

<b>Taub v Columbia Univ. in the City of N.Y.</b>
2016 NY Slip Op 30409(U)
March 11, 2016
Supreme Court, New York County
Docket Number: 155657/15
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ PART 13
Justice

DR. ROBERT N. TAUB,

Petitioner,

-against-

INDEX NUMBER 155657/15

MOTION DATE 02-24-2015

MOTION SEQ. NO. 006

MOTION CAL. NO.

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, COLUMBIA UNIVERSITY MEDICAL CENTER, COLUMBIA UNIVERSITY COLLEGE OF PHYSICIANS AND SURGEONS,

Respondents.

The following papers, numbered 1 to 7 were read on this motion pursuant to CPLR §5104, §6301 or §7805:

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1 - 4

Answering Affidavits — Exhibits cross motion

5 - 7

Replying Affidavits

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is ordered that Petitioner's motion pursuant to CPLR §5104, to hold Respondents in Contempt, is denied. Petitioner's motion pursuant to §6301 alternatively CPLR §7805, to obtain an Order modifying the injunction presently in effect, and adding additional injunctive relief, is granted as stated herein.

Petitioner, Dr. Robert N. Taub, has been employed as a professor of medicine specializing in mesothelioma research at Columbia University for more than thirty-five years. Petitioner claims that by letter dated January 23, 2015, Columbia University advised him that effective July 22, 2015, he would no longer have his job, duties, or an office, and no reason was provided for the termination. Petitioner also claims that because of his "tenure of title," Respondents are violating his due process rights by not following their own rules and procedures as stated in the Faculty Handbook.

The Decision and Order of this Court dated July 31, 2015, filed under Motion Sequence 001, granted Petitioner injunctive relief pending a hearing by a Special Referee to determine whether he had "tenure" or only "tenure of title," requiring either an additional multi-step procedure or immediate termination. The July 31, 2015 Decision and Order enjoined and restrained Respondents from,

"...removing Petitioner from his position; discharging Petitioner from his duties and position as Professor of Clinical Medicine; ending Petitioner's salary; discontinuing Petitioner's use of Medical Center Space and administrative support; and preventing Petitioner from admitting patients to the Medical Center, pending a final determination on this petition..."

Petitioner seeks an Order pursuant to CPLR §5104, §5301 or §7805, holding Respondents in Contempt of the injunctive relief and further enjoining them from interfering with his work and research. Petitioner argues that Respondents have violated the injunction by barring him from engaging in new research and removing his status as "Principal Investigator" (PI). Petitioner claims that without this PI title which is synonymous with "head of laboratory" or "research group leader," he is essentially fired.

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

Civil contempt requires clear and convincing evidence that the Court's clear and unequivocal mandate was knowingly disobeyed (*Scotto v. Giuliani*, 259 A.D. 2d 412, 697 N.Y.S. 2d 142 [1<sup>st</sup> Dept., 1999] and *Simens v. Darwish*, 104 A.D. 3d 465, 960 N.Y.S. 2d 120 [1<sup>st</sup> Dept., 2013]). Contempt is a drastic remedy that should not be granted unless it is established, "with reasonable certainty" (*Usina Costa Pinto, S.A. v. Sanco Sav Co. Ltd.*, 171 A.D. 2d 487, 571 N.Y.S. 2d 264 [1<sup>st</sup> Dept., 1991]).

Petitioner has not provided sufficient evidence to show that Respondents have denied him PI status or removed him from that status on existing projects, to find them in contempt. His contention that at a December 3, 2015 meeting with Donald W. Landry, M.D., the Chair of the Department of Medicine at Columbia University, He was told that Columbia was not going to allow him to be a PI in the future, "Not going to happen," is insufficient to establish a violation of a clear mandate of the July 31, 2015 Order of this Court. Petitioner fails to show that Dr. Landry's opinion amounts to a formal denial of any research or PI request.

Petitioner has not refuted statements made by Brenda Ruotolo, the Executive Director of the Columbia University Human Research Protection Office/Institutional Review Boards, explaining the review process for research and clinical trials, and identifying Petitioner's current projects. Petitioner concedes that although Merck Inc. and Eli Lilly Company have expressed an interest, he made no formal application for those studies, or for any other new research studies. There is no proof that Petitioner is currently being denied PI status on his existing research projects.

Petitioner claims that his staff was not given the 2.5% Cost of Living Allowances (COLA), that were previously provided as a matter of course. He argues that failure to provide COLA allowances or any similar reduction in salary are indirect attacks and will essentially penalize his staff for working with him, potentially hampering Petitioner's ability to conduct research.

Respondents have shown that there is no basis for a finding of contempt resulting from the failure to provide Petitioner's staff with an 2.5% COLA increase for the 2015-16 academic year. Respondents have stated that the COLA allowances are merit based and awarded after a supervisor recommends increases for the staff members to Human Resources, typically in April or May. Petitioner did not recommend his increases for his staff in 2015.

Petitioner also argues that the injunction has been violated because funds were deliberately removed and completely depleted from the, "Leonore Gershwind Charitable Foundation," which is a multi-million dollar research gift, causing the current use of the "Simmons Mesothelioma Foundation," gift account. He claims that the funds in the "Simmons Mesothelioma Foundation," gift account have been reduced from \$2,819,000.00 as of January 23, 2015, to \$936,713.00 as of November of 2015 and that it does not cost that much to run his laboratory or conduct research. Petitioner also claims that \$550,000.00 loaned to the Department of Medicine to construct a laboratory on the eighth floor has not been returned and should be included as part of the funds in the "Simmons Mesothelioma Foundation," gift account.

It has not been established that a finding of contempt is warranted for the Respondents alleged redistribution of research funding. Respondents provide proof that although Dr. Landry contacted the "Simmons Mesothelioma Foundation" and obtained the donor's consent to use the funds as Respondents see fit, the funds have not actually been redirected. Respondents provide the proposed agreements for both the "Leonore Gershwind Charitable Foundation" and "Simmons Mesothelioma Foundation" together with spreadsheets that show how the funds were used, including salaries and rent through 2015. Respondents also provide proof that of the \$550,000.00 loaned to the Department of Medicine, \$300,000.00 was forfeited as part of the loan arrangement with \$250,000.00 to be paid back "when funds are available" (Landry Aff. Exh. 3). Respondents claim that although the \$250,000.00 has not yet been

returned there has been no charge of rent for Petitioner's use of research space in Black Building 20 since 2014. Petitioner has conceded that he was unable to track funding to his laboratory, and he provides no proof in support of the contentions that attempts to obtain information has been thwarted by the Respondents.

Petitioner, pursuant to CPLR § 6301 or alternatively CPLR §7805, seeks to extend the previously granted injunctive relief to restrain and enjoin the Respondents from, "...taking any further negative or limiting actions against Dr. Taub, his staff, his lab, his research, or his patients with respect to hospital admissions, medical treatment, research work, applications for research, interactions with possible research sponsors or collaborators, speaking or presenting at academic, medical, scientific conferences events or programs." Petitioner argues that without the additional relief the status quo of this proceeding will not be maintained, his reputation damaged, and he will be the equivalent of terminated.

The movant seeking a preliminary injunction, is required to demonstrate that the factors required pursuant to CPLR Article 62 and 63 concerning preliminary injunctions also apply to the petition (*Uniformed Firefighters Ass'n of Great New York v. City of New York*, 79 N.Y. 2d 236, 590 N.E. 2d 719, 581 N.Y.S. 2d 734 [1992]). CPLR §7805 permits the Court in its discretion to enforce a stay or a related determination under review to maintain the status quo in a special proceeding (*Town of East Hampton v. Jorling*, 181 A.D. 2d 781, 581 N.Y.S. 2d 95 [2<sup>nd</sup> Dept., 1992]). The criteria for a determination under CPLR §7805 relies on the same factors as a preliminary injunction in a plenary action (*Melvin v. Union College*, 195 AD 2d 447, 600 N.Y.S. 2d 141 [2<sup>nd</sup> Dept., 1993]).

CPLR § 6301 grants this court the power to issue an order directing that a party be enjoined from performing an act, or to refrain from performing an act which would be injurious. The issuance of a preliminary injunction is within the discretion of the trial court. A movant seeking a stay or injunction, is required to show, "(1) the likelihood of ultimate success on the merits; (2) irreparable injury to him absent granting of the preliminary injunction; and (3) that a balancing of the equities favors his position" (*Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 N.Y. 3d 839, 833 N.E. 2d 191, 800 N.Y.S. 2d 48 [2005]).

The likelihood of ultimate success on the merits requires a prima facie showing of the right to relief (*DiMartini v. Chatham Green, Inc.*, 169 A.D. 2d 689, 575 N.Y.S. 2d 712 [1<sup>st</sup> Dept., 1991]). Irreparable injury requires that there is no other remedy at law, including monetary damages, that could adequately compensate the party seeking relief (*Zodkevitch v. Feibush*, 49 A.D. 3d 424, 854 N.Y.S. 2d 373 [1<sup>st</sup> Dept., 2008]). The balancing of the equities requires the Court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief. Injunctive relief may be granted to maintain the status quo where denial of injunctive relief would result in an ineffectual final judgment (*Ma v. Lien*, 198 A.D. 2d 186, 604 N.Y.S. 2d 84 [1<sup>st</sup> Dept., 1993]).

Petitioner has established that some injunctive relief should be extended to avoid irreparable injury and maintain the status quo pending a final determination in this proceeding. He is entitled to an additional restraint of Respondents from notifying potential donors and collaborators that Petitioner has been terminated. The injunctive relief should include preventing and enjoining Respondents from affecting Petitioner's ability to present his findings at academic, medical, scientific conferences, events or programs. Petitioner has also established that injunctive relief should be extended to the potential redistribution or allocation by Respondents of Petitioner's research grants and gifts, to other projects.

Petitioner has made only conclusory statements, not submitted any proof, or made a prima facie showing that he is entitled to additional injunctive relief derived from Respondents having taken negative or limiting actions on hospital admissions and

medical treatment of patients. His current research has not been affected and Petitioner has not established that his applications for future research will be denied after proper review.

Accordingly, it is ORDERED that Petitioners' motion pursuant to CPLR §5104, seeking to hold Respondents in contempt, is denied, and it is further,


ORDERED, Petitioner's motion pursuant to §6301 alternatively CPLR §7805, to obtain an Order modifying the preliminary injunction presently in effect, and adding additional injunctive relief is partially granted, and it is further,

ORDERED, that Respondents are enjoined and restrained from taking negative actions interfering with Petitioner's interactions with potential research sponsors or collaborators and his speaking or presenting at academic, medical, scientific conferences events or programs, including advising that Petitioner has been terminated from his position at Columbia University, pending a final determination on this petition, and it is further,

ORDERED, that Respondents are enjoined and restrained from advising potential research sponsors or collaborators that Petitioner has been terminated from his position, pending a final determination on this petition, and it is further,

ORDERED, that Respondents are enjoined and restrained from redistributing or allocating Petitioner's research grants and gifts to other projects, pending a final determination on this petition.

ENTER:

  
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MANUEL J. MENDEZ, J.S.C. MANUEL J. MENDEZ  
J.S.C.

Dated: March 11, 2016

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST                       REFERENCE