper. On August 10, 2006 the defendants moved to dismiss the complaint for improper service. On October 26, 2006, Supreme Court granted the

motion and dismissed the complaint for lack of jurisdiction. On November 2, 2006 the Decision and Order was entered with the Greene County Clerk. On February 12, 2007 the plaintiff recommenced the action and served the Bleezarde defendants with the summons and complaint.

The plaintiff alleges he timely commenced the second cause of action pursuant to CPLR 306-b which provides for an additional one hundred twenty days for the recommencement of the same action. "If an action is dismissed for failure to ...effect proper service was timely commenced, the plaintiff may commence a new action, despite the expiration of the statute of limitations after the commencement of the original action, upon the same transaction or occurrence... within one hundred twenty days of such dismissal provided that service upon the defendant is effected within such one hundred twenty day period." See, Fley v. Fitzpatrick Container, Co., 267 AD2d 637 (3rd Dept. 1999). An order is effective on the date of entry and not on the date a decision is signed. See, Matter of City of Albany v. New York State Div. Of Human Rights, 157 AD2d 1008 (3rd Dept. 1990).

Plaintiff timely commenced an action for defamation on May 18, 2006. The action was dismissed for improper service in a Decision and Order dated October 26, 2006. The order was entered with the Greene County Clerk on November 2, 2006. Pursuant to CPLR § 306-b, the plaintiff had 120 days to recommence a second action from the date the dismissal order was entered on November 2, 2006. Notwithstanding the expiration of the statute of limitations, the plaintiff had until March 2, 2007 to recommence the dismissed prior action. The plaintiff recommenced the second action on February 12, 2007, by filing with the County Clerk and with service upon the defendant. The plaintiff properly recommenced the action and timely served the defendants pursuant to CPLR § 306-b. See, Gallo v. Ventimiglia, 283 AD2d 331 (1st Dept. 2001).

The defendants' motion to dismiss the complaint as untimely is denied.

All papers, including this Decision and Order are being returned to the attorneys for the defendant Luckacovic. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provision of that section respecting to filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York
June // , 2007


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion dated March 1, 2007;
2. Affirmation of Matthew I. Mazur, Esq. dated March 1, 2007 with attached exhibits A & B;
3. Defendant Bleezarde's Memorandum of Law dated March 1, 2007;
4. Affidavit of Harold W. Vadney, III dated March 12, 2007;
5. Plaintiff's Memorandum of Law dated March 12, 2007;
6. Notice of Motion dated March 10, 2007;
7. Affidavit of Harold W. Vandey, III dated March 12, 2007;
8. Affirmation of Kevin A. Luibrand, Esq. dated March 22, 2007 with attached exhibits A-D.