

Wahab v Patterson Belknap Webb & Tyler LLP

2021 NY Slip Op 33788(U)

March 10, 2021

Supreme Court, Suffolk County

Docket Number: Index No. 2593/2020

Judge: Martha L. Luft

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 2593/2020

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - COUNTY OF SUFFOLK

P R E S E N T:

Hon. Martha L. Luft
Acting Justice Supreme Court

DECISION AND ORDER
CASEDISP

CHASSIB KASSIM WAHAB, x

Plaintiff,

-against-

PATTERSON BELKNAP WEBB &
TYLER LLP, JOHN D. WINTER, AND
INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITY AS A LAWYER & PARTNER
OF PATTERSON BELKNAP WEBB &
TYLER, LLP,

Defendants.

x

Mot. Seq. No.: 001 - MD
Orig. Return Date: 11/04/2020
Mot. Submit Date: 01/19/2021

Mot. Seq. No.: 002 - MG
Orig. Return Date: 11/10/2020
Mot. Submit Date: 01/19/2021

**SELF-REPRESENTING PLAINTIFF
ATTORNEY**

Chassib Kassim Wahab
25 Hargrove Drive
Stony Brook, NY 11790

**SELF-REPRESENTING DEFENDANT
ATTORNEY**

John D. Winter, Esq.
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036

Upon the Notice of Motion, dated October 21, 2020, and all the exhibits attached thereto, and the e-filed documents numbered 2 through 28, it is

ORDERED that the motion by the plaintiff Chassib Kassm Wahab for, purportedly, an order granting him a Request for Judicial Intervention (RJI) is hereby considered to be a motion for leave to file a summons and complaint against the defendants Patterson Belknap Webb & Tyler LLP, and John D. Winter, individually and in his official capacity as employee, and is denied; it is further

ORDERED that the cross motion by the defendants for an order dismissing the complaint in its entirety and imposing sanctions upon the plaintiff is granted; it is further

ORDERED that the plaintiff is prohibited from commencing any new actions or filing any further motions pertaining to the facts and circumstances alleged in this action without first obtaining leave of court, and the failure to do so may result in the further imposition of sanctions,

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pursuant to 22 NYCRR § 130-1.1; and it is further

ORDERED that the Suffolk County Clerk of the Supreme Court is directed to reject any application by the plaintiff seeking any relief related to the alleged defamation and/or libel of him by the defendants or any other party occurring during the prior state and federal litigation as to the plaintiff's former employment with Estee Lauder Companies Inc. without prior leave of court to do so (see *Rossrock Fund II, L.P. v Toledo*, 186 AD3d 1441, 1442, 128 NYS3d 853 [2d Dept 2020]).

At the outset, the Court takes judicial notice of the prior lengthy proceedings between the plaintiff and his former employer, nonparty Estee Lauder Companies Inc. The plaintiff, who is self-represented, filed several actions in the United States District Court for the Eastern District of New York as to his former employment and termination therefrom, ultimately culminating in that Court (Azrack, J.) issuing a Filing Injunction Order, dated April 17, 2019, against the plaintiff. After his attempts in the United States District Court and appeals taken in federal court to seek relief were denied, the plaintiff then commenced an action in Supreme Court, Suffolk County in December 2019 against the same parties, bearing index number 6354/2019 and assigned to Hon. David T. Reilly. In both the federal court actions and the state court action, Estee Lauder Companies Inc. was represented by the defendant Patterson Belknap Webb & Tyler LLP.

The Court's records indicate that six motions were filed under that index number, five of which were filed by the plaintiff. On August 27, 2020, Judge Reilly held oral argument on the record, at which the plaintiff appeared and the defendant John D. Winter appeared on behalf of Estee Lauder Companies Inc., as an employee of the defendant Patterson Belknap Webb & Tyler LLP. As a result of this lengthy court appearance, the Court granted Estee Lauder Companies Inc.'s motion to dismiss the complaint, which alleged, among other things, that this entity published defamatory statements regarding the plaintiff. By order dated October 1, 2020, this Court (Reilly, J.), in relevant part, enjoined the plaintiff from filing any further actions or motions related to his employment with Estee Lauder Companies Inc. without prior leave of court.

By his complaint in the instant action, the plaintiff alleges, among other things, that the defendants made certain false and defamatory statements about him during the August 2020 court appearance before Judge Reilly. By order dated November 18, 2020, this court converted this matter to electronic filing at the defendants' request. The Court notes that it has not received, nor has any document been uploaded to the New York State Courts Electronic Filing System ("NYSCEF"), indicating that the plaintiff has "opted out" of electronic filing in this matter.

By his motion, the plaintiff appears to be requesting an RJI, though no motion is required for such relief. The defendants cross-move to dismiss the complaint in its entirety, arguing, *inter*

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alia, that the complaint fails to state a cause of action for defamation, as it fails to plead with particularity the allegedly defamatory statements made by the defendants or special damages. In addition, the defendants move for an order imposing sanctions upon the plaintiff, as he has engaged in a years-long pattern of vexatious litigation as to his former employment. In support, the defendants submit, among other things, copies of the United States District Court filing injunction order, a copy of the Suffolk County Supreme Court filing injunction order, a copy of a transcript of the August 2020 proceedings, and a memorandum of law. No papers were submitted in response to the motion.

A cause of action for defamation must contain: (1) a false statement that tends to expose a person to public contempt, hatred, ridicule, aversion, or disgrace; (2) such statement was published without privilege or authorization to a third party; (3) amounting to fault as judged by, at a minimum, a negligence standard; and (4) either causing special harm or constituting defamation per se (*see Kasavana v Vela*, 172 AD3d 1042, 1044, 100 NYS3d 82 [2d Dept 2019]; *Stone v Bloomberg, L.P.*, 163 AD3d 1028, 1029, 83 NYS3d 78 [2d Dept 2018]). A statement is defamatory per se if it: (1) charges the plaintiff with a serious crime; (2) injures the plaintiff in her or his trade, business, or profession; (3) imputes to the plaintiff a loathsome disease; or (4) imputes unchastity to a woman (*see Liberman v Gelstein*, 80 NY2d 429, 435, 590 NYS2d 857 [1992]; *Levy v Nissani*, 179 AD3d 656, 657, 115 NYS3d 418 [2d Dept 2020]). Moreover, CPLR 3015 (a) requires that the particular words complained of shall be set forth in the complaint.

Here, the complaint fails to set forth the particular words that were allegedly defamatory of the plaintiff, as the only statement complained of is "...if...your job description...you're a janitorial-type person...you're going to change a lightbulb," which can neither be construed as defamatory or defamation per se, and the complaint is devoid of any allegations of special damages as a result of these statements being made (*see CPLR 3015 [a]; Liberman v Gelstein, supra; Kasavana v Vela, supra; Stone v Bloomberg, L.P., supra*). As such, the complaint fails to state a cause of action (*see CPLR 3211 [a][7]*), and dismissal of the complaint on this ground is warranted, and the Court need not reach the defendants' alternative arguments for this relief.

The Court, however, must address the plaintiff's prior course of conduct in the federal and state courts as to his actions against Estee Lauder Companies Inc. In particular, the copy of the transcript of the August 2020 court appearance before Judge Reilly indicates that the Court spent a great amount of time hearing argument on the pending motions before it, and it found, among other things, that the plaintiff's complaint in the 2019 state court action failed to plead with particularity the statements which were alleged to be defamatory, that it failed to allege special damages, and that any such statements were protected by absolute privilege, as they were made during the course of litigation. The Court also granted the defendants' motion in the 2019 for sanctions against the plaintiff by granting their application for a filing injunction. As the defendants ask the undersigned to adopt a similar sanction against the plaintiff in the instant action, the Court will take judicial notice of all prior proceedings involving the plaintiff, the

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defendants, and Estee Lauder Companies Ltd.

Although public policy mandates free access to the courts, a litigant can forfeit that right by abusing the judicial process through vexatious litigation (*see Rossrock Fund II, L.P. v Toledo, supra*, at 1443; *DiSilvio v Romanelli*, 150 AD3d 1078, 1080, 56 NYS3d 162 [2d Dept 2017]; *Dimery v Ulster Sav. Bank*, 82 AD3d 1034, 1035, 920 NYS2d 144 [2d Dept 2011]). Where there has been an abuse of judicial process, the court may enjoin a litigant from further actions or motion practice without prior written approval of the court (*see Rossrock Fund II, L.P. v Toledo, supra*; *Matter of Isaac S.*, 178 AD3d 829, 830, 111 NYS3d 877 [2d Dept 2019]; *Vogelgesang v Vogelgesang*, 71 AD3d 1132, 1134, 899 NYS2d 272 [2d Dept 2010]). Notwithstanding that the plaintiffs are self-represented and may be granted some latitude, a litigant's decision to proceed without counsel does not confer any greater rights than those afforded to other litigants, nor may a *pro se* appearance serve to deprive parties in opposition of their right to a fair trial (*see Strujan v Glencord Bldg. Corp.*, 137 AD3d 1252, 29 NYS3d 398 [2d Dept 2016]; *Mirzoeff v Nagar*, 52 AD3d 789, 861 NYS2d 740 [2d Dept 2008]).

Here, the Court finds that adopting a similar filing injunction against the plaintiff is warranted, as he has exhibited a pattern of engaging in vexatious litigation in federal court, and he has begun a similar course of conduct in state Supreme Court (*see Rossrock Fund II, L.P. v Toledo, supra*; *DiSilvio v Romanelli, supra*; *Dimery v Ulster Sav. Bank, supra*). As such, the plaintiff is enjoined from further filings pertaining to the allegations and parties in this action without obtaining prior leave of court (*see Rossrock Fund II, L.P. v Toledo, supra*; *Matter of Isaac S., supra*; *Vogelgesang v Vogelgesang, supra*).

ENTER

Date: March 10, 2021
Riverhead, New York


HON. MARTHA L. LUFT, A.J.S.C.

Final Disposition

Non-Final Disposition