

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

2014 NY Slip Op 33454(U)

November 25, 2014

Supreme Court, Queens County

Docket Number: 989/12

Judge: Bernice D. Siegal

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Short Form Order

NEW YORK STATE SUPREME COURT – QUEENS COUNTY
Present: HONORABLE BERNICE D. SIEGAL IAS TERM, PART 25
Justice

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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: 8/26/14
Motion Seq. No.: 8

Plaintiff,

FILED
NOV 28 2014
COUNTY CLERK
QUEENS COUNTY

-against-

Nick Papaspiridakos,

Defendant.

ORIGINAL

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The following papers numbered 1 to 12 read on this motion for an order granting sanctions, cost and restitution; damages of relief; to reargue and renew; to dismiss motion for relief of judgment or order pursuant to CPLR 3211, 5015, 2221, 3216, Part 130.1 and 2.2 section 202; all orders related to 989/12 and August 1, 2014 order of Judge Schulman.

	PAPERS NUMBERED
Notice of Motion - Affidavits-Exhibits.....	1 - 4
Affirmation in Opposition.....	5 - 9
Reply Affidavit.....	10 - 12

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

Defendant, Nick Papaspiridakos, moves for an Order granting sanctions, cost and restitution; “damages and relief”; motion to reargue and renew; motion to dismiss; motion for relief of judgment or order; motion to reverse, modify or vacate judgment or Orders.

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For the reasons set forth below, Defendant's motion to reargue the July 21, 2014 Order is denied, without prejudice, with leave to renew before Justice Martin Schulman. Defendant's remaining requests for relief are denied in their entirety.¹

Background

On January 17, 2012, plaintiff St. Paul's (St. Paul's) commenced this action by way of an Emergency Order to Show Cause seeking a preliminary injunction barring defendant Nick Papaspiridakos, a former student at St. Paul's, from entering St. Paul's campuses or from communicating with the school's faculty members or employees as a result of defendant's threats and harassment to St. Paul's faculty and staff, including his admission that he harbored thoughts about shooting several of those faculty and staff members.

On January 17, 2012, plaintiff and defendant entered into a so-ordered stipulation as a result of defendant's repeated threats and harassment of St. Paul's faculty, staff, and students. Paragraph 1 of the so-ordered stipulation provides that defendant agreed "not to enter the leased premises of Staten Island and Queens campuses of St. Paul's School of Nursing." Paragraph 2 of the so-ordered stipulation provides that defendant agreed "not to enter the floor on which the Queens leased premises are located." Paragraph 3 of the so-ordered stipulation provides that defendant agreed "not to initiate communication with faculty, staff, employees or students of St. Paul's School of Nursing." Paragraph 4 of the so-ordered stipulation provides that defendant agreed "not to harass, annoy or otherwise threaten the security of the faculty, staff, employees or students of St. Paul's School of

¹The court notes that Defendant sought relief in the within motion that could not be addressed by one Justice. The request for reargument of the July 21, 2014 Order must be resolved by the Justice who rendered the decision, as set forth below, and the remainder of the motion must be addressed by this Court as the Justice assigned to the within action.

Nursing.” Paragraph 5 of the so-ordered stipulation provides that “defendant may communicate with faculty, staff, employees or students who initiate contact with him.”

On February 17, 2012, St. Paul’s sent a cease and desist letter to defendant with respect to defendant’s continued harassment and intimidation of St. Paul’s faculty and staff. On March 29, 2012, St. Paul’s sent a second cease and desist letter to defendant to immediately cease and desist from any further conduct in violation of the so-ordered stipulation.

Plaintiff subsequently filed with this court an emergency order to show cause for contempt, pursuant to CPLR §5104 and Judiciary Law §§753(A) and 773, seeking an order finding defendant in contempt for his refusal and/or willful neglect to obey the so-ordered stipulation; imposing a fine upon defendant in the amount of plaintiff’s costs and expenses, including attorney’s fees, in bringing the order to show cause; compelling compliance with the so-ordered stipulation; requiring that defendant not come within 100 yards of St. Paul’s campuses or the homes of current or former St. Paul’s faculty and staff members; and requiring that defendant not initiate communications with any relative, neighbor, friend, associate or acquaintance of any current or former St. Paul’s faculty or staff members.

On December 21, 2012, January 2, 2013 and January 4, 2013, this court conducted a contempt hearing on the issue of whether the defendant violated the so-ordered stipulation by calling, emailing, and writing letters to St. Paul’s faculty and staff, by posting comments on his public Facebook page about St. Paul’s faculty and staff, by sending Facebook friend requests to St. Paul’s faculty and staff, and by protesting and by handing out flyers outside of St. Paul’s campus.

By Short Form Order dated August 12, 2013, this court concluded that St. Paul’s motion was granted to the extent that Papaspiridakos was found in civil contempt of the so-ordered stipulation

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dated January 17, 2012, and a fine of \$250.00 was imposed. St. Paul's was also directed to submit an affidavit, in connection with the settlement of the order, an affidavit of its counsel as to reasonable attorneys' fees. In addition, the so-ordered stipulation of January 17, 2012 was modified to include the following paragraph: Defendant Nick Papaspiridakos agrees to not come within 100 yards of the St. Paul's campuses or homes of current or former St. Paul's faculty and staff members.

On January 23, 2014, this Court issued a Memorandum decision denying Defendant's motion² for an Order "granting leave to reargue, renew and recall" the Court's decision dated August 12, 2013.³

On March 25, 2014, Defendant submitted an additional motion for leave to reargue the January 23, 2014 decision of this Court. By Short Form Order dated May 27, 2014, this Court denied Defendant's motion to reargue and vacate the January 23, 2014 Order.

On June 20, 2014, the Clerk of this Court entered an Order holding the Defendant in civil contempt pursuant to CPLR §5104 and Judiciary Law §753(A). The June 20, 2014 Order provided that Defendant shall pay St. Paul's School of Nursing, Inc. a fine of \$250.00 and the reasonable costs and expenses incurred by St. Paul's School of Nursing in the amount of \$48,997.75.

On July 24, 2014, the Order was docketed as a Judgment.

On August 7, 2014, Defendant filed an appeal from the Order and Judgment.

On July 21, 2014, Justice Martin Schulman issued an Order vacating the Note of Issue and restoring the matter to the pre-note of issue status.

Discussion

²Said motion was submitted on October 29, 2013.

³The Court reduced the fine from \$1000 to \$250.

Reargument and Renewal

“Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some [other] reason mistakenly arrived at its earlier decision.” (*Barnett v. Smith*, 64 A.D.3d 669, 670 [2d Dep’t 2009]; CPLR § 2221[d][2].) Pursuant to CPLR 2221, a motion for leave to renew or to reargue a prior motion...shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it.” Accordingly, Defendant’s motion to reargue the July 21, 2014 Order is denied, without prejudice, with leave to renew before Justice Martin Schulman.

In addition, the court denies any portion of Defendant’s motion which seeks to reargue or vacate any of this court’s prior rulings. “While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.” (*Ahmed v. Pannone*, 116 A.D.3d 802, 806 [2nd Dept 2014] quoting *Anthony J. Carter, DDS, P.C. v. Carter*, 81 A.D.3d 819 [2nd Dept 2011].)

Motion to Dismiss

Defendant’s motion dismiss pursuant to CPLR 3211(a), (b) and (d) is denied as Defendant failed to set forth cognizable grounds for dismissal.

Motion for Want of Prosecution

“CPLR 3216 permits a court to dismiss an action for want of prosecution only after the court or the defendant has served the plaintiff with a written demand requiring the plaintiff to

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resume prosecution of the action and to serve and file a note of issue within 90 days after receipt of the demand, and also stating that the failure to comply with the demand will serve as a basis for a motion to dismiss the action.” (*Diemer v. Eben Ezer Medical Associates*, 120 A.D.3d 614 [2nd Dept 2014].) Herein, Defendant has failed to make a showing of entitlement to dismissal for want of prosecution.

Remaining requests for Relief

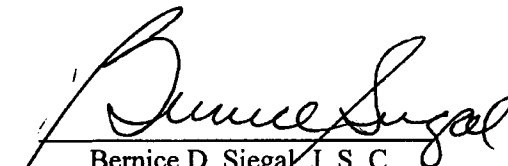
Defendant’s final requests for relief including a motion for sanctions, costs, restitution, damages, counterclaims, Uniform Rules of the Trial Courts Part 130, CPLR 3211, 5015(d), 5104, 3126 and various other areas of relief is likewise denied as Defendant fails to set forth cognizable grounds for relief under the various sections cited to in Defendant’s moving papers.

Conclusion

For the reasons set forth above, Defendant’s motion to reargue the July 21, 2014 Order is denied, without prejudice, with leave to renew before Justice Martin Schulman. Defendant’s remaining requests for relief are denied in their entirety.

FILED
NOV 28 2014
COUNTY CLERK
QUEENS COUNTY

Dated: Nov 25, 2014


Bernice D. Siegal, J. S. C.