

Barbetta v Facchini
2021 NY Slip Op 34305(U)
December 10, 2021
Supreme Court, Nassau County
Docket Number: Index No. 000283/21
Judge: Randy Sue Marber
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SHORT FORM ORDERSUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUPresent: **HON. RANDY SUE MARBER****Justice**

TRIAL/IAS PART 4

CONSEUELO MARIE BARBETTA,

Plaintiff,

Index No.: 000283/21

Motion Sequence: 01, 02, 03, 04, 05

-against-

Motion Date...8/20/21

XXXRACHELE FACCHINI, SANDRA CAMPOS,
JESSIE VASSALLO and
EMILY MARCHESIELLO,

Defendants.

Papers Submitted:

Notice of Motion (Seq 01).....x
 Memorandum of Law in Support.....x
 Affidavit in Opposition.....x
 Reply Memorandum of Law.....x
 Amended Notice of Motion (Seq 02).....x
 Notice of Motion (Seq 03).....x
 Notice of Motion (Seq 04).....x
 Memorandum of Law in Support.....x
 Affidavit in Opposition.....x
 Affirmation in Reply.....x
 Notice of Motion (Seq 05).....x
 Affidavit in Opposition.....x

The Plaintiff, *pro se*, brought this action seemingly for personal injuries purportedly sustained as a result of some sort of action or inaction on the part of the Defendants many years ago (the dates of alleged negligence are unclear from the

allegations of the complaint). The Court preliminarily notes that this Plaintiff appears to have overstayed her welcome in Federal Court, having had at least 9 proceedings dismissed as frivolous and/or for failure to state any cognizable claim, and having been given a “final warning” regarding her frivolous filings by United States District Court Judge, Hon. Brian M. Cogan.

The motion (Seq 01) filed by the Defendant, RACHELE FACCHINI (“Rachele”), seeks an Order, pursuant to CPLR §3211 (a)(5) and (7), dismissing the Plaintiff’s Complaint; the motion (Seq 02) filed by the Plaintiff, CONSUELO MARIE BARBETTA, seeks the entry of a default judgment pursuant to CPLR 3215 as against the Defendant SANDRA CAMPOS (“Sandra”), for failure to timely answer the complaint or otherwise appear in this action; the motion (Seq 03) by the Plaintiff, seeks an Order granting her leave to amend the caption of this matter to reflect the proper spelling and/or married name of certain Defendants; the motion (Seq 04) by the Defendant, EMILY MARCHESIELLO-FRANCOME s/h/a EMILY MARCHESIELLO (“Emily”), seeks an Order, pursuant to CPLR §3211 (a)(5) and (7), dismissing the Plaintiff’s Complaint; and the motion (Seq 05) by the Defendant, Rachele, seeks an Order vacating the Note of Issue that was prematurely filed by the Plaintiff. The within motions are decided as hereinafter provided.

The facts pertinent to the determination of this motion are derived from the Plaintiff’s complaint, as best as the Court can discern the rambling allegations against Defendants asserted therein. The Plaintiff seeks to recover monetary damages allegedly

incurred as a result of purported interactions with the named Defendants at least 16 or more years ago that allegedly resulted in prolonged marijuana use and certain medical conditions. The only dates that appear in the complaint related to having graduated from high school with the Defendants in 2002; receiving a group text from certain Defendants in 2012 (except for Defendant, Rachele, with whom the Plaintiff concedes having no relationship with since 2005); “uncomfortably reconnect[ing] in 2016” with Rachele, and “then in 2018 when [Plaintiff] was left homeless without a friend in the community”; and 2019 when she began treatment as her “first attempt at addressing what happened between” the parties. The Plaintiff claims to have “remained in a significant state of distress between 2005 and 2008”; and alleges that “[b]etween 2008 to 2015, [she] was still compulsively buying a gram of weed at a time and driving around in circles, which [she] bought from the Defendant, Sandra’s brother’s house...” She further appears to complain about not having received any calls or hearing from any of the Defendants after her grandmother passed away in 2016; and being “tagged in a photo on Facebook” in 2020. Based on the foregoing, the Plaintiff seeks judgment in the sum of “\$5,000,000 as punitive recompense”.

From what the Court can glean, it appears that the Plaintiff attempts to causally relate her prolonged drug use and subsequent medical conditions to the former relationship she had with each, some or all of the Defendants. There does not appear to be any reason or logic as to how the allegations are set forth. Nor is there any discernible connection between the Plaintiff’s diagnosed medical conditions and the Defendants’

alleged actions or inactions.

In opposition to the Defendants' respective motions to dismiss the complaint as time-barred, the Plaintiff attempts to save her stale claims based on the discovery doctrine – that is, the Plaintiff asserts that the “three year limitation for personal injury CPLR 214 (4) (5)...[is] tolled until the injuries are discovered.” (*See* Plaintiff's Affidavit in Opposition at p. 3). The Plaintiff further asserts that “between 2005 and 2019, there was no connection made between [her] anxiety and behavior to [her] relationship with the defendant” (*Id.*).

Legal Analysis

On a motion to dismiss pursuant to CPLR § 3211 (a)(7), the court must accept as true, the facts “alleged in the complaint and submissions in opposition to the motion, and accord plaintiffs the benefit of every possible favorable inference,” determining only “whether the facts as alleged fit within any cognizable legal theory” (*Sokoloff v. Harriman Estates Development Corp.*, 96 N.Y.2d 409, 414 [2001]; *see People ex rel. Cuomo v. Conventry First LLC*, 13 N.Y.3d 108 [2009]; *Polonetsky v. Better Homes Depot*, 97 N.Y.2d 46, 54 [2001]; *Leon v. Martinez*, 84 N.Y.2d 83, 88 [1994]; *Feldman v. Finkelstein & Partners, LLP*, 76 A.D.3d 703 [2d Dept. 2010]). Notably, on a motion to dismiss, the plaintiff is not obligated to demonstrate evidentiary facts to support the allegations contained in the complaint (*see, Stuart Realty Co. v. Rye Country Store, Inc.*, 296 A.D.2d 455 [2d Dept. 2002]; *Paulsen v. Paulsen*, 148 A.D.2d 685, 686 [2d Dept. 1989]; *Palmisano v. Modernismo Pub.*, 98 A.D.2d 953, 954 [4th

Dept. 1983]), and “[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*EBC I, Inc. v. Goldman Sachs & Co.*, 5 N.Y.3d 11, 19 [2005]; *International Oil Field Supply Services Corp. v. Fadeyi*, 35 A.D.3d 372 [2d Dept. 2006]).

In the instant matter, putting aside however illogical the facts are pleaded, the Plaintiff has failed to set forth any discernible facts from which this Court can infer a legally cognizable claim against these Defendants. In any event, even if the pleading sufficiently alleged some discernible claim, it would be time-barred. The statute of limitations for a personal injury claim, such as the claim(s) the Plaintiff attempts to plead herein, is three years from the date of the alleged conduct, action or inaction by the defendants, not discovery of some unrelated medical condition.

Moreover, in reviewing the prior federal action dismissed by Judge Cogan in April 2020, it appears that this pro se Plaintiff sued a drug dealer for her prolonged drug use during the same timeframes as alleged in the within complaint. In this regard, the Plaintiff alleged in the federal action that she was addicted to marijuana for almost 20 years, began seeking treatment for her drug use in 2018, around which time she was allegedly informed that she was probably being extorted by a drug trafficking ring. In dismissing the complaint as frivolous, Judge Cogan explicitly warned the Plaintiff about her frivolous filings:

“In addition, the Court has previously warned plaintiff that if she continued to file frivolous complaints, then the Court would impose an anti-filing injunction against her.

The present case reflects the same frivolous character as her past complaints and it seems plaintiff is content to continue to waste this Court's time and resources. She is again warned that she is on the cusp of having her right to file actions in federal court severely curtailed."

(See Exhibit "2" annexed to Mot Seq 01).

Subsequently, when the Plaintiff filed yet another frivolous action in derogation of prior warnings, Judge Cogan noted as follows:

"In addition, I note that this is the ninth lawsuit that plaintiff has filed in this district in the last two years. I have repeatedly warned her, both in the prior decision in this case and in other cases...that if she continues to file meritless complaints, I would enter an anti-filing injunction against her. **This is the final warning.**"

See Exhibit "3" annexed to Mot Seq 01, at p. 2 [emphasis supplied]).

The Plaintiff now seems to have taken the foregoing warnings as an invitation to burden other courts with her frivolous filings. The complaint herein, while at first glance seemingly unrelated to the prior federal actions, is equally weird and undoubtedly frivolous. While the Defendants have not sought sanctions for the filing of this action, the Plaintiff is hereby forewarned by this Court that any further frivolous filings may result in the issuance of sanctions.

In light of the Court's within determination, the default motion is denied as Plaintiff could not recover on the alleged purported "facts".

Accordingly, the amended complaint is hereby **DISMISSED**, with prejudice.

The Court has considered the parties remaining contentions and find them to be either irrelevant or without merit.

Any matters not specifically addressed herein are **DENIED**.

This constitutes the decision and order of this Court.

DATED: Mineola, New York
December 10, 2021



Hon. Randy Sue Marber, J.S.C.
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