

Bell v New York City Dept. of Corr.
2022 NY Slip Op 30024(U)
January 7, 2022
Supreme Court, New York County
Docket Number: Index No. 150007/2022
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL EDMEAD PART 35

Justice

-----X

RAYMOND BELL

Plaintiff,

- v -

NEW YORK CITY DEPARTMENT OF CORRECTION,

Defendant.

-----X

INDEX NO. 150007/2022
MOTION DATE 12/30/2021
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3
were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

In this Article 78 proceeding, Petitioner Raymond Bell, on behalf of himself and all others
similarly situated, moves by Order to Show Cause (OSC) for an Order:

- (i) Certifying the following class pursuant to CPLR Section 901(a):
 - a. All current and future pre-trial detainees incarcerated in Respondent New York City Department of Correction (“DOC”) facilities at Rikers Island (“Rikers”) who have been or will be denied their due process rights under the New York State Constitution based on the New York City Department of Correction’s failure to manage the present and ongoing Department of Correction staffing shortage and the spread of COVID-19 to those incarcerated at Rikers;
- (ii) Designating Winston & Strawn LLP as class counsel;
- (iii) Granting the following remedies:
 - a. a preliminary injunction, pursuant to CPLR Section 6311, forbidding the admission of new incarcerated persons to any Rikers detention facility, and the diversion of incarcerated persons to at-home confinement or other facilities as appropriate in light of the exacerbated conditions caused by COVID-19, the ongoing staffing crisis, and the inhumane conditions at Rikers; and
 - b. a temporary restraining order, pursuant to CPLR Section 6313(a), preserving the status quo pending the Court’s determination of the preliminary injunction

motion by enjoining the Department of Correction from admitting new incarcerated persons to any Rikers detention facility, and requiring the diversion of incarcerated persons to at-home confinement or other facilities as appropriate in light of the exacerbated conditions caused by COVID-19, the ongoing staffing crisis, and the inhumane conditions at Rikers; and

- (iv) Ordering Respondent to provide proof of substantial compliance with the above remedies within one week of its order; and
- (v) Imposing public health and safety measures as appropriate.

(Motion Seq. 001).

At a Microsoft Teams conference held January 7, 2022, the Court found that a combination of jurisdictional and procedural issues constrain its ability to take further action with respect to the relief sought in the petition, and thus “Declines to Sign” the instant OSC without prejudice.

Jurisdiction

In the underlying Petition in support of his OSC, Petitioner argues that the Court has subject matter jurisdiction under Art. 6, § 7 of the New York State Constitution (NYSCEF doc No. 1 at 8). Art. 6, § 7 provides that “[t]he supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided.”

Notwithstanding the general subject matter jurisdiction provided in Art. 6, § 7, the Court finds that it lacks jurisdiction to entertain the relief sought herein. Petitioner asks that the Court forbid the admission of new incarcerated persons to any Rikers Island detention facility and divert presently incarcerated persons to at-home confinement or other facilities. However,

determinations remanding individuals to the custody of Respondent are made by this Court's sister criminal courts and/or courts of concurrent jurisdiction.

At the January 7, 2022 Microsoft Teams conference, counsel for the DOC explained that Rikers is currently the only New York City facility in which incarcerated persons are detained while awaiting trial. Accordingly, the DOC is essentially required to detain individuals to Rikers in order to fulfill its obligation to effect the orders of various New York courts. This Court does not believe it has the authority to override orders of said courts, or, with respect to Petitioner's application that the Court forbid the admission of future detainees to Rikers, enjoin said courts.

Failure to Name All Proper Respondents

The Court further finds that procedurally, Petitioner has erred in naming the DOC as the sole Respondent to its Petition. As discussed *supra*, the DOC does not make the determination to detain incarcerated persons to Rikers but rather does so in effecting orders from said courts.

At the January 7, 2022 Teams Conference, Petitioner argued that although the DOC is not the entity that remands incarcerated persons to custody, it has authority to move said persons to other locations and therefore is the proper Respondent to the instant proceeding. In support, Petitioner argued that in 2021, female inmates were moved from Rikers to various upstate facilities. However, that action was taken pursuant to an Executive Order rendered by Governor Hochul¹. Accordingly, to the degree that the DOC has the ability to disperse where one must be

¹ See Executive Order No. 5, Declaration of a Disaster Emergency in the Counties of the Bronx, Kings, New York, Richmond and Queens Due to Conditions at Rikers Island Correctional Center, dated September 28, 2021 <https://www.governor.ny.gov/executive-order/no-5-declaration-disaster-emergency-counties-bronx-kings-new-york-richmond-and>.

while incarcerated and awaiting trial, said ability is not solely within its control and requires approval from a higher authority (i.e., the State's Executive Branch).

Therefore, the Court finds that it is procedurally improper for the DOC to be named as the sole Respondent in the instant proceeding.

Improper Application for Injunctive Relief

The Court further writes to note that, *assuming arguendo* it was able to proceed beyond the jurisdictional and procedural roadblocks detailed herein and reach the merits of Petitioner's OSC, Petitioner's application for injunctive relief is improper as it essentially seeks the ultimate relief sought in the underlying petition, i.e., an order of mandamus compelling the DOC to take action in response to the conditions at Rikers.

The decision of whether to grant a motion for injunctive relief is committed to the sound discretion of the trial court (*Doe v Axelrod*, 73 NY2d 748, 750 [1988]). A preliminary injunction that would impermissibly grant a party the ultimate relief being sought in a lawsuit generally cannot be granted (see *Northern Funding, LLC v 244 Madison Realty Corp.*, 41 AD3d 182, 183 [1st Dept 2007], citing *St. Paul Fire & Marine Ins. Co. v York Claims Serv., Inc.*, 308 AD2d 347 [1st Dept 2003]; Injunctive relief wherein the movant would receive some form of the ultimate relief sought as a final judgment "is granted only in 'unusual' situations, 'where the granting of the relief is essential to maintain the status quo pending trial of the action'" (*Jones v Park Front Apartments, LLC*, 73 AD3d 612, 612 [1st Dept 2010] [internal citations omitted]).

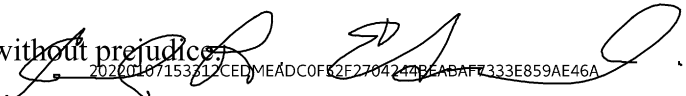
Here, Petitioner's application for a preliminary injunction forbidding the admission of newly incarcerated persons to Rikers and diverting incarcerated persons to other facilities, and

for a temporary restraining order pending the determination of the preliminary injunction motion enjoining the DOC from admitting new persons to Rikers, essentially overlaps with the ultimate relief of mandamus sought in the underlying petition. As discussed herein, an order granting such relief would not preserve the status quo, but would in fact *upend* the status quo by acting in direct contravention of orders from courts of concurrent jurisdiction.

The Court concludes by noting that it is acutely aware of the well-documented issues related to Rikers as articulated in the December 21, 2021 Letter sent by DOC Commissioner Vincent Schiraldi imploring the criminal justice system to “consider every available option to reduce the number of individuals in our jails” (NYSCEF doc No. 2). The Court is highly mindful of the concerns raised by Petitioner with respect to the untenable circumstances and situations of those detained and those employed as Rikers as a result of the ongoing COVID-19 pandemic. However, as discussed, a combination of jurisdictional and procedural roadblocks obstruct the ability of the Petition, *in its current form*, to proceed. The Court is thus constrained to “Decline to Sign” Petitioner’s OSC and dismiss the underlying Petition without prejudice, so that Petitioner may commence a new proceeding that remedies the jurisdictional and procedural defects detailed herein.

Therefore, in accordance with the “So-Ordered” Transcript January 7, 2022 (Michele Panteloukas, Court Reporter), the Court “Declines to Sign” the instant application by Order to Show Cause (Motion Seq. 001); and it is further

ORDERED that the Petition is dismissed without prejudice.


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1/7/2022
DATE

CAROL EDMEAD, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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