

Wang v LSUC

2018 NY Slip Op 31216(U)

June 15, 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. 007

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. Joel 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. Joel 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 third motion for leave to amend the Complaint to add "new causes of action ... sounding in negligence and breach of fiduciary duty (the latter in respect to all the Defendants, except LSUC)." Defendants, Law Society of Upper Canada s/h/a LSUC ("LSUC"), CAMH, and Dr. Joel Jeffries, Dr. Stephen Swallow, and Dr. Lance L. Hawley, OCCT (collectively, "Defendants") cross move for an Order: "1) declaring Plaintiff a vexatious litigant and seeking sanctions, costs, and attorneys' fees pursuant to 22 N.Y.C.R.R. §130-1.1 and CPLR § 8303-a; [and] (2) denying Plaintiff's motion for leave to amend his Complaint in its entirety."

Previous Motions to Amend

Plaintiff previously moved to amend on June 1, 2017 and again on December 8, 2017 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 opposed the motions. The motions to amend were denied by decisions dated October 24, 2017 and March 13, 2018. Plaintiff's first motion to amend 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. Plaintiff's second motion to amend was denied as untimely and because the proposed amendment was palpably insufficient and devoid of merit. *MBIA Ins. Corp. v. Greystone & Co.*, 74 A.D.3d 499, 500 [1st Dep't 2010].

Pending Motions

Plaintiff's Third Motion to Amend

In his instant motion to amend, Plaintiff seeks to amend the complaint to add “causes of action ... sounding in negligence and breach of fiduciary duty” based on the allegations that Defendants made “false and malicious statements by alleging a non-existent personality or mood disorder, in the nature of chronic bipolar disorder II, which have been clearly denied by reports.” These are the same allegations that the Court previously rejected in its October 24, 2017 and March 13, 2018 decisions as insufficient to confer personal jurisdiction over Defendants or to state a claim. As this Court stated in its March 13, 2018 Decision and Order, “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.” Thus, again, Plaintiff’s third motion to amend the complaint, made three years after the action was dismissed for lack of personal jurisdiction, is untimely, and as palpably insufficient and devoid of merit. 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].

Defendants’ Cross Motion

Turning to Defendants’ cross motion, Defendants cross move for an Order: “(1) declaring Plaintiff a vexatious litigant and seeking sanctions, costs, and attorneys’ fees pursuant to 22 N.Y.C.R.R. §130-1.1 and CPLR § 8303-a; [and] (2) denying Plaintiff’s motion for leave to amend his Complaint in its entirety.”

“[P]ublic policy mandates free access to the courts and zealous advocacy is an essential component of our legal system, and, ordinarily, the doctrine of former adjudication will serve as an adequate remedy against repetitious suits.” *Sassower v. Signorelli*, 359, 472 N.Y.S.2d 702, 704 [2d Dept 1984]. “Nonetheless, a litigious plaintiff pressing a frivolous claim can be extremely costly to the defendant and can waste an inordinate amount of court time, time that this court and the trial courts can ill afford to lose.” *Id.* at 704. Accordingly, “when ... a litigant is abusing the judicial process by hagridding individuals solely out of ill will or spite, equity may enjoin such vexatious litigation.” *Id.* In such cases, the Court has discretion to enjoin the plaintiff from bringing any further motions regarding the subject matter of the instant action without its permission. *See e.g., Uzamere v. Uzamere*, 957 N.Y.S.2d 639

[N.Y. Sup. Ct. 2010] (enjoining pro se plaintiff from filing additional lawsuits against defendants without prior approval of the appropriate Administrative Justice or Judge); *Muka v. New York State Bar Assoc.*, 466 N.Y.S.2d 891 [N.Y. Sup. Ct. 1983] (enjoining a pro se litigant from instituting any further actions and proceedings in any court in the NY Unified Court System against defendant).

Additionally, 22 NYCRR § 130-1.1 authorizes the Court, in its discretion, to award costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from "frivolous conduct" as defined in this Part. Furthermore, "[i]n addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Part." 22 NYCRR § 130-1.1[a]. Conduct is "frivolous" within the meaning of § 130-1.1 if, "it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;" if "it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another;" or, if "it asserts material factual statements that are false." 22 NYCRR § 130-1.1[c][1]-[3].

Here, in light of Plaintiff's repeated applications to amend based on the same factual allegations, the Court finds it appropriate to label Plaintiff a vexatious litigator and to enjoin him from filing any further motions in connection with the instant action without prior Court approval. The Court denies the portion of the cross motion that seeks sanctions under 22 NYCRR § 130-1.1.

Wherefore, it is hereby

ORDERED that Plaintiff's motion to amend is denied; and it is further

ORDERED that the portion of Defendants' cross motion seeking to have Plaintiff deemed a vexatious litigator and enjoining him from filing any further motions in connection with the instant action without prior Court approval is granted.

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

DATED: JUNE 15, 2018

