

Bach v Johnson
2020 NY Slip Op 31791(U)
June 10, 2020
Supreme Court, New York County
Docket Number: 155115/2018
Judge: Arlene P. Bluth
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PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

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INDEX NO. 155115/2018

MOTION DATE N/A

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

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were read on this motion to/for DISMISSAL

Background

Mr. Johnson moves to dismiss on the ground that the complaints made to the grievance committee are privileged. He adds that the Court should impose sanctions against plaintiff for bringing frivolous litigation because it was obvious that this case should not have been brought. Mr. Johnson seeks \$7,624.25.

In opposition, Mr. Bach points out that in the partition action Mr. Johnson refused to cooperate in the discovery process and motion practice was required to obtain his deposition. He argues that Mr. Johnson's comments constitute harassment. Mr. Bach speculates that there is a strong possibility that Mr. Johnson will file other baseless claims against him. He points out that Mr. Johnson wrote to Chase Bank and contacted federal authorities.

Discussion

A Court considering a motion to dismiss for failure to state a cause of action "must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference. We may also consider affidavits submitted by plaintiffs to remedy any defects in the complaint" (*Chanko v American Broadcasting Companies Inc.*, 27 NY3d 46, 52, 29 NYS3d 879 [2016]).

"In the investigation of such complaints and in the conduct of such proceedings, then, the bar association's Grievance Committee acts as a quasi-judicial body and, as such, is an arm of the Appellate Division. Quite clearly, the filing of the complaint in the present case initiated a judicial proceeding. It follows, therefore, that the defendants' letter to the Grievance Committee was absolutely privileged" (*Wiener v Weintraub*, 22 NY2d 330, 331-32, 292 NYS2d 667 [1968]).

"Assuredly, it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct on the part of lawyers to impart that knowledge to a Grievance Committee or some other body designated for investigation. If a complainant were to be subject to a libel action by the accused attorney, the effect in many instances might well be to deter the filing of legitimate charges. We may assume that on occasion false and malicious complaints will be made. But, whatever the hardship on a particular attorney, the necessity of maintaining

the high standards of our bar—indeed, the proper administration of justice—requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined” (*id.* at 332).

Here, plaintiff’s amended complaint focuses exclusively on the allegations contained in Mr. Johnson’s complaint to the grievance committee. Clearly, that is absolutely privileged and cannot form the basis of a defamation case. In his opposition, Mr. Bach references two items not included in the amended complaint that are unrelated to the grievance committee complaint: an email from Mr. Johnson to Chase and Mr. Johnson’s complaints to authorities.

However, the only supporting documentation attached by Mr. Bach is the Chase email. This communication does not contain defamatory statements. Contrary to the salacious accusations in the grievance committee complaint, the email notes that “federal authorities are being notified of several instances of fraud as neither my mother’s attorney, M. Daniel Bach Esq. New York, nor my sister attorney Marsha Johnson Esq. and co-defendant in the lawsuit notified my mother’s financial institutions of her death” (NYSCEF Doc. No. 52). Once his client died, the attorney-client relationship was over and Mr. Bach had no duty to contact banks. Besides, the vague references to federal authorities and fraud are statements of opinion and Mr. Johnson certainly had a right to contact Chase if he thought something was amiss even if Chase concludes that there was no fraud. But it does not assert facts that could support a defamation cause of action.

The Court declines to award sanctions. Simply because Mr. Bach’s case is being dismissed does not mean that it was frivolous. Clearly, Mr. Bach is upset with the grievance complaint filed against him by Mr. Johnson and the email sent to Chase. And the language used in the grievance is highly critical and contains serious personal attacks. But the adversarial

process sometimes evokes these types of sentiments from litigants towards opposing counsel and especially in a case involving a family dispute.

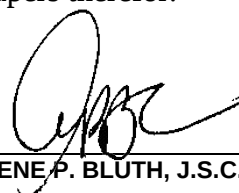
That is the purpose of the grievance committee—to allow people to raise concerns about lawyers. As the Court of Appeals suggested in *Wiener*, sometimes complaints about lawyers will contain malicious accusations that would otherwise be actionable. But there must be an absolute privilege so that legitimate complaints can be filed without fear of facing a lawsuit. And, here, the basis for the claims in the amended complaint is that grievance complaint. Therefore, the case must be dismissed.

Accordingly, it is hereby

ORDERED that the motion by defendant to dismiss is denied to the extent it sought sanctions and attorneys' fees against plaintiff but granted as to the remaining relief requested; the amended complaint is dismissed and the Clerk is directed to enter judgment when practicable along with costs and disbursements upon presentation of the proper papers therefor.

06/10/2020

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

☐

DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

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OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

☐

REFERENCE