

Mitchell v New York Univ.

2015 NY Slip Op 30464(U)

March 31, 2015

Supreme Court, New York County

Docket Number: 450016/2015

Judge: Jennifer G. Schechter

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

-----x
SETH MITCHELL,

Petitioner,

-against-

NEW YORK UNIVERSITY, et al.,

Respondents.
-----x

JENNIFER G. SCHECTER, J.:

DECISION AND JUDGMENT

Index No.
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Papers Considered
(1) Affidavit/Petition
(2) Opp Aff
(3) Unsworn Letter*

Petitioner Seth Mitchell commenced this special proceeding against, among others, New York University (NYU) and the City of New York (City). Pursuant to CPLR 3102(c), he moves for pre-action discovery and seeks production of "any and all paper and electronic communications in [respondents'] possession whether electronic or otherwise, that bear [Mr. Mitchell's] name or NYU Identification Number" (see Discovery Order #1). His petition is denied.

Pre-action discovery cannot be used by a prospective plaintiff to ascertain whether a cause of action exists (*Holzman v Manhattan & Bronx Surface Tr. Operating Auth.*, 271 AD2d 346, 347 [1st Dept 2000]; see also *Thomas v Mastercard Advisors, LLC*, 74 AD3d 464, 465 [1st Dept 2010]). "A petition for pre-action discovery should only be granted when the petitioner demonstrates that he has a meritorious cause of action and that the information sought is material and

necessary to the actionable wrong" (*Holzman v Manhattan & Bronx Surface Tr. Operating Auth.*, 271 AD2d at 347).

In his affidavit, which was deemed the Petition, Mr. Mitchell asks for discovery related to "any new causes of action/claims which may have or had accrued against" NYU after January 14, 2014, which is the date a prior action that he commenced against NYU was dismissed (Affidavit in Support [Pet] at "Conclusion" #1 [emphasis added]). He asserts that his "personal, professional, and academic lives are literally being threatened, and without Judicial Intervention to uncover the wrongdoing parties and their specific actions, [petitioner] will continue [to] suffer grievous harm and damage by the named and Doe [respondents] in the future" (Pet at "Conclusion" #4 [emphasis added]).

In support of his application, Mr. Mitchell states that he received an email from NYU Account Services "regarding an illegal but temporary 'IT Security Hold' placed on [his] information technology and clients accounts with [NYU]" that caused him "grievous and unwarranted harm" (Pet at ¶ 8) and that contrary to another email he received from NYU Account Services, he was never provided with documentation to remove

the security hold (Pet at ¶ 9). He maintains that he has "*prima facie* causes of action against NYU for lack of good faith and fair dealing, purposeful infliction of severe emotional distress, lack of duty of care, negligence, defamation *per se*, [and] purposeful obstruction of communication with the United States Department of Treasury" (Unsworn Submission dated Feb 23, 2015 [Sub] at 8).

As to the City, all that Mr. Mitchell asserts in his Petition is that he filed a notice of claim that was disallowed and "has been compelled to file suit against the City" (Pet at ¶ 12 and "Conclusion" #3). He subsequently set forth that he has "*prima facie* causes of action against the City of New York for negligence, lack of good faith and fair dealing, lack of duty of care, and purposeful infliction of severe emotional distress, and negligence . . . related to the actions, inactions and communications of the NYPD and Mayor's Office of the City of New York, at least" (Sub at 8).

* In the interests of justice and the finality of this proceeding, the Court has considered Mr. Mitchell's letter despite the facts that (1) a reply was not authorized, (2) new material cannot be raised in a reply (see e.g. *Atlantic Mut. Ins. Co. v M.H. Kane Constr. Corp.*, 100 AD3d 564, 564-565 [1st Dept 2012]) and (3) the submission is unsworn.

Based on well settled precedent, Mr. Mitchell's allegations plainly do not establish the existence of any meritorious causes of action as required to obtain pre-action disclosure (see e.g. *Woodbridge Structured Funding, LLC v Pissed Consumer*, 125 AD3d 508 [1st Dept 2015]; *Sandals Resorts Intl. Ltd. v Google, Inc.*, 86 AD3d 32, 38-39 [1st Dept 2011]).

Accordingly, it is ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the Decision, Order and Judgment of the Court.

Dated: March 31, 2015



HON. JENNIFER G. SCHECTER