SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX – PART 22

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JAMES PETTUS

Petitioner,

- against -

THE HON. LAURA DOUGLAS, BOYD RICHARDS PARKER & COLONNELLI, P.L., and BRYAN J. MAZZOLA,

Respondents.

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Index No. 300213/2018

DECISION/ ORDER

**Hon. Norma Ruiz**

Upon the foregoing papers this motion is granted in part and denied in part, pursuant to the following decision.

Respondents Boyd Richards Parker & Colonnelli, P.L. and Bryan J. Mazzola (hereinafter BRPC Respondents) seek a temporary restraining order, dismissal of this matter, sanctions, and request the Court enforce its prior order requiring petitioner to seek judicial leave prior to filing any further papers with this court. Upon review and consideration of the papers, respondent's motion to dismiss is granted.

Mr. Pettus, Pro Se, initiated this action in late 2018, ostensibly seeking further relief upon prior actions which he initiated against the co-op board of his building. The instant action names the law firm which represents his co-op, their attorney Bryan Mazzola and the Honorable Laura Douglas, who ruled against Mr. Pettus in a prior related matter. Mr. Pettus' instant complaint reads as a stream of consciousness wherein he accuses most of the staff of the Bronx Supreme Court of corruption, racial animus, bribery, fraud, and a litany of other violations most familiar to anyone who has studied intentional torts. According to the papers annexed hereto, Mr. Pettus is the named plaintiff in **97** state lawsuits, as well as over **60** federal lawsuits.

As a Pro Se litigant, Mr. Pettus has failed to understand that the United States legal system is an adversarial one. The mere filing of a lawsuit does not guarantee victory, as multiple judges over many, many years and various jurisdictions have attempted to explain to him. Mr. Pettus has chosen to ignore judicial admonitions, repeatedly defying court orders precluding him from filing further frivolous papers without leave of court. These decisions have been repeatedly upheld on appeal; so affirmed as recently as March of this year by the Appellate Division, First Department (*Pettus v. Mazzola*, 63 Misc.2d 133(A) [1st Dept. 2019]).

In an effort to clarify the record as much as possible, a brief recitation of Mr. Pettus' filings with this Court is required. On June 16, 2015 the Honorable Justice Barone ruled Mr. Pettus a "vexatious litigant". The ruling was upheld at the First Department (*Matter of Pettus v. Board of Directors*, 31 N.Y.3d 1113) and the Court of Appeals declined to hear a further appeal (*Id.*, 32 N.Y.3d 1077). On June 26, 2015, the Honorable Justice Guzman concurrently dismissed three of Mr. Pettus' actions on the merits (Index Nos. 250113/15, 251433/14, and 251413/14) and he was thereafter unsuccessful on appeal (*Matter of Pettus v. Board of Directors*, 155 A.D.3d 485 [1st Dept. 2017]). These actions all named his co-op's Board of Directors as defendants and concerned themselves with a 9% co-op fee increase.

On September 28, 2015, the Honorable Justice Julia Rodriguez ruled that Mr. Pettus' repeated attempts to obtain overbroad and extravagant discovery from his co-op board were denied for cause pursuant to the Business Judgment Rule. She further reiterated prior court orders that Mr. Pettus cease and desist from delivering further letters, motions, or arguments directly to her court room or chambers. Plaintiff subsequently initiated an Article 78 proceeding against the same defendants, again contesting a co-op fee increase of 9%. In an order dated March 28, 2017, Judge

Rodriguez again dismissed plaintiff's petition, with prejudice. Mr. Pettus appealed and the First Department, in an Order dated February 19, 2019, unanimously affirmed her decision.

Therefore, under our system of justice, Judges Barone, Rodriguez, and Guzman's rulings are the law of the land. Notwithstanding, Mr. Pettus has filed multiple related lawsuits against various defendants, related and unrelated to his original suit. In Bronx County alone, the clerk's office reflects Mr. Pettus has brought at least **19** separate actions against judges, court staff, lawyers, his co-op board or their officers and the captain's office of the Bronx County Court officers. More troubling, he has sent vaguely threatening letters to judges following their decisions and to court staff in good standing with the State of New York. Every subsequent filing by Mr. Pettus, without prior court approval, has been an exercise in Mr. Pettus thumbing his nose at the Court, which has been coolly tolerated until now.

The courts of New York are no strangers to vexatious litigation. Repeatedly, across multiple courts, in multiple departments, the results have remained the same. The Court, in *Sassower v. Signorelli* (99 A.D.2d 358, 359 [2d Dept 1984]), noted that "public policy mandates free access to the courts ... and, ordinarily, the doctrine of former adjudication will serve as an adequate remedy against repetitious suits." It further observed that: "[n]onetheless, 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 (see *Harrelson v. United States*, 613 F.2d 114)." On the subject of vexatious litigants, other courts have agreed, "Given plaintiff's 'continuous and vexatious litigation,' an order enjoining him from further litigation against this defendant, to the extent indicated, is warranted." *Curry v. Common Ground Community*, H.D.F.C., 146 A.D.3d 641, 641-642 [1st Dept 2017]; "While public policy mandates free access to the courts, when a litigant is abusing the judicial process by harassing

individuals solely out of ill will or spite, equity may enjoin such vexatious litigation" (*see Breytman v. Schechter*, 101 A.D.3d 783, 785, 957 N.Y.S.2d 145 [2nd Dept 2012]; *Matter of Simpson v. Ptaszynska*, 41 A.D.3d 607, 608, 836 N.Y.S.2d 419 [2nd Dept 2007]; *Matter of Shreve v. Shreve*, 229 A.D.2d 1005, 1006, 645 N.Y.S.2d 198 [4th Dept 1996]); (*Harrelson v. United States*, 613 F.2d 114 [5th Cir 1980]). Thus, when, as here, a litigant is abusing the judicial process by haranguing individuals solely out of ill will or spite, equity may enjoin such vexatious litigation (*e.g., Matter of Hartford Textile Corp.*, 681 F.2d 895, 897 [2nd Cir 1982], cert. den. sub. nom.; *Muka v. New York State Bar Assn.*, 120 Misc.2d 897, 903–905, 466 N.Y.S.2d 891 [Sup Ct, Tompkins County 1983]; *see, also, Wood v. Santa Barbara Chamber of Commerce*, 705 F.2d 1515, 1524–1525 [9th Cir 1983]; *Pavilonis v. King*, 626 F.2d 1075 [1st Cir 1980], cert. den. 449 U.S. 829, 101 S.Ct. 96, 66 L.Ed.2d 34).

The Court is increasingly concerned that petitioner continues to use the scarce resources of the New York State Unified Court System to fruitlessly pursue duplicative and spurious claims, even claims which have already been decided adversely to Mr. Pettus. As noted, he is no stranger to litigation in Supreme Court, Bronx County, Civil Term. The Court should not have to expend resources on another action by Mr. Pettus that will be nothing more than a new variation on the same theme of defendants' alleged misdeeds and misconduct, or ever more likely, a new lawsuit against this Court based purely on this decision being averse to Mr. Pettus' desired result. The continued use of the New York State Unified Court System for the personal pursuit by Mr. Pettus of irrational complaints against defendants must cease. Our courts have an interest in preventing the waste of judicial resources by a party who knows that his or her lawsuit has no legitimate basis in law or fact and continues to attempt to relitigate resolved claims and issues. *(Martin–Trigona v. Capital Cities/ABC, Inc.*, 145 Misc.2d 405 [Sup Ct, New York County 1989]).

Further, Mr. Pettus' status as a pro-se litigant does not inoculate him from the rules which govern the courts in this state. Pro-se litigants who abuse judicial process have had their access to the courts limited many times in the past. In *Spremo v. Babchik* (155 Misc.2d 796 (Sup Ct, Queens County 1996]), the Court enjoined a pro-se litigant from instituting any further actions and proceedings in any court in the New York State Unified Court System, citing *Sassower and Kane v. City of New York*, 468 F Supp 586 [SD N.Y.1979], affd 614 F.2d 1288 [2d Cir1979]). The Kane Court, at 592, held:

> The fact that one appears pro-se is not a license to abuse the process of the Court and to use it without restraint as a weapon of harassment and libelous bombardment. The injunction herein ordered is fully warranted to put an end to such activity ... Commencement of action upon action based on the same facts dressed in different garb, after thrice being rejected on the merits and having been repeatedly warned that the claims were barred by res judicata, can only be explained as malicious conduct.

Similarly, in *Muka v. New York State Bar Association, supra*, a pro-se plaintiff commenced a fourth unsuccessful lawsuit against the State Bar Association upon various conspiracy theories. The Court in dismissing the action, based upon *res judicata*, observed that "all litigants have a right to impartial and considered justice. Insofar as any litigant unnecessarily consumes inordinate amounts of judicial time and energy, he or she deprives other litigants of their proper share of these resources. A balance must be kept."

The record here reflects that Mr. Pettus forfeited his rights by abusing the judicial process through continued and repeated vexatious litigation. Accordingly, he is hereby enjoined from filing any further lawsuits against these defendants, or any member in good standing of this Court,

**without leave and permission from a judge**. The court's resources cannot continue to be wasted in entertaining Mr. Pettus' repeated, duplicative, and spurious claims. Further analysis of *res judicata* is unnecessary on these facts, except merely to say, in as plain terms as possible: Mr. Pettus, your legal arguments have failed, and it is time to move on. The courts are not, and cannot be, a playground wherein grievances are litigated and re-litigated ad infinitum.

DISCUSSION

On determining a motion to dismiss the Court of Appeals has held that a "court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (see *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 [1994], *Goldman v. Metropolitan Life Ins. Co.*, 5 N.Y.3d 561, 570–571 [2005]). Further, the Court, in *Morris v. Morris* (306 A.D.2d 449, 451 [2nd Dept 2003]), instructed that in determining whether a complaint is sufficient to withstand a motion pursuant to CPLR 3211(a)(7), "the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" *(Guggenheimer v. Ginsburg*, 43 N.Y.2d 268, 275 [1977]). The court must accept the facts alleged in the complaint to be true and determine only whether the facts alleged fit within any cognizable legal theory (*see Dye v. Catholic Med. Ctr. of Brooklyn & Queens*, 273 A.D.2d 193 [2000]). However, bare legal conclusions are not entitled to the benefit of the presumption of truth and are not accorded every favorable inference (*Simkin v Blank*, 19 N.Y.3d 46, 52, 968 N.E.2d 459, 945 N.Y.S.2d 222 [2nd Dept 2012]).

In order for a plaintiff to survive a motion to dismiss, the factual allegations in the claim cannot be "merely conclusory and speculative in nature and not supported by any specific facts." (*Residents for a More Beautiful Port Washington, Inc. v. Town of North Hempstead*, 153 A.D.2d 727, 729 [2d Dept 1989]). "The allegations in the complaint cannot be vague and conclusory." *(Stoianoff v. Gahona*, 248 A.D.2d 525 [2d Dept 1998]). (*See Perciaccanto v. City of New York*, 47 Misc.3d 1216(A) [Sup Ct Bronx County 2015]).

Mr. Pettus' complaint must be dismissed because the "Court need not, and should not, accept legal conclusions, unwarranted inferences, unwarranted deductions, baseless conclusions of law, or sweeping legal conclusions cast in the form of factual allegations. (*Ulmann v. Norma Kamali, Inc.*, 207 A.D.2d 691 [1st Dept 1994]; *Mark Hampton, Inc. v. Bergreen*, 173 A.D.2d 220 [1st Dept 1991])." It is clear that the facts alleged by Mr. Pettus do not fit into any cognizable legal theory. Mr. Pettus' claims have been conclusory and speculative in nature from the outset[1], and it is hereby **ORDERED** this matter is dismissed in its entirety.

Further, it is hereby:

**ORDERED** that Mr. James Pettus is enjoined from commencing any further litigation in the courts of the State of New York arising from or related to issues with respect to his co-op action, as well as any staff of the New York Unified Court System without prior leave of Supreme Court of the applicable county.

[1] Parenthetically, in connection with the annexed petition where Mr. Pettus names Justice Laura Douglas and the respondents it appears that Mr. Pettus never served these defendants, as such this petition is a nullity.

**ORDERED** that the Clerk of this Court is directed not to accept any filings from this plaintiff as to such matters **without the prior leave of a judge of the court**. *Melnitzky v. Apple Bank for Sav.*, 19 A.D.3d 252, 253, 797 N.Y.S.2d 470 [1st Dept.2005].

The Court also notes that Mr. Pettus has recently begun a campaign of letter writing, as noted above, to court staff, court officers, and judges with whom he feels have not complied with his wishes. These letters have taken on a decidedly threatening tone. Mr. Pettus is advised that such threats will not be tolerated and may lead to criminal charges lodged against him. As such, in the most emphatic terms, Mr. Pettus is advised to cease and desist as such actions will not be condoned.

The Court declines respondent's request for sanctions or a temporary restraining order at this juncture, but Mr. Pettus would do well to pay close attention to this ruling, for should he elect to file any further actions without proper judicial leave, he will be subject to sanctions pursuant to Uniform Rules of the Trial Courts Subpart 130-1.1.

This constitutes the decision and order of the court.

Dated:

6/05/19

E N T E R,

Norma Ruiz, J.S.C.