

St. Paul's Sch. of Nursing, Inc. v Papaspiridakos

2014 NY Slip Op 33452(U)

September 23, 2014

Supreme Court, Queens County

Docket Number: 989/12

Judge: Bernice D. Siegal

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 19
Justice

-----X
St. Paul's School of Nursing, Inc. doing business
as St. Paul's School of Nursing, individually, and on
behalf of the students, faculty, and administration of
St Paul's School of Nursing,

Index No.: 989/12
Motion Date: 7/22/14

Plaintiff,

Motion Seq. No.: 7

-against-

Nick Papaspiridakos,

FILED
SEP 29 2014

FILED
SEP 20 2014

Defendant.

-----X
COUNTY CLERK
QUEENS COUNTY

COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 13 read on this motion to inter alia vacate the order of Justice Bernice D. Siegal dated June 17, 2014.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	1 - 6
Memorandum of Law in Support.....	7 - 9
Affirmation in Opposition.....	10 - 13

Upon the foregoing papers, it is hereby ordered that the motion is resolved as follows:

Facts

Plaintiff commenced this action in 2012 to obtain a preliminary injunction barring defendant, a former student of plaintiff's, from entering plaintiff's campus or communicating with

plaintiff's employees. In violation of the January 17, 2012 stipulation between the parties, defendant entered plaintiff's leased premises and initiated conversations with plaintiff's employees and students. Plaintiff then filed an Order to Show Cause for Contempt on December 4, 2012. This Court's Order of June 20, 2014, held defendant to be in contempt of the January 17, 2012 stipulation. Pursuant to this Court's Order of June 20, 2014 holding defendant in contempt, defendant was ordered to pay plaintiff \$48,997.75.

Defendant now moves for relief of judgment, for a hearing, and for the Court to use its inherent powers. Defendant's motion is denied in its entirety.

The court notes that the within motion was submitted to the Honorable Robert L. Nahman on July 22, 2014 and referred to this court by Order dated July 24, 2014.

Discussion

As an initial matter, defendant's motion must be denied in its entirety because defendant has failed to furnish this Court with all papers necessary to decide the motion, which defendant, as the movant, must do pursuant to CPLR § 2214(c). (CPLR § 2214(c).) Defendant has failed to provide this Court with a copy of plaintiff's Order to Show Cause for Contempt of December 4, 2012. As defendant complains that that Order to Show Cause was fraudulently submitted, and it was that Order to Show Cause that started the process of having the defendant held in contempt, it is "necessary to the consideration of the questions involved" in this motion. (CPLR § 2214(c).) Defendant failed to provide it to this Court, and failure to provide the Court with all necessary papers is, in and of itself, grounds for denial of the motion. (*Biscone v. JetBlue Airways Corp.*, 103 A.D.3d 158, 178-180 [2d Dep't 2012]; *Alizio v. Perpignano*, 225 A.D.2d 723, 724-725 [2d Dep't 1996]; *Wells Fargo Home Mortg., Inc. v. Mercer*, 35 A.D.3d 728, 728 [2d Dep't 2006];

Sheedy v. Pataki, 236 A.D.2d 92, 97-98 [3d Dep't 1997].) Thus, defendant's motion is denied in its entirety.

But even if the Court were to reach the merits of defendant's motion, it would still be denied in its entirety.

Defendant's Motion for Relief from Judgment

Pursuant to CPLR § 5015, a party may be relieved from a judgment in the following circumstances:

- a) On motion. The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:
 1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry; or
 2. newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or
 3. fraud, misrepresentation, or other misconduct of an adverse party; or
 4. lack of jurisdiction to render the judgment or order; or
 5. reversal, modification or vacatur of a prior judgment or order upon which it is based.
- (b) On stipulation. The clerk of the court may vacate a default judgment entered pursuant to section 3215 upon the filing with him of a stipulation of consent to such vacatur by the parties personally or by their attorneys.
- (c) On application of an administrative judge. An administrative judge, upon a showing that default judgments were obtained by fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities or where such default judgments were obtained in cases in which those defendants would be uniformly entitled to interpose a defense predicated upon but not limited to the foregoing defenses, and where such default judgments have been obtained in a number deemed sufficient by him to justify such action as set forth herein, and upon appropriate notice to counsel for the respective parties, or to the parties themselves, may bring a proceeding to relieve a party or parties from them upon such terms as may be just. The disposition of any proceeding so instituted shall be determined by a judge other than the administrative judge.
- (d) Restitution. Where a judgment or order is set aside or vacated, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal.

(CPLR § 5015.) Plaintiff moves for relief based on alleged fraud committed by the defendant. To prove fraud, a party must show "misrepresentation of a material fact, falsity, scienter, and deception." (*Barclay Arms, Inc. v. Barclay Arms Associates*, 74 N.Y.2d 644, 646-647 [1989].) Defendant has not proved this. Specifically, Defendant contends, for the first time in the within motion, that he was forced to appear Pro Se on December 5, 2012 and that the court was somehow complicit¹. Defendant refers to an alleged conversation with Peter Thomas, Esq, the attorney who appeared on behalf of Peter Gordon, Esq. on January 17, 2012 when the parties entered into a stipulation. However, Defendant fails to set forth how his alleged discussion with his former counsel, Peter Thomas, Esq., has any impact on the within case or establishes the existence of fraud as the Defendant has appeared Pro-Se in each of the court appearances since that date. It is also critical to note that the Defendant testified on January 4, 2013 that he had read the stipulation and that the terms of the stipulation were explained by his attorney. Accordingly, Defendant has failed to establish the existence of fraud. Thus, defendant's motion for relief from the judgment is denied.

Defendant's Request for a Hearing

Defendant's request for a hearing is denied, as such a request is not a cognizable motion under the CPLR.

Defendant's Request for the Court to Use its Inherent Powers

¹Defendant refers to an alleged conversation with Peter Thomas Esq. wherein he states that he has a long personal history with this court. However, Defendant fails to establish how he was prejudiced.

Defendant's Request for the Court to Use its Inherent Powers is denied, as such a request is not a cognizable motion under the CPLR.

Conclusion

For the reasons set forth above, Defendant's motion is denied in its entirety.

Dated: *Sept 23, 2014*



Bernice D. Siegal, J. S. C.

FILED
SEP 29 2014
COUNTY CLERK
QUEENS COUNTY