

Mees v Stibbe N.Y. B.V.
2020 NY Slip Op 31139(U)
April 2, 2020
Supreme Court, New York County
Docket Number: 150975/2019
Judge: Robert D. Kalish
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 29

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HELEEN MEES,

Index No. 150975/2019

Plaintiff,

Motion Date: 11/27/2019

-against -

Motion Seq. Nos.: 005 & 006

STIBBE NEW YORK B.V., ADRIENNE B. KOCH,
KATSKY KORINS LLP, TIMOTHY J. KEANE,
QUIRK & BAKALOR, P.C. and WILLEM H. BUITER,

DECISION & ORDER

Defendants.

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HON. ROBERT D. KALISH, J.S.C.:

Motion (Seq. 005) by defendants Willem H. Buitter (“Buitter”), Adrienne B. Koch, Katsky Korins LLP, Timothy J. Keane and Quirk & Bakalor, P.C. pursuant to CPLR 3211(a)(1), (5) and (7) to dismiss the Verified First Amended Complaint and to enjoin plaintiff from bringing further proceedings having anything to do with Buitter is granted as indicated below.

Cross motion (Seq. 005) by plaintiff Heleen Mees (“plaintiff”) to amend the caption/pleading pursuant to CPLR 1003 and 3025(b) is denied.

Motion (Seq. 006) by defendant Stibbe New York B.V. pursuant to CPLR 3211(a)(1), (5) and (7) to dismiss the Verified First Amended Complaint is granted.

Motion Sequence Numbers 005 and 006 are hereby consolidated for disposition.

In a prior related action, *Mees v Buitter*, Index No. 154905/2018, plaintiff alleged four causes of action against Buitter:

- 1) For negligent infliction of emotional distress based on Buitter allegedly maintaining explicit photographs of plaintiff on his Verizon cloud service;

- 2) For negligent infliction of emotional distress based on Buitter allegedly maintaining explicit photographs of plaintiff on his handheld device; and
- 3) For tortious interference with prospective business relations based on Buitter's alleged communications with a journalist at Bloomberg News; and
- 4) For tortious interference with prospective business relations based on Buitter's alleged communications with the Dutch Consul-General in New York.

In a decision dated September 20, 2019, this court dismissed that related action based on, inter alia, res judicata and failure to state a cause of action (*Mees v Buitter*, 2019 N.Y. Slip Op. 32792(U) [Sup Ct, NY Co 2019] [*"Mees I"*]). In that decision, this court referred to the prior dismissal of plaintiff's action before the Supreme Court in Kings County (Edwards, J), which this court noted was on appeal. In addition, in *Mees I*, the facts and history of plaintiff's litigation efforts, arising from the aftermath of plaintiff and Buitter's romantic and sexual relationship, were recounted at length. This court will not recount the same herein.

Now, in the instant Verified First Amended Complaint (the Complaint) (Koch Affirm. [Doc. 172], Ex. A [Doc. 173]),¹ plaintiff pro se Heleen Mees seeks damages for two causes of action:

- 1) Intentional infliction of emotional distress (IIED) against defendant Buitter, and;
- 2) For aiding and abetting IIED against some of the attorneys who have been representing him in this and other actions she has pursued.

Defendants argue the aforesaid two causes of actions should be dismissed because:

- 1) They are time-barred;

¹ References to "Doc." followed by a number refer to documents filed in this action in the New York State Courts Electronic Filing (NYSCEF) system.

- 2) They are based entirely on alleged conduct that took place within the context of adversarial litigation, which is not actionable as a matter of law; and
- 3) They do not allege the kind of extreme and outrageous conduct necessary to support a claim for IIED.

I. Defendants' Motions to Dismiss

Plaintiff's claims are time-barred. The statute of limitation for IIED is one year, as set forth in CPLR 215[3] (*Offor v Mercy Med. Ctr.*, 171 AD3d 502, 503 [1st Dept 2019], *lv den* 2020 WL 729192 [2020]; *Bridgers v Wagner*, 80 AD3d 528 [1st Dept. 2011]). The limitations period for aiding and abetting IIED is the same, insofar as "[a] claim that a person aided and abetted a tort is governed by the same statute of limitations that is applicable to the underlying tort allegedly aided and abetted" (*Pomerance v McGrath*, 124 AD3d 481, 484 [1st Dept 2015]). This action was commenced on January 29, 2019, more than one year from the last wrongful acts alleged to have occurred in September 2016 (Am. Compl. ¶¶ 12, 32-41).

Plaintiff concedes the untimeliness of her claims, but argues that "the first cause of action for intentional infliction of emotional distress will no longer be time-barred under CPLR § 203(f) if the Second Department reverses the court below" (Pl's Opp. Br. at 4).² The appellate court has not done so, however, and the pendency of plaintiff's appeal does not affect the res judicata effect of the lower court's dismissal (*see Plaza PH2001 LLC v Plaza Residential Owner LP*, 98 AD3d 89, 98 [1st Dept 2012]; *People ex rel. McGoldrick v Baldwin Gardens, Inc.*, 283 AD 897, 898 [2d Dept 1954]). In any event, a reversal would at most, allow plaintiff to seek leave to amend her complaint in the Kings County action. Her speculation regarding the potential success

² The fact that plaintiff refers to CPLR 203 (f) is all the more reason why the prior related action before this court and the current case all should have been brought in Kings County (if at all)—not New York County.

of her appeal has no bearing on the question of whether the action before this court is time-barred—which it clearly is. Given this determination, there is no need to reach the parties’ various other arguments on the merits of this case (*D. Penguin Bros. Ltd. v City Nat’l Bank*, 158 AD3d 432, 434 [1st Dept 2018]; *Sierra Club v Martens*, 156 AD3d 454, 456 [1st Dept 2017]).

II. Plaintiff’s Cross-Motion to Amend the Caption/Pleading is Denied

The motion to amend the caption to add Stibbe N.V. as a defendant and to amend the Complaint is denied as the proposed amendment is patently lacking in merit. The proposed additional cause of action, for prima faice tort, would also be untimely. The statute of limitation for prima facie tort, when based upon an intentional tort as here, is one year (*Casa de Meadows Inc. (Cayman Islands) v Zaman*, 76 AD3d 917, 921 [1st Dept 2010]; *Havell v Islam*, 292 AD2d 210 [1st Dept 2002]).

III. Defendants’ Motion for Injunctive Relief is Granted

In *Mees I*, the court recounted plaintiffs’ extensive state, federal and international litigation activity since 2014, including the filing of the instant action. In particular, this court observed, inter alia, that plaintiff had commenced ten prior proceedings before that action and two after; unnecessarily prolonged the proceedings through last-minute amendments; and engaged in forum shopping. Despite finding that plaintiff’s conduct bordered on being frivolous – as did the Kings County court – this court denied defendant’s motion to enjoin her from commencing similar additional proceedings. Instead, the court suggested that plaintiff reconsider her course of action.

Plaintiff disregarded this advice by pursuing this action, fully aware that it was time-barred. An injunction prohibiting plaintiff from engaging in future vexatious litigation

activity is therefore appropriate. While “public 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 . . . 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” (*Sassower v. Signorelli*, 99 AD2d 358, 359 [2d Dept 1984]). A court thus has discretion to enjoin the plaintiff from the vexatious relitigation of the same factual and legal issues (*Banushi v Law Office of Scott W. Epstein*, 110 AD3d 558, 558–59 [1st Dept 2013]; *Wang v Lsuc*, 2018 NY Slip Op 31216(U), at *2 [Sup Court, NY County 2018] [Rakower, J.]).

As such, plaintiff is hereby enjoined from commencing, either pro se or by counsel, any actions in the state of New York without leave of court against defendant, defendant’s family, and / or defendants’ counsel based upon the alleged facts underlying the parties’ dispute as described in detail in this Court’s decision *Mees I*’, except as consistent with whatever decisions are potentially rendered by the Appellate Division, Second Department or by the Appellate Division, First Department in connection with plaintiff’s pending or future appeals. Plaintiff is also enjoined from making any further motions in the instant action or in the prior related action, *Mees v Buiter*, Index No. 154905/2018, without leave of court. Any application for leave must be made in writing to this court or the Administrative Judge of New York State Supreme, New York County – Civil Branch on notice to the proposed or instant defendant(s).³

³ The parties are further advised that pursuant to directives by the Governor and the Chief Administrative Judge of New York, the courts are not accepting any filings in non-essential matters during the ongoing COVID-19 pandemic (*see* Executive Order [A. Cuomo] No. 202.8; Admin Orders of Chief Admin Judge of Cts AO/71/20, AO/78/20). Lest there be any doubt, the instant action is a non-essential matter.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion to dismiss (Seq. 005) by defendants Willem H. Buiters, Adrienne B. Koch, Katsky Korins LLP, Timothy J. Keane and Quirk & Bakalor, P.C. (collectively, Buiters Defendants) and the motion to dismiss (Seq. 006) defendant Stibbe New York B.V., are both granted, and the Verified First Amended Complaint is dismissed as against all defendants with prejudice, and with costs and disbursements to said defendants as taxed by the Clerk of the Court, upon submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff's cross motion to amend the caption/pleadings is denied; and it is further

ORDERED that the branch of the motion (Seq. 005) by Buiters Defendants for injunctive relief and sanctions is granted to the extent of enjoining plaintiff Heleen Mees, either pro se or by counsel, from commencing any actions in the state of New York, without leave of this court or the Administrative Judge of New York State Supreme, New York County – Civil Branch (“the Administrative Judge”), against defendant, defendant's family, and / or defendants' counsel based upon the alleged facts underlying the parties' dispute as described in detail in this Court's decision *Mees v Buiters*, (2019 N.Y. Slip Op. 32792(U) [Sup Ct, NY Co 2019] [“*Mees I*”]), except as consistent with whatever decisions are potentially rendered by the Appellate Division, Second Department or by the Appellate Division, First Department in connection with plaintiff's or future appeals; and it is further

ORDERED that plaintiff is also enjoined from making any further motions in the instant action or in the prior related action, *Mees v Buiters*, Index No. 154905/2018, without leave of

court; and it is further

ORDERED that any applications for the aforesaid leave must be made in writing to this court or the Administrative Judge on notice to the proposed or instant defendant(s); and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that counsel for Buiter Defendants shall serve, via NYSCEF, a copy of the instant decision and order with notice of entry within twenty (20) days after the Governor's Executive Order 202.8 or any order modifying it is lifted; and it is further

ORDERED that compliance with this order is subject to the Administrative Orders of the Chief Administrative Judge of the Courts, dated March 20 and 22, 2020 (AO/71/20; AO/78/20).

The foregoing constitutes the decision and order of the Court.

Dated: April 2, 2020

ENTER:


ROBERT DAVID KALISH, J.S.C.