

Rahman v NYC Human Resources Admin.

2014 NY Slip Op 30277(U)

January 27, 2014

Supreme Court, New York County

Docket Number: 154273/2013

Judge: Kathryn E. Freed

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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: KATHRYN E. FREED
Justice

PART 5

RAHMAN, EZEKIEL A

INDEX NO. 154273/2013

- V -

MOTION DATE _____

NYC HUMAN RESOURCES

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this application to/for _____

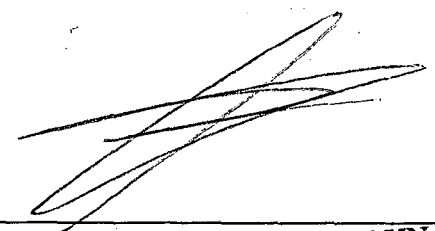
Notice of Motion/ Petition/ OSC - Affidavits - Exhibits No(s) _____

Answering Affidavits - Exhibits No(s) _____

Replying Affidavits No(s) _____

Upon the foregoing papers, it is ordered that this application is

**DECIDED IN ACCORDANCE WITH
ADJUDICATING DECISION / ORDER**



DATED: 1/27/2014
JAN 27 2014

**KATHRYN E. FREED
JUSTICE OF SUPREME COURT**

- 1. CHECK ONE : CASE DISPOSED NON-FINAL DISPOSITION
- 2. APPLICATION : 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 5

-----X

EZEKIEL ABDEL RAHMAN,

Plaintiff,

- against-

NYC HUMAN RESOURCES
ADMINISTRATION and DOES
1-100, inclusive

Defendants.

-----X

KATHRYN E. FREED, J.S.C.

DECISION/ORDER

Index No.: 154273/2013

Seq. Nos. 001 & 002

PRESENT:

Hon. Kathryn E. Freed

J.S.C.

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
Seq. 001	
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	..1-2(Ex A-C)..
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
AFFIDAVIT IN OPPOSITION & X-MOTION.....	..3,4(Ex 1-12)..
AFFIDAVIT IN OPPOSITION TO X-MOTION.....	..5(Ex A, B)...
OTHER ...Memo of Law, 2 Proposed Orders.....6,7,8.....

PAPERS	NUMBERED
Seq. 002	
NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	..1-2(Ex A-B)..
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED.....
AFFIDAVIT IN OPPOSITION & X-MOTION.....	..3,4(Ex 1-12)..
AFFIDAVIT IN OPPOSITION TO X-MOTION.....	..5(Ex A, B)...
OTHER ...Memo of Law,.....6.....

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In motion sequence 001, pro se plaintiff Ezekiel Abdel Rahman moves, pursuant to CPLR 3213, for an order granting summary judgment in lieu of complaint against defendant New York City Human Resources Administration (HRA), thereby dismissing all of plaintiff's debts and, among other things, dismissing any actions initiated by HRA as against him. Plaintiff also moves, in motion

sequence 002, for the identical relief. These motions will therefore be consolidated. HRA cross-moves for an order dismissing the action, pursuant to CPLR 3211 (a) (1), (2) and (7) and 7511 (b), on the grounds that plaintiff is perpetrating a fraud by presenting false documents.

Factual and Procedural Background

Plaintiff owes approximately \$44,617.00 in arrears in child support to the custodial parent of his child. See HRA’s Exhibit 3. In December 2012, a “petition for enforcement and violation of support and order” was filed in the City of New York Family Court with an upcoming hearing scheduled. See HRA’s Exhibit 1. The petition states that it was “brought by the Corporation Counsel of the City of New York on behalf of the Initiating Jurisdiction Petitioner, based upon information provided by the Support Collection Unit.” *Id.* at 2.

Plaintiff then sent HRA a “Notice of Settlement Offer” (Settlement Offer), dated February 1, 2013, which allegedly bound HRA and plaintiff to a private administrative proceeding in order to settle his arrears. The Settlement Offer charged HRA with the responsibility of accepting and tendering a “Draft Money Order (Money Order),” in the amount of \$150,000. After accepting the money, according to the Settlement Offer, HRA was to discharge all debts owed by plaintiff. This “set off” of the \$150,000 would also force the closure of his division of child support enforcement case. The Settlement Offer states that it unilaterally binds HRA to an adjudication of some sort.

The purported Money Order, in the amount of \$150,000, was enclosed with the Settlement Offer. This Money Order was to be paid to HRA for termination of child support payments and was to be drawn from the United States Treasury (Treasury) in Washington, D.C. The purported Money Order states that plaintiff is an authorized representative who can withdraw from the Treasury.

Along with the Settlement Offer, plaintiff enclosed an alleged "Private Registered Setoff Bond," also dated February 1, 2013, which was apparently to be used to satisfy any outstanding demands made against him by the State of New York. Similarly, this bond, which was in the amount of \$450,000, was to be drawn from the Treasury.

Although HRA received this Settlement Offer, it did not respond to it. Nor did HRA agree to participate in any "private administrative proceeding." HRA argues that it did not respond to plaintiff's "unilateral attempt to discharge his child support obligations with a false instrument . . ." See Affirmation of Charles Carey, at ¶ 9. It did not accept any alleged draft money order or set off bond.

When HRA did not respond to plaintiff's documents, plaintiff claims to have had an alleged "Court of International Claims" issue a default judgment against HRA. The case title of this purported "Foreign Default Judgment" is *Rahman v Human Resources Administration Office of Child Support Enforcement*. Plaintiff claims that this court, allegedly located in Arizona, issued the notice of default judgment on April 2, 2013.

The alleged Court of International Claims found that plaintiff was not liable for any arrears in child support but rather that HRA owed plaintiff \$150,000. As set forth in the alleged default judgment, the "Court of International Claims for the International Adjudicators Association" informed HRA of the following, in pertinent part:

[*5]
“1. [HRA] forthwith shall rescind and/or revoke any and all liens, levies, deficiencies, garnishments and distraint [sic] warrants on all property, registered and unregistered held in the name of [plaintiff] . . .

2. [HRA] forthwith shall vacate/discharge any and all judgments, orders, and decrees issued against the DEBTOR and/or the COLLATERAL for the settlement of the Division of Child Support Enforcement, Case Number NV93028U1 (collectively, the “ACCOUNTS”) by executing, or causing to be executed, any and all instruments necessary for the discharging of such and give notice by providing certified copies of the discharges by mailing said certified copies to the Claimant through this court . . .”

See Plaintiff’s Exhibit B, at 3.

The “Adjudicator” in the default judgment also allegedly found that HRA admits and confesses to committing tortious acts such as theft of funds and fraud.

Positions of the Parties

Plaintiff now seeks to enforce this purported default judgment as against HRA. He has also attempted to use these documents to enforce similar “findings” in other courts, such as in Rockland County. *See* HRA’s Exhibit 9. In his two motions for summary judgment, he seeks to charge HRA with the “duties, obligations, liabilities and restraints accrued by the receipt and acceptance” of the Settlement Offer and its terms. *See* Plaintiff’s Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, at 2. As a result, plaintiff would then be discharged from all debts and liabilities related to his child support account.

Plaintiff apparently believes that, since HRA received his Settlement Offer and Money Order and did not refuse the Settlement Offer, it is thereby bound to the terms that he set forth. Plaintiff submits a proposed order, staying any action as against him in Family Court by HRA.

HRA argues, among other things, that there was never an agreement between the parties to

participate in a settlement. As such, the court cannot attempt to enforce a default out of a non-agreement. Moreover, in the plaintiff's situation, all of his arrears are owed to the custodial parent, not to the Department of Social Services. HRA summarizes with the following:

"In seeking to avoid his obligations as a parent, Plaintiff is attempting to enforce an improperly-obtained 'default judgment' from a dubious out-of-state 'court' with the support of financial instruments that claim to be able to draw on a purported personal account at the United States Treasury. In other words, Plaintiff is a perpetrating a fraud on this Court."

See *Carey Aff.*, at ¶¶ 18-19.

Conclusions of Law

Plaintiff's motions for summary judgment in lieu of a complaint is denied. "A motion for summary judgment brought in lieu of a complaint (CPLR 3213) is based on an 'instrument for the payment of money only or upon any judgment.'" *Sea Trade Maritime Corp. v Coutsodontis*, 111 AD3d 483, 483-484 (1st Dept 2013). The allegations in support of plaintiff's motion are baseless, unsupported and suspect. HRA cannot be unilaterally bound to the terms of plaintiff's self-serving documents and the resulting invalid alleged judgments from other courts. Although plaintiff mailed purported legal and other documents to HRA, there was never an acceptance by HRA to be bound to a settlement agreement. Thus, plaintiff's claims fail and his motions are denied.

HRA's cross-motion to dismiss the complaint is granted. On a motion to dismiss pursuant to CPLR 3211, the facts as alleged in the complaint are accepted as true, the plaintiff is given the benefit of every possible favorable inference, and the court must determine simply whether the facts alleged fit within any cognizable legal theory. *Mendelovitz v Cohen*, 37 AD3d 670, 671 (2d Dept

2007); see also *P.T. Bank Cent. Asia N.Y. Branch v ABN AMRO Bank N.V.*, 301 AD2d 373, 375 (1st Dept 2003). However, “bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to any such consideration [internal quotation marks and citation omitted].” *Silverman v Nicholson*, 110 AD3d 1054, 1055 (2d Dept 2013). Here, dismissal is appropriate pursuant to CPLR 3211 (a) (1) because “the documentary evidence submitted [by HRA] conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v Martinez*, 84 NY2d 83, 88 (1994).

In this court's discretion, sanctions in the form of costs, fees, and disbursements will not be granted to HRA, but ordinary costs and disbursements are awarded to defendant.

Accordingly, it is hereby

ORDERED that plaintiff Ezekiel Abdel Rahman’s motion for summary judgment in lieu of a complaint is denied (001); and it is further,

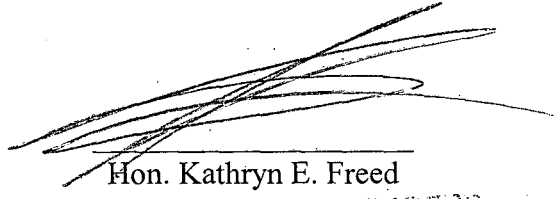
ORDERED that motion sequence 002 is denied as duplicative; and it is further

ORDERED that the cross motion by defendant New York City Human Resources Administration to dismiss the action herein is granted and the action is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further,

ORDERED that this constitutes the decision and order of the Court.

Dated: January 27, 2014

ENTER:



Hon. Kathryn E. Freed
HON. KATHRYN FREED
JUSTICE OF SUPREME COURT