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| <b>Cadore v State of New York</b>  |
| 2021 NY Slip Op 33673(U)   |
| March 30, 2021   |
| Court of Claims  |
| Docket Number: Claim No. 135656  |
| Judge: Richard E. Sise   |
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FILED  
03/31/2021  
NY COURT OF CLAIMS  
ALBANY, NY

STATE OF NEW YORK COURT OF CLAIMS

JOHN D. CADORE,

Claimant,

DECISION AND  
ORDER

-v-

THE STATE OF NEW YORK,

Claim No. 135656  
Motion No. M-96399

Defendant.

BEFORE:

HON. RICHARD E. SISE  
Acting Presiding Judge of the Court of Claims

APPEARANCES:

For Claimant:  
JOHN D. CADORE, PRO SE

For Defendant:  
HON. LETITIA JAMES, ATTORNEY GENERAL  
BY: Douglas H. Squire  
Assistant Attorney General

The following papers were read on Defendant's motion to dismiss pursuant to CPLR 3211:

1. Notice of Motion filed December 10, 2020;
2. Affirmation of Douglas H. Squire affirmed December 10, 2020 with Exhibits A-D annexed;
3. Memorandum filed January 11, 2021 with Exhibits 1-4 annexed;
4. Memorandum filed February 16, 2021 with Exhibits 1-6 annexed.

Filed papers: Claim

Defendant has moved to dismiss the claim on the grounds that it is untimely, is barred by the doctrines of res judicata and collateral estoppel and fails to state a cause of action.

A-16

The claim lists six causes of action based on certain activity engaged in by State actors beginning in October 2012 and ending in early 2019. The events alleged in the claim track, for the most part, the events alleged in an earlier claim dismissed by the court on the basis that it was untimely (*Cadore v State of New York*, Court of Claims, Claim No. 129681, M-95448, September 23, 2020, Sise, P. J.). The allegations underlying the earlier claim have some connection to charges that claimant, an attorney, over billed for services to the Unified Court System Attorney for Children program and the Broome County assigned counsel program. Those events began on October 11, 2012 when a search warrant was executed on claimant's law office and more than 300 case files were seized. The following day his appointments to all law guardian and assigned counsel program assignments were halted. In August 2014 claimant was charged with larceny and scheme to defraud in connection with his billing practices regarding those assignments. In October 2015 the charges were dismissed following a jury trial in County Court. In the previously dismissed claim, claimant alleged that he had been defamed by statements published by defendant from August 14, 2014 to October 30, 2015 regarding his billing for assigned cases. Claimant also alleged that defendant has refused to restore him to the assigned counsel panel and the law guardian panel, despite his acquittal, that vouchers for work done on assigned cases have not been paid and that there remained other unbilled work for which he has not been paid. In the prior claim, claimant used these allegations to define seventeen causes of action. Three of those causes of action were directed exclusively toward Broome County, originally named as a defendant in that action.

In commencing this action claimant has again asserted the allegations made in the previous claim and has added claims for defamation and harassment/intentional infliction of

A-17

emotional distress based on letters written to claimant by George Danyluk, Chief Internal Auditor for the Office of Court Administration, and a complaint filed with the Attorney Grievance Committee. The letters from Danyluk were written between December 15, 2015 and September 1, 2017 and initially addressed an audit of claimant's billing practices by the Internal Audit Services of the Office of Court Administration. Those letters also expressed a desire to meet with claimant regarding the results of the audit. When claimant chose not to accept a meeting, a request was made in the last letters for reimbursement of the overpayments determined by the audit. Claimant also alleges in the instant claim that in April 2017 defendant wrongfully filed a complaint against him with the Attorney Grievance Committee that was concluded in early 2019. According to claimant, defendant's actions continue to affect his ability to earn a living.

In moving to dismiss defendant notes that the claims presented in the earlier action have already been determined to be untimely and further contends that the newly asserted matter in this action involves intentional torts and was not served within the time limitations set forth in the Court of Claims Act. The statute provides that any action based on intentional tort must be filed and served within ninety days of accrual of the claim unless within that time the claimant serves on the Attorney General a written notice of intention to file a claim in which event the claim must be filed and served within one year after accrual (Court of Claims Act § 10 [3-b]).

The most recent date for any event alleged in both the earlier claim and the instant claim is March 14, 2016. That date fell years before claimant served the instant claim and as such, exceeded the time permitted by statute for presenting claims for either intentional torts, such as defamation, or breach of contract claims (Court of Claims Act § 10 [3-b]). As for the new matter asserted in this claim, the last of the letters written by Danyluk is dated September 1, 2017 and

A-18

the complaint to the Attorney Grievance Committee was resolved, at the latest, on March 31, 2019. The claim alleging these intentional acts was served on November 18, 2020 which again is beyond the time permitted by the statute for presenting such claims. As such, the claim can only be timely if a notice of intention was timely served (Court of Claims Act §11) or some toll of the relevant service and filing requirements applies.

In opposing the motion on the grounds that the claim is untimely, claimant argues that each of the causes of action alleged in the claim are timely because the underlying events, beginning in October 2012 and ending in February/March 2019, constitute a continuous course of conduct and because he served a document on the Attorney General on January 19, 2017 that is legally sufficient to constitute a notice of intention to file a claim. For purposes of the Court of Claims Act, a claim accrues when damages are reasonably ascertainable (*Waters of Saratoga Springs v State of New York*, 116 AD2d 875 [3d Dept 1986], affd 68 NY2d 777 [1986]). While a continuous course of conduct may extend the accrual period of a claim until such conduct terminates, the rule only applies where the conduct is so interrelated that the individual acts cannot be separated for purposes of applying time limitations (*Mahoney v Temporary Com. of Investigation*, 165 AD2d 233, 240-241 [3d Dept 1991]). The doctrine does not apply where a party relies on the continuing effects of earlier unlawful conduct (*Commack Self-Service Kosher Meats Inc. v State of New York*, 270 AD2d 687 [3d Dept 2000]). In this instance, while all of the events alleged in the claim may have root in claimant's billing practices, the causes of action are individually distinct. The claims for defamation are not in any way dependent on the allegations that defendant failed to pay claimant for work he asserts was done under the assigned counsel or attorney for the children programs, or for the refusals to restore him to those programs. The same

A-19

is true with respect to any claim based on allegations of harassment/intentional infliction of emotional distress which also involve discrete events leading to a separate claim of harm. Furthermore, these later causes of action, harassment and intentional infliction of emotional distress, are unavailable to claimant (*Carroll v Rondout Yacht Basin, Inc.*, 162 AD3d 1150, 1151 [3d Dept 2018] [cause of action for harassment not recognized in New York]; *Sawitsky v State of New York*, 146 AD3d 914, 915 [2<sup>nd</sup> Dept 2017] [public policy prohibits claims against the State for intentional infliction of emotional distress]).

Claimant's argument that he served a notice of intention on defendant in January 2017 is also of no avail. The document is insufficient to constitute a notice of intention. Though a notice of intention may be adequate if it relates the general nature of the claim without stating a cause of action, the notice must provide sufficient detail to enable the State to investigate (*Epps v State of New York*, 199 AD2d 914 [3d Dept 1993]). The document served by claimant is completely lacking in such detail. The notice fails to advise defendant of the time when, or place where, any of the alleged wrongful acts occurred (see, Court of Claims Act § 11 [b]), alleging only that the claim is continuous in nature and baldly asserting that the nature of the claim is theft of certain legal services and defamation of character.

Claimant also argues that the claim is timely because the court erred in dismissing the previous claim and as such, the refiling is authorized by CPLR 205 (a). The argument is clearly without merit. CPLR 205 (a), which allows commencement of a new action upon the same transaction or occurrence or series of transactions or occurrences as a previously terminated action, only applies when the original action was timely commenced and thus, cannot be relied on where, as here, the original claim was dismissed as untimely.

A-20

Inasmuch as the claim was not timely filed, the court is without jurisdiction and the claim must be dismissed.

Accordingly, it is

ORDERED, that the motion is granted and the claim is dismissed.

Albany, New York  
March 30, 2021

A handwritten signature in cursive script, reading "Richard E. Sise", written over a horizontal line.

RICHARD E. SISE  
Acting Presiding Judge of the Court of Claims

A-21