

Wang v LSUC

2017 NY Slip Op 32261(U)

October 24, 2017

Supreme Court, New York County

Docket Number: 653250/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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Fred Simcha Wang,

Plaintiff,

Index No.
653250/2013

**DECISION and
ORDER**

Mot. Seq. 005

LSUC, DR. JOEL JEFFRIES, CAMH, DR. STEPHEN
R. SWALLOW, DR. LANCE L. HAWLEY, OCCT,
JOHN DOES 1-10, JANE DOES 1-8,

Defendants.

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HON. EILEEN A. RAKOWER, J.S.C.

This action was dismissed for lack of jurisdiction on July 30, 2014.

Plaintiff, Fred Simcha Wang (“Plaintiff”), appearing pro se, now moves for an Order pursuant to CPLR § 3025(b) to amend the Complaint. Defendants Law Society of Upper Canada s/h/a LSUC (“LSUC”), Centre for Addiction and Mental Health (“CAMH”), and Dr. Joel Jeffries (collectively, “Moving Defendants”) oppose the motion.

Plaintiff filed his Summons and Complaint on September 19, 2013. Plaintiff, a former Canadian lawyer, who resides in the Dominican Republic brought this lawsuit against LSUC, three Ontario doctors (Dr. Jeffries, Dr. Stephen R. Swallow, and Dr. Lance L. Hawley), and the professional organizations to which these doctors belong (CAMH and the Oakville Centre for Cognitive Therapy (“OCCT”) (collectively, “Defendants”). In the Complaint, Plaintiff alleged that LSUC wrongfully suspended his Ontario law license in 2006 because of purported issues with his record keeping and accounting of his client’s funds. Plaintiff alleged that the other defendants Dr. Jeffries, Dr. Stephen R. Swallow, and Dr. Lance L. Hawley

are doctors that he retained to help him present a defense to LSUC's claims of wrongdoing. Plaintiff alleged that those defendants committed fraud and medical malpractice in rendering their diagnoses of him.

In 2014, the defendants moved to dismiss the Complaint for lack of personal jurisdiction, among other grounds. (Transcript of proceedings on July 30, 2014 before Justice Schlesinger, attached as Exhibit B to the affirmation of CAMH's counsel, Samuel H. Abate, Esq.). Justice Schlesinger stated on the record, "[I] simply see no connection whatsoever that the State of New York has in this controversy between Mr. Wang and the LSUC, and peripherally involved with the two psychologists, Dr. Swallow and Dr. Hawley and with Dr. Jeffries and the Centre. I see no connection ... which would be appropriate for New York State Courts to be in any way involved or to make any decisions which in any way connect these Defendants or which in any way would control the actions of these Defendants." (Transcript of proceedings on July 30, 2014; 25:22-26:6).

On March 10, 2016, the Appellate Division, First Department, unanimously affirmed the trial court's decision to grant the defendants' motions to dismiss the complaint, with prejudice, for lack of jurisdiction. On July 14, 2016, the Appellate Division, First Department, denied Plaintiff's motions for reargument and for leave to appeal. On October 20, 2016, the New York Court of Appeals dismissed Plaintiff's appeal. On February 9, 2017, the New York Court of Appeals denied Plaintiff's motion for leave to appeal. On June 7, 2017, the New York Court of Appeals denied Plaintiff's motion to reargue his motion for leave to appeal.

Plaintiff now seeks to Amend his Complaint, claiming in his Amended Notice of Motion that Defendants have maliciously alleged that Plaintiff is suffering from chronic bipolar disorder II. More specifically, Plaintiff seeks to amend the Complaint "in order to reflect only that the Defendants throughout these proceedings maliciously alleged that I am suffering from a severe personality or mood disorder in the nature of a chronic bipolar disorder II for which there is no objective basis at all, having acted therewith in a grossly negligent manner to me." Plaintiff asserts, "Should this motion be allowed this Honorable Court will have personal jurisdiction over the Defendants, pursuant to CPLR § 302(a)(2)."

Defendants LSUC, CAMH, and Dr. Joel Jeffries oppose. Defendants argue that Plaintiff's motion should be denied because it is a collateral attack on the Court's July 30, 2014 Decision and Order and wrongfully asserts that these new allegations confer personal jurisdiction of the defendants under CPLR 302(a)(2). Defendants

also argue that the motion lacks any merit, is untimely, and is procedurally deficient because it fails to include a proposed amended complaint.

CPLR § 3025 permits a party to amend or supplement its pleading “by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties.” (CPLR § 3025[b]). Pursuant to CPLR § 3025(b), such “leave shall be freely given upon such terms as may be just including the granting of costs and continuances.” (CPLR § 3025[b]; *Konrad v. 136 East 64th Street Corp.*, 246 A.D.2d 324, 325 [1st Dep’t 1998]). CPLR § 3025 states, “Any motion to amend or supplement pleadings *shall* be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.” (emphasis added).

Leave to amend a pleading must be denied where the proposed amendment is plainly lacking in merit. (*See Bd. of Managers of Gramercy Park Habitat Condo. v. Zucker*, 190 A.D.2d 636 [1st Dept. 1993]). Thus, “[w]here no cause of action is stated, leave to amend will be denied.” (*Konrad v. 136 E. 64th St. Corp.*, 246 A.D.2d 324, 325 [1st Dep’t 1998]). Although a plaintiff “need not establish the merit of its proposed new allegation” on a motion to amend, the plaintiff must “show that the proffered amendment is not palpably insufficient or patently devoid of merit.” (*MBIA Ins. Corp. v. Greystone & Co.*, 74 A.D.3d 499, 500 [1st Dep’t 2010])

This case was dismissed for lack of jurisdiction on July 30, 2014, which was upheld by the Appellate Division, First Department. Plaintiff’s pending motion to amend the Complaint, filed three years after the dismissal of the case, attempts to revive the action by adding allegations that the defendants “throughout these proceedings maliciously alleged that [he is] suffering from a severe personality or mood disorder in the nature of a chronic bipolar disorder II for which there is no objective basis at all, having acted therewith in a grossly negligent manner to [him].” Plaintiff asserts that these allegations give rise to personal jurisdiction over the defendants under CPLR 302(a)(2), which provides a court “may exercise personal jurisdiction over any non-domiciliary ... who ... commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act.”

CPLR 3025(b) requires that “[a]ny motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.” Here, Plaintiff’s motion fails to include a copy of the proposed amended complaint as required by CPLR 3025(b).

Preliminarily, CPLR 320(b) provides:

When appearance confers personal jurisdiction, generally.

Subject to the provisions of subdivision (c), an appearance of the defendant is equivalent to personal service of the summons upon him, unless an objection to jurisdiction under paragraph eight of subdivision (a) of rule 3211 is asserted by motion or in the answer as provided in rule 3211.

In *Hopstein v. Cohen*, 143 A.D.3d 859 [2d Dept 2016], the court held that the defendant did not waive personal jurisdiction by responding to the pleadings.

Plaintiff's action was dismissed three years ago. Plaintiff's pending motion to amend, filed three years after dismissal of this case, is untimely and prejudicial. Furthermore, Plaintiff's allegations that the defendants acted in a "grossly negligent manner" towards him throughout this action do not confer jurisdiction over the defendants under CPLR 302(a)(2).

Wherefore, it is hereby

ORDERED that Plaintiff's motion to amend is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: October 24, 2017


EILEEN A. RAKOWER, J.S.C.