

Raghavendra v Stober
2017 NY Slip Op 31809(U)
August 22, 2017
Supreme Court, New York County
Docket Number: 450287/2016
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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R.S. RAGHAVENDRA, etc., et al.

Plaintiffs

Index No. 450287/2016

v

DECISION AND ORDER

LOUIS D. STOBER, Jr., et al.

Defendants.

MOT SEQ 013

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this action, inter alia, to recover damages for legal malpractice, fraud, and breach of contract, the plaintiff moves for permission to file further motion papers, for leave to renew and reargue prior motions, for recusal of the court, and for a stay of enforcement of prior orders. The defendants cross-move for an award of costs and to enjoin the plaintiff from employing the court's electronic filing system without prior permission of the court. The motion is denied, the cross motion is granted, and the matter is referred to a referee to hear and report on the appropriate amount of the award of costs.

II. BACKGROUND

By decision and order dated January 14, 2016, the Appellate Division, First Department, directed the "Clerks of [the

Appellate Division] and Supreme Court . . . to accept no filings from this plaintiff as to the matters herein without the prior leave of their respective courts." Raghavendra v Brill, 135 AD3d 531, 532 (1st Dept. 2016), lv denied 27 NY3d 1186 (2016). Notwithstanding this prohibition, beginning on April 11, 2016, and in the following months, the plaintiff filed papers initiating or responding to motions designated as motion sequence numbers 001, 002, 003, 005, 007, 008, 010, and 011. By order dated November 9, 2016, this court directed that, pending the determination of those motions, the plaintiff

"is hereby enjoined and restrained from filing any motions or other papers in this action or any action pending in the state courts in New York County without prior permission of this court, and is enjoined from commencing a new action based on the same claims. The violation of this order shall result in the imposition of an appropriate sanction upon application of the defendants."

Based both on the plaintiff's failure to secure the court's permission to make any filings after January 14, 2016, and on the merits, this court, in a series of orders entered December 2, 2016, denied the plaintiff's motion for summary judgment on the complaint (SEQ 001), granted the motion of the defendants Louis D. Stober, Jr., and Law Offices of Louis D. Stober, Jr., LLC (the Stober defendants), to dismiss the complaint against them, for an award of costs, and to permanently enjoin the plaintiff from initiating any further legal action against them (SEQ 002), and granted the motion of the defendants Edward Brill, Susan D.

Friedfel, Allison L. Martin, Proskauer Rose, LLP, Donna P. Fenn, Jane E. Booth, and Trustees of Columbia University (collectively the Columbia defendants) for the same relief (SEQ 003). The court also denied the plaintiff's motion for leave to amend the complaint (SEQ 005), denied his motion to "strike" the motions submitted by the defendants under sequences 002 and 003 and for leave to enter a default judgment against Robert Modica and Gordon & Rees, LLP (SEQ 007), and denied his motion to disqualify counsel for Fenn, Booth, and Columbia University, and for an award of sanctions (SEQ 008). The court further denied the plaintiff's motions to compel arbitration or mediation (SEQ 010) and for summary judgment on certain causes of action (SEQ 011).

Despite failing to secure prior approval of either this court or the Appellate Division, the plaintiff, on December 12, 2016, filed notices of appeal from the orders disposing motion sequences 001 and 010. On December 29, 2016, again without court permission, the plaintiff filed notices of appeal from the orders disposing of motion sequences 002, 003, and 007. By decision and order on motion, the Appellate Division denied the plaintiff's motion for leave to appeal to the Court of Appeals from an order entered in a related action entitled Raghavendra v Bollinger, New York County Index No. 100389/13, and directed the plaintiff "to make no further filing of any kind." Raghavendra v Bollinger, 2017 NY Slip Op 62675(U) (1st Dept., Jan. 5, 2017). In a

subsequent decision and order on motion, the Appellate Division dismissed all of the appeals in this action, and, in accordance with its prior order, enjoined the plaintiff

"from filings of any kind, including but not limited to summonses and complaints, notices of appeal and motion papers, in any state court of the State of New York, involving any of the defendants in this action or any of the prior actions against these defendants, or any case involving the nucleus of operative facts at issue in this or the prior actions, without the prior, written permission of the Chief Judge, Presiding Justice or Administrative Judge of the Court in which such filing is sought."

Raghavendra v Stober, 2017 NY Slip Op 72050(U) (1st Dept., Apr. 27, 2017). The plaintiff, without permission, thereafter moved in the Appellate Division to "strike" the defendants' pending motions, for the imposition of sanctions, and to disqualify the Columbia defendants' attorney. The Appellate Division denied that motion as academic. See Raghavendra v Stober, 2017 NY Slip Op 75999(U) (1st Dept., Jun. 6, 2017).

While the plaintiff's appeals were pending, this court, by order dated March 15, 2017, directed the Clerk to enter judgment in favor of all of the defendants and against the plaintiff dismissing the complaint. It further directed the Clerk to enter judgment for attorneys' fees and disbursements, pursuant to 22 NYCRR 130-1.1, in favor of the Stober defendants in the total sum of \$89,546.36, and in favor of the Columbia defendants in the total sum of \$47,172.25. On April 29, 2017, without permission, the plaintiff filed a notice of appeal from this order.

By order dated August 3, 2017, made after a hearing, Justice George J. Silver, the administrative judge of the Civil Division, Supreme Court, New York County, denied the plaintiff's request for permission to file further motions or appeals, since "the record before the court establishes that plaintiff has repeatedly abused the judicial process and has a penchant for vexatious conduct."

III. DISCUSSION

A. THE PLAINTIFF'S MOTION

Since plaintiff failed to obtain permission to file this motion, the court denies the motion.

Inasmuch as the Appellate Division required the plaintiff to obtain permission of the appropriate administrative judge before making further filings, and Justice Silver denied the plaintiff's request, this court is without authority to countermand that determination. Hence, the plaintiff's instant request for permission to make further filings must be denied.

Were the court to consider the merits of the plaintiff's motion, it would be constrained to deny it in any event. The Appellate Division has already dismissed the plaintiff's appeals from the orders disposing the motions sought to be reargued, and the court did not overlook or misapprehend any relevant facts or law that were presented to it in connection with the prior

motions and cross motions. See CPLR 2221(d); William P. Pahl Equip. Corp. v Kassis, 182 AD2d 22 (1st Dept 1992). Hence, reargument is inappropriate. Since the plaintiff does not identify any facts that were not presented in connection with the prior motions and cross motions that would change their outcome, renewal is not warranted. See CPLR 2221(e)(2); Solomon v Pepsi-Cola Bottling Co. of N.Y., Inc., 136 AD3d 469 (1st Dept 2016). There is no basis for the recusal of the court, and no grounds to stay enforcement of its prior orders.

B. THE DEFENDANTS' CROSS MOTIONS

The defendants are entitled to an award of attorneys' fees in defending against this motion, which is frivolous since it was made without permission in violation of several court orders. See Matter of Ram v Estate of Hershowitz, 149 AD3d 959 (2nd Dept. 2017). They are also entitled to such an award for fees incurred in cross-moving for sanctions. Moreover, it is appropriate under the circumstances of this case to enjoin the plaintiff from employing the e-filing system without prior permission of the court.

IV. CONCLUSION

In light of the foregoing, it is
ORDERED that the plaintiff's motion is denied; and it is

further,

ORDERED that the defendants' cross motions are granted to the extent that (a) the plaintiff is enjoined and prohibited from employing the e-filing system of the New York State Unified Court System in connection with any issue involving any of the defendants in this action or any of the prior actions against these defendants, or any case involving the nucleus of operative facts at issue in this or the prior actions, without the prior, written permission of the court, and (b) the defendants are awarded attorneys' fees in defending this motion and making this cross motion as a sanction for the plaintiff's frivolous conduct; and it is further,

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

1. the issue of the amount due to the defendants for attorneys' fees in defending this motion and making their cross motions

and it is further,

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of

this court at www.nycourts.gov/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further,

ORDERED that for the defendants shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise the plaintiff and counsel for the defendants of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further,

ORDERED that counsel for the defendants shall serve a proposed accounting within 24 days from the date of this order and the plaintiff shall serve objections to the proposed accounting within 20 days from service of the defendants' papers and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further,

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed

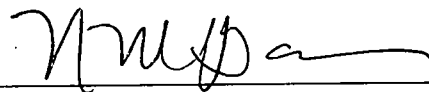
by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further,

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further,

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

This constitutes the Decision and Order of the court.

Dated: 8/22/17

ENTER: 

J.S.C.

HON. NANCY M. BANNON