

Reyes v Hubert

2021 NY Slip Op 33824(U)

March 29, 2021

Supreme Court, Westchester County

Docket Number: Index No. 64923/2020

Judge: Richard Mott

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ELLEN REYES,

Plaintiff,

DECISION/ORDER

-against-

Index No. 64923/2020

Richard Mott, J.S.C.

JAMES W. HUBERT, JR.,

Defendant.

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Motion Return Date: January 29, 2021
Final submission filed February 11, 2021

APPEARANCES:

Plaintiff: Ellen Reyes
Self-represented
PO Box 1145
Roosevelt, NY 11575

Defendant: Letitia James, Esq.
Attorney General of the State of New York
44 South Broadway, 5th Floor
White Plains, NY 10601
Terrance K. DeRosa, Esq., Assistant Attorney General

Mott, J.

Defendant moves to dismiss this complaint seeking declaratory and equitable relief, as barred by the 11th Amendment to the U.S. Constitution (11th Amendment), on grounds of judicial immunity, lack of standing and ripeness. In addition, he moves for injunctive relief.

Plaintiff opposes and cross-moves to dismiss Defendant’s motion and strike his Exhibit B.¹

¹Exhibit B contains the Probation Department Criminal Division Order and Conditions of Probation and Supreme Court Commitment Order in *People v. Reyes*, Nassau County Indictment No. 1324N-18 (*People v. Reyes*). On February 28, 2020, Plaintiff was sentenced to 6 months jail and 5 years’ probation upon her conviction after trial of, *inter alia*, Aggravated Unlicensed Operation of a Vehicle in the 1st degree [VTL 511.3(a)(i)] and Driving While Impaired [VTL 1192.1].

Background

This action commenced November 12, 2020. The complaint challenges Defendant NYS Supreme Court Justice James W. Hubert, Jr.'s (Defendant) assignment to an action consolidating 2 matters in which Plaintiff sues a NYS Nassau County Judge, to wit: *Ellen Reyes v. Robert Bogle*, Sup. Ct. Nassau County, Index No. 001256/2019 (*Reyes v Bogle*).² Therein, Plaintiff asserts violations of federal civil rights law against Judge Bogle who presided in *People v. Reyes*. *Reyes v. Bogle* was dismissed, based, *inter alia*, upon the doctrine of judicial immunity. Decision and Order, dated September 1, 2020 (Ruderman, J.). Thereafter, Plaintiff commenced an action against Justice Ruderman,³ who then recused. See, *Reyes v. Bogle*, Order dated October 9, 2020. Thereafter, *Reyes v. Bogle* was assigned to Defendant. Plaintiff's motion to vacate the *Reyes v. Bogle* dismissal remains pending.

Plaintiff claims that Defendant lacks jurisdiction in *Reyes v. Bogle*. Further, she avers Defendant has conspired with Judge Bogle, Justice Ruderman and the latter's counsel, all of whom are white, to perpetuate fraud,⁴ perjury, defamation, obstruction of justice and denial of her due process and equal protection rights. She avers that in *People v. Reyes*, she was forced to accept representation from an inexperienced/inadequate assigned counsel,⁵ denied the opportunity to present exculpatory evidence and threatened and harassed by having court officers sit behind her. Further, she claims that Defendant improperly favored Justice Ruderman by granting, *ex parte*, a second 30-day extension to answer Plaintiff's

² The 2nd action by Plaintiff against Judge Bogle was initially docketed as Nassau County Sup. Ct. Index No. 00197/20.

³ *Reyes v. Ruderman*, Sup. Ct. Westchester County, Index No. 62936/2020, commenced October 16, 2020.

⁴ Plaintiff claims that the Decision and Order dismissing *Reyes v. Bogle* and the denials of her default judgment motion against Bogle and for a stay in *People v. Reyes* are fraudulent and obstructed justice.

⁵ Plaintiff also alleges that the Nassau County Legal Aid Society participated in the conspiracy to deny her the opportunity to testify or present evidence in her favor at her trial.

dispositive motion. She avers this conduct evidences a racist/white supremacist criminal conspiracy constituting judicial gangsterism.

Plaintiff alleges violations of the 1st, 4th through 10th, 13th and 14th Amendments to the U.S. Constitution and the Civil Rights Act (42 USC §§ 1983, 1985)⁶ *via* fraud, a criminal conspiracy and perjury.⁷ She seeks declaratory judgments that her rights, as alleged, have been violated and confirming the alleged fraud and criminal conspiracy to deprive her of same. Further, she demands that Defendant answer the complaint or, alternatively, a default judgment against him. She submits the affidavits of William Shelley⁸ (Shelley) and Nehemiah Rolle, who state they were present at Plaintiff's sentencing by Judge Bogle on January 15, 2020 and that he caused her to be harassed by placing 4 court officers around her. Shelley's 2nd affidavit states he witnessed Judge Bogle directed 2 vengeful comments containing racial epithets at Plaintiff on February 28, 2020.⁹

Parties' Contentions

Defendant claims that Plaintiff has failed to allege a concrete or identifiable injury, that her claims are not ripe for review and that Defendant's assignment, on October 27, 2020 to *Reyes v. Bogle*, by Deputy Chief Administrative Judge Vito C. Caruso's (Justice

⁶ Plaintiff also cites 42 USC § 1988, regarding attorney fee awards in civil rights actions.

⁷ The complaint's legal allegations are largely verbatim those in *Bernardin v. Hubert*, Westchester County Index No. 64180/2020 and *Rolle v. Hubert*, Westchester County Index No. 64437/2020. See Decisions and Orders in said matters, dated March 12, 2021 and March 22, 2021, respectively. In addition, the complaint makes various references to "Plaintiff Nehemiah Ellen Reyes", where Nehemiah is Mr. Rolle's first name.

⁸ Mr. Shelley was plaintiff in a 2008 federal suit against various judges for alleged 1st Amendment violations, See, *Shelley v. Hon. DeStefano, et al*, 08-CV-02854-SJF AKT EDNY, in which Mr. Bernardin asserts he was a material witness. See, *Bernardin v. Hubert*, Index No. 64180/2020.

⁹ Plaintiff alleges Judge Bogle uttered "vicious criminal hate speech" on January 15, 2020, but does not refer to specific statements, while Shelley's 2nd affidavit does.

Caruso) Administrative Order AO/239a/2020 (Order) utterly refutes Plaintiff's allegations of lack of jurisdiction. He maintains that the complaint alleges, in conclusory fashion, an absurd conspiracy of judges, to deprive her of her civil rights. Further, Defendant maintains that the complaint fails to state a claim upon which relief may be granted, as it is barred by the 11th Amendment and the doctrine of judicial immunity.

Finally, he claims that Plaintiff's frivolous and vexatious suits against judges solely by reason of their assignment to cases in which she is a litigant merits an order precluding her from commencing further actions or making additional filings in pending cases as a *pro se* litigant, without prior written Court approval.

Plaintiff restates her complaint and contends, on her cross motion, that her claims are justiciable. Plaintiff moves to strike Defendant's Exhibit B as illegible, avers that she was denied the opportunity to prove, at her criminal trial, that her vehicle was properly registered from 2016-2018 and that Defendant's counsel is part of the overall criminal conspiracy. She maintains that declaratory judgment is merited so that she may bring further actions against the conspirators and use same as impeachment.

Finally, she insists that Defendant's reply/opposition to her cross-motion, should not be considered as it is untimely, since she designated a January 14, 2021 response date but did not receive same until January 29, 2021. In addition, she claims Defendant's January 19, 2021 affidavit of service of his reply/opposition is defective as the affiant's signature is notarized by Defendant's counsel. Thus, Plaintiff maintains that her cross-motion should be granted on default. Finally, she denies having been served with Justice Caruso's Order assigning *Reyes v. Bogle* to Defendant and urges that same is part of the overall criminal

conspiracy preventing her from redress for violations of her Constitutional and civil rights, under color of state law.

Discussion/Motion to Dismiss

“On a motion to dismiss a complaint pursuant to CPLR §3211 (a) (7), the court must accept the facts alleged by the plaintiff as true and liberally construe the complaint, according it the benefit of every possible favorable inference.” *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Campaign for Fiscal Equity v State of New York*, 86 NY2d 307, 318 [1995]; *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]. The role of the court is to “determine only whether the facts as alleged fit within any cognizable legal theory.” *Leon v Martinez*, 84 NY2d at 87-88. Further, “[W]hether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus.” (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]; *Dee v. Rakower*, 112 A.D.3d 204, 208, (2d Dept. 2013). However, a motion to dismiss may be appropriately granted pursuant to CPLR § 3211(a) (1) where the documentary evidence utterly refutes plaintiff’s allegations, conclusively establishing a defense as a matter of law, *Crepin v Fogarty*, 59 AD3d 837 [3d Dept. 2009] or where the pleading fails to state a cause of action. CPLR § 3211(a) (7).

Here, the complaint, which is based upon Defendant’s performance of his official duties, patently lacks merit as it is barred by the doctrine of judicial immunity. *Walker v State*, 151 AD3d 1147, 1148 [3d Dept 2017], citing *Best v State of New York*, 116 AD3d 1198, 1199 [2014] (a judge is immune from civil liability for acts done in the exercise of his [or her] judicial function); *Harley v State of New York*, 186 AD2d 324, 324-325 [1992], appeal dismissed 81 NY2d 781 [1993]; *Weiner v State*, 273 AD2d 95, 97 [1st Dept 2000].

Indeed, Defendant's assignment to *Reyes v. Bogle*, pursuant to the Judiciary Law and Justice Caruso's Order, is part of Defendant's judicial function and a challenge thereto may not be raised collaterally. *Maa-Sharda, Inc. v First Citizens Bank & Tr. Co.*, 149 AD3d 1484 [4th Dept 2017] (collateral attack on judgment in prior action impermissible upon conclusory allegations of a fraudulent scheme therein). Indeed, Order constitutes conclusive documentary evidence of Defendant's jurisdiction to preside over *Reyes v. Bogle*. *Mehrhof v Monroe-Woodbury Cent. School Dist.*, 168 AD3d 713, 715 [2d Dept 2019] (judicial records competent to support dismissal upon documentary evidence); *Crepin v Fogarty*, 59 AD3d 837; Judiciary Law § 140-b; NYS Constitution Article 6 § 26. Further, the grant of an extension of time to respond to a motion is a judicial function. CPLR § 2004.¹⁰

Moreover, the complaint's conclusory allegations that Defendant is motivated by racial or retaliatory bias is insufficient to sustain a federal discrimination claim. *Gribbin v New York State Unified Ct. Sys.*, 18CV6100PKCAKT, 2020 WL 1536324, at *5 [EDNY Mar. 31, 2020]; see also, *Szymonik v Connecticut*, 807 Fed Appx 97, 101 [2d Cir 2020] (11th Amendment bars federal courts from retrospective declaratory relief against state officials for past federal law violations); *Treistman v McGinty*, 804 Fed Appx 98, 100 [2d Cir 2020] (speculative allegations of potential federal law violations not actionable in equity). Indeed, Plaintiff fails to identify any actual injury by Defendant's assignment, belying a controversy ripe for review. *Hearst Corp. v Clyne*, 50 NY2d 707 [1980]; see e.g., *Strujan v Kaufman & Kahn, LLP*, 168 AD3d 1114, 1116 [2d Dept 2019] ("although a *pro se* litigant is afforded

¹⁰ Notably, Defendant's response to Plaintiff's cross-motion herein is timely as it was submitted on January 19, 2021, well before the initial motion return date. See, CPLR § 2214(b).

some latitude, he or she is not entitled to rights greater than any other litigant and may not disregard court rules..." (internal citations omitted).

Finally, Plaintiff's repeated filing of actions impugning the justice system by conclusory conspiracy and misconduct claims against judges with whom she disagrees establish a pattern of continuous and vexatious litigation of likely repetition, meriting the injunctive relief requested. *Sassower v Commn. on Jud. Conduct of State*, 289 AD2d 119 [1st Dept 2001] (a litigious plaintiff pressing a frivolous claim can be extremely costly and waste an inordinate amount of court time that courts can ill afford to lose, meriting relief in equity enjoining same); *Shahid v Ridgewood Bushwick Senior Citizens Council, Inc.*, 181 AD3d 744 [2d Dept 2020] (court properly exercised discretion when it enjoined plaintiff from commencing any new action or proceeding against defendants without prior leave of court); *Xiaokang Xu v Xiaoling Shirley He*, 147 AD3d 1223, 1226 [3d Dept 2017] (requirement that defendant seek court approval before commencing further actions or proceedings involving plaintiff and others, was sufficiently narrow and balanced to protect against further vexatious actions or proceedings); *IRB-Brasil Resseguros S.A. v Portobello Intern. Ltd.*, 59 AD3d 366, 367 [1st Dept 2009] (foreign court action brought to improperly avoid application of New York law proper basis to enjoin same). Indeed, instead of following orderly process to challenge judicial determinations, Plaintiff has opted instead to attempt disqualification of any judge that issues a decision to which she objects or any party-attorney who disputes her position, causing judicial resources to be squandered to the detriment of the public good. *Breytman v Pinnacle Group*, 110 AD3d 754, 755 [2d Dept 2013] (a litigant abuses the judicial process by harassing individuals solely out of ill will and equity may enjoin such vexatious litigation).

Accordingly, the motion is granted and this action is dismissed.

This constitutes the Decision and Order of this Court. The Court is Efiling this Decision and Order, but that does not relieve Plaintiff from compliance with the provisions of CPLR §2220 with regard to filing and entry thereof.

Dated: Hudson, New York
March 29, 2021



RICHARD MOTT, J.S.C.

Papers Considered:

1. Notice of Motion, Affirmation and Memorandum of Law of Terrance K. DeRosa, Esq., dated December 7, 2020, with Exhibits A-F;
2. Notice of Cross Motion and Affidavit of Ellen Reyes, dated December 23, 2021;
3. Reply Affirmation and Opposition to Cross-motion of Terrance K. De Rosa, dated January 19, 2021;
4. Reply Affidavit of Ellen Reyes, dated February 10, 2021, with Exhibits G1-3.