

**Wang v LSUC**

2018 NY Slip Op 30421(U)

March 13, 2018

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. 006

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.

Plaintiff, Fred Simcha Wang (“Plaintiff”), filed his Summons and Complaint on September 19, 2013. Plaintiff, a 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”). In the Complaint, Plaintiff alleged that LSUC had commenced a disciplinary action against him and ultimately wrongfully suspended his Ontario law license in 2006 because of purported issues with his record keeping and accounting of his client’s funds. Defendants Dr. Jeffries, Dr. Stephen R. Swallow, and Dr. Lance L. Hawley are doctors that Plaintiff retained to help him present a defense to LSUC’s claims of wrongdoing. Plaintiff alleged that those defendants committed fraud and medical malpractice when they rendered their evaluations of him in connection with the LSUC disciplinary proceeding.

The action was dismissed for lack of personal jurisdiction on July 30, 2014. 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 the Honorable Alice 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).

The dismissal was affirmed by the Appellate Division, First Department, on March 10, 2016.

Presently before the court is Plaintiff's motion for leave to amend the Complaint. Plaintiff seeks to add a claim that Defendants "acted in a grossly negligent" manner in the instant action by falsely alleging that Plaintiff suffers from chronic bipolar disorder. Defendants Law Society of Upper Canada s/h/a LSUC ("LSUC"), CAMH, and Dr. Joel Jeffries (collectively, "Defendants") oppose the motion.

Plaintiff previously moved to amend on June 1, 2017. Plaintiff's motion was denied by this Court on October 24, 2017 for the following reasons: Plaintiff had failed to include a copy of the proposed amended complaint, the motion was untimely and prejudicial, and there remained issues concerning jurisdiction as had been previously identified by Justice Schlesinger on July 30, 2014.

In his instant motion to amend, Plaintiff includes a copy of the proposed amended complaint. Plaintiff seeks to recover damages from defendants because they "falsely and maliciously alleged, throughout the proceedings in this forum" that he suffers from chronic bipolar disorder and have acted in a grossly negligent manner towards [him]." Although changing the "[n]ature of this action," Plaintiff repeats his previous allegations relating to the LSUC disciplinary proceeding brought against him in Canada and the purported fraudulent reports that defendant doctors issued concerning him in that proceeding. With respect to his proposed claim that the Defendants have falsely alleged that Plaintiff suffers from chronic bipolar disorder *in this forum*, the "Conclusion" section of the proposed pleading states the following:

Throughout these proceedings, the Defendants in their materials (R.143-145, R. 156-159, R. 174, R. 178, R. 314-317, R. 337-340, R. 377-378, R. 383-384, R. 458-460, R.

467 and in their Briefs filed and served before the Appellate Division First Department, as compiled for the Courts of Appeal B. 54, B.73, B.93-95, B. 133-134) and in oral submissions before the Courts (R.43-44) have alleged that I am suffering from a severe personality or mood disorder in the nature of chronic bipolar disorder II for which there is no justification at all. The Defendants refer to self-serving reports (R.82-R.84, R.94-R.95 (Exhibit "B") and R. 96-R. 104 (Exhibit "C")), which they prepared and which state as much. However, these reports are fake, fraudulent and completely without merit, as explained in this Proposed Amended Complaint. The Defendants just simply did a hit job here calculated to destroy my professional career and cut me of my livelihood for a period meanwhile of 11 years. The Defendants' conduct was gross, wanton, willful and malicious, involving a high degree of culpability, making it appropriate to deter these Defendants from committing similar conduct in the future (*Whitney v. Citibank N.A.* 782 F2d 1106, 1118 (2nd Cir. 1985), *Roy Export Co, Estab of Vaduz Liechtenstein v. Columbia Broadcasting Systems Inc.* 672 F 2d 1095, 1106 and *LeMistral v, Columbia Broadcasting Systems Inc.* 61 A.D. 2d 491, 495, 402 N.Y.S. 2d 815, 817 (1987)).

### Standard

CPLR § 3025[b] 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." Leave to amend a complaint is to be freely granted absent prejudice or surprise resulting from the delay and provided that the proposed amendment is not patently devoid of merit, and is not palpably insufficient. (CPLR § 3025[b]; *MBIA Ins. Corp. v. Greystone & Co.*, 74 A.D.3d 499, 500 [1st Dep't 2010]; *Konrad v. 136 East 64th Street Corp.*, 246 A.D.2d 324, 325 [1st Dep't 1998]). "[L]eave may not be granted where the amended pleading plainly fails to state a cause of action and, thus, lacks merit." *Stroock & Stroock & Lavan v. Beltramini*, 157 A.D.2d 590, 591 [1st Dept 1990]). "While leave to amend a pleading is freely granted, this Court has consistently held that, in order to conserve judicial resources, an examination of the underlying merits of the proposed causes

of action is merited.” (*Non-Linear Trading Co., Inc. v. Braddis Associates, Inc.*, 243 A.D.2d 107, 116 [1st Dept 1998] [internal citations omitted]).

### Discussion

Plaintiff’s motion to amend the complaint, made three years after the action was dismissed for lack of personal jurisdiction, is untimely. In addition, the proposed amendment is palpably insufficient and devoid of merit. (*MBIA Ins. Corp.*, 74 A.D.3d at 500). First, it is not clear from the proposed amended complaint what cause of action Plaintiff is asserting against the defendants. Most of the allegations concern the LSUC disciplinary proceeding that took place in Ontario and the defendants’ alleged wrongdoing in that proceeding. The court has already determined that New York courts have no jurisdiction to hear those claims. Second, while Plaintiff alleges that the defendants have “falsely and maliciously” asserted he has chronic bipolar disorder *in this forum*, it is not clear when defendants affirmatively made such assertions *in this forum*. Rather, Defendants’ participation in this matter has been limited to motions to dismiss the action based on lack of personal jurisdiction and appellate briefs related to the same. Any assertion regarding Plaintiff’s mental health by defendants was a response to the statements that Plaintiff made in his own complaint. Furthermore, even if defendants made fraudulent statements concerning Plaintiff’s mental health in this action, to the extent that Plaintiff is asserting a defamation claim, “[i]t is well established that a statement made in the course of legal proceedings is absolutely privileged if it is at all pertinent to the litigation.” *Lacher v. Engel*, 33 A.D.3d 10, 13 [1st Dept 2006]. In addition, to the extent that Plaintiff is asserting a claim that defendants acted “grossly negligent,” the proposed pleading fails to state a claim.

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: MARCH 13, 2018

  
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EILEEN A. RAKOWER, J.S.C.