

**Passe v Santiago**

2014 NY Slip Op 30132(U)

January 15, 2014

Supreme Court, New York County

Docket Number: 100616/13

Judge: Louis B. York

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: LOUIS B. YORK  
J.S.C. Justice

PART 2

Dvalina Paste  
-v-  
Hector Santiago et al.

INDEX NO. 100616/13  
~~100616/0~~

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

MOTION SEQ. NO. 001

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is decided in accordance  
with the accompanying decision.

**FILED**

JAN 22 2014

COUNTY CLERK'S OFFICE  
NEW YORK

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

Dated: 1/15/13

fly, J.S.C.  
**LOUIS B. YORK**

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 2

\_\_\_\_\_  
IVALINA PASSE, X

Plaintiff,

Index No. 100616/2013

-against-

HECTOR SANTIAGO, SANDRA MUNOZ, ACS  
CHILD PROTECTIVE SERVICES, MICHELLE  
BAILY, LILLIAN JOHNSON, GEORGE NEAR  
SOUTH FERRY TERMINAL DEPARTMENT  
OF TRANSPORTATION,

**FILED**

JAN 22 2014

COUNTY CLERK'S OFFICE  
NEW YORK

Defendants.  
\_\_\_\_\_  
X

LOUIS B. YORK, J.:

In this action, *pro se* plaintiff alleges that the various defendants conspired against her to deprive her the custody of her daughter and to have her institutionalized. The defendants in this case are plaintiff's lawyer Hector Santiago, her *guardian-ad-litem* Sandra Munoz, defendants New York City Administration for Children's Services (ACS) and ACS caseworkers, defendants Michelle Baily and Lillian Johnson, and George Near, an employee of the Department of Transportation who works at the South Ferry Terminal Station.

One of the defendants, Sandra Munoz, currently moves to dismiss all causes of action against her. By way of background, the Court notes that plaintiff initially states that two police officers wrongfully accused her of leaving her daughter unattended at the shelter where the two of them stayed, and that they detained her at the police station without cause while ACS caseworker Baily visited the shelter and took custody of her daughter. Following the detention, she was sent to Jamaica Hospital Medical Center's psychiatric ward, again without basis. She

states that the judge and several lawyers involved in a custody hearing in Queens Family Court failed to represent her interests in various ways.

At some subsequent hearing, apparently related to Near's allegedly false accusation that she threw books at bystanders at the Staten Island Ferry Terminal, ACS worker Johnson provided false information in Family Court. She contends that Johnson and Near were in collusion, their purpose being to harass and defame her. Plaintiff states that the police arrested her for no reason and sent her to Bellevue Hospital, where she was diagnosed with paranoid schizophrenia. According to plaintiff, these actions also were in furtherance of the conspiracy to deny her visitation rights with respect to her daughter.

As relates to Munoz, plaintiff asserts the following: In February 2010, as the result of a hearing, attorney Hector Santiago became her new attorney. In addition, defendant Munoz became plaintiff's *guardian ad litem*. Plaintiff accuses Munoz of failing to inform plaintiff of the guardian's duties. Moreover, she claims, no one set forth an adequate reason for the appointment of a *guardian ad litem*. She also accuses Munoz of withholding information about plaintiff's inheritance, due to her upon her mother's death. Munoz did not represent her with due diligence, plaintiff states, and therefore she is guilty of a breach of duty. The complaint refers to a guardian's duty to his or her client in a probate proceeding, but it does not appear that a probate proceeding was involved. She accuses all defendants of wrongdoing, but the claims which conceivably apply to Munoz are: violating her due process right to participate in hearings, during which she could have regained custody of her children<sup>1</sup>; of discrimination based on sex, which has caused her lost earnings and benefits as well as emotional duress; of fraud;

---

<sup>1</sup> Plaintiff also refers to her desire to regain custody of her son, whom she allegedly has not seen in 15 years.

and of negligently failing to take her medical disabilities into consideration during the proceedings she describes. Plaintiff seeks \$85 million in compensatory and punitive damages, and requests a jury trial.

As the Court has indicated, it currently considers Munoz's motion to dismiss this action as it applies to her. She first contends that quasi-judicial immunity protects her from any alleged wrongdoing or negligence that she performed in the scope of her duty as plaintiff's *guardian ad litem*. In this, she is correct. *See Bradt v. White*, 190 Misc. 2d 526, 528-29, 740 N.Y.S.2d 777, 779-80 (Sup. Ct. Greene County 2002); *see also In re TM*, 19 Misc. 3d 1113(A), 859 N.Y.S.2d 907 (Fam. Ct. Kings County No. NN-35537/06, Feb. 20, 2008)(parent's claim against child's law guardian denied based on quasi-judicial immunity)(avail at 2008 WL 880192, at \*1). Therefore, to the extent that plaintiff's claims against the guardian are based on negligence, the claims must fail.

Plaintiff also alleges that the guardian is guilty of intentional wrongdoing and of the deprivation of certain constitutional rights. However, in her complaint, the only wrongful actions which she attributes to the guardian are 1) the guardian did not explain her duties to plaintiff, 2) the guardian did not provide to plaintiff necessary information about an inquest and about her mother's inheritance,<sup>2</sup> and 3) the guardian breached her duty of care and did not perform her role with due diligence. All of these relate to the guardian's alleged negligence. As the Court stated above, quasi-judicial immunity protects her from litigation on these grounds. Plaintiff sets forth no facts which show that the guardian deprived her of any constitutional rights. Similarly, plaintiff does not support her claim of fraud with the specificity the law

---

<sup>2</sup> The Court cannot determine the specific inquest to which plaintiff refers, and does not understand what plaintiff's allegations are with respect to her mother's inheritance.

requires. See *Berardi v. Berardi*, 108 A.D.3d 406, 406-07, 969 N.Y.S.2d 444, 446 (1<sup>st</sup> Dept. 1013). Plaintiff also asserts a cause of action for sex discrimination. To state a viable cause of action for sex discrimination, plaintiff must include the facts on which she bases her claim. *Goldin v. Engineers Country Club*, 54 A.D.3d 658, 659-60, 864 N.Y.S.2d 43, 45-46 (2<sup>nd</sup> Dept. 2008). The complaint here does not explain the basis of the claim. Therefore, it must be dismissed. The Court also finds no information alleging a particular conspiracy involving the guardian. Simply stating that there was a conspiracy, unfortunately, is not enough.

Finally, plaintiff does not set forth any facts in opposition which warrant a different result. Instead, she states only that it would be more fair and appropriate to allow her the chance to argue her claims against the guardian in court. Again, this is insufficient as plaintiff does not provide any facts which, if proven, would show that the guardian committed any actionable offenses.

Therefore, it is

ORDERED that the motion to dismiss the claims against Sandra Munoz is granted; and it is further

ORDERED that all causes of action are severed and dismissed as they relate to Sandra Munoz; and it is further

ORDERED that the remainder of the action shall continue.

Dated: 1/15, 2014

Enter:

*LB*

LOUIS B. YORK, J.S.C.

**FILED**

**JAN 22 2014**

COUNTY CLERK'S OFFICE  
NEW YORK

LOUIS B. YORK  
J.S.C.