Jacobson v Seddio
2022 NY Slip Op 32748(U)
August 15, 2022
Supreme Court, New York County
Docket Number: Index No. 651572/2020
Judge: Louis L. Nock

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **38M**

Justice

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LAURA LEE JACOBSON,

Plaintiff,

- v -

FRANK SEDDIO; MARTIN EDELMAN; RODNEYSE BICHOTTE; STEVEN FINKELSTEIN; STEVE DECKER; ABAYOMI AJAIYEOBA; KINGS COUNTY DEMOCRATIC COUNTY COMMITTEE; and JOHN AND JANE DOES ## 1-20, SO NAMED, AS THEIR IDENTITIES ARE NOT YET KNOWN, etc.,

Defendants.

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INDEX NO. 651572/2020

MOTION DATE 07/06/2020, 07/13/2020

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 63, 65, 77, 79, 80, and 83

were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 33, 34, 35, 36, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 66, 67, 68, 69, 70, 71, 72, 73, 78, 81, and 84

were read on this motion to DISMISS, and cross-motion for DISQUALIFICATION.

LOUIS L. NOCK, J.

Upon the foregoing documents, and after oral argument convened on the record, it is ordered that defendants' motions to dismiss the verified complaint (the "Complaint"), and plaintiff's cross-motion for the disqualification of certain counsel, are consolidated herein for disposition and determined as follows.

PROCEDURAL AND DISPOSITIONAL PREFACE

In 2016, the plaintiff, Honorable Laura Lee Jacobson, was a sitting Justice of the Supreme Court of the State of New York, County of Kings, who was seeking re-election. She received a "Not Recommended" rating from the Judicial Screening Committee (the "Screening Committee") of the Kings County Democratic County Committee ("KCDCC") and appealed that

decision. After her Honor's appeal was unsuccessful, she advised the Screening Committee that she wished to withdraw her application with prejudice, with the understanding, as alleged, that the Screening Committee's rating would not be published pursuant to provisions in the applicable rules of the Screening Committee and KCDCC. However, after her Honor's withdrawal of her application, various unfavorable news articles appeared in the local press that Plaintiff attributes to Defendants, and which, as alleged, could only have originated with Defendants, all of whom having a direct relation to the Screening Committee and/or KCDCC.[1] In an attempt to redress the alleged wrongful disclosures to the local press, Plaintiff commenced a lawsuit against the defendants herein in the United States District Court for the Eastern District of New York on August 26, 2016, alleging violations of her Honor's constitutional rights pursuant to 42 United States Code § 1983, as well asserting state law claims, including breach of contract and slander and libel claims.

On September 29, 2018, following a series of pre-motion conferences, and after providing Plaintiff an opportunity to amend her complaint, the United States District Court for the Eastern District of New York granted Defendants' motion to dismiss the federal claims and declined to exercise supplemental jurisdiction over Plaintiff's state law claims (*see, Jacobson v Kings County Democratic County Committee*, No. 16-CV-4809, 2018 WL 10228395 [ED NY Sept. 29, 2018]). On October 8, 2019, the United States Court of Appeals for the Second Circuit affirmed the District Court's disposition (*see, Jacobson v Kings County Democratic County Committee*, 788 Fed Appx 770 [2d Cir 2019]).

[1] Defendants Frank Seddio and Martin Edelman are alleged to be, respectively, the then-Chair of KCDCC and then-Chair of the Screening Committee. Defendant Rodneyse Bichotte is alleged to be the current Chair of KCDCC, and the remaining defendants are alleged to be then-members of the Screening Committee.

By summons and verified complaint dated March 9, 2020, Plaintiff commenced this action. Plaintiff proffers the same substantive allegations previously alleged in her federal lawsuit and also asserts substantively identical claims for breach of contract and libel and slander. Plaintiff also asserts a quasi-contract claim, styled as promissory estoppel, as an alternative to her breach of contract claim.

For the reasons thoroughly discussed below, the Complaint is dismissed. By way of very brief summary in advance of full discussion, Plaintiff's breach of contract claim is dismissed because it is predicated on a breach of the Screening Committee Rules (the "Rules" [Complaint Exh. 9, NYSCEF Doc. No. 10]) and the KCDCC Report on Judicial Screening Procedures (the "KCDCC Report" [Complaint Exh. 8, NYSCEF Doc. No. 9]). Because Plaintiff is not a member of either body, she lacks standing to enforce, or sue upon, those internal organizational rules by way of litigation. In addition, alleged reputational injury is not actionable under breach of contract theory. Relatedly, Plaintiff's quasi-contract/promissory estoppel claim is dismissed because it cannot afford more rights than one might have had under contract theory. Finally, Plaintiff's claim for libel and slander is dismissed because Defendants' alleged statements to the press are protected opinion.

The court will now proceed with the analysis which leads to the conclusions briefly set forth above.[2]

BACKGROUND

The Screening Committee is a voluntary entity created pursuant to an internal decision of the KCDCC. The Screening Committee's function is to assist the KCDCC by reviewing the

[2] Plaintiff has cross-moved, within the context of motion sequence number 002, for disqualification of counsel for defendants Seddio, Bichotte, and KCDCC for reasons dealt with toward the end of this decision. That cross-motion is denied as discussed hereinafter.

qualifications of candidates for judicial office. Specifically, the Rules provide that the Screening Committee shall categorize each candidate as either "Qualified" or "Not qualified at this time," and then recommends candidates to the Executive Committee of the KCDCC. In the case of a sitting Supreme Court Justice, the Rules provide that any incumbent shall be presumed qualified, unless 75 percent of a quorum of the Screening Committee determines that the incumbent should not be reported as "Recommended." A finding of "Not Recommended" from the Screening Committee does not render the candidate ineligible to run for office; but rather, precludes the Executive Committee of the KCDCC from endorsing that candidate prior to the party's Judicial Nominating Convention. It does not prevent either the members of the Executive Committee or judicial delegates at the Judicial Nomination Convention from placing the candidate's name in nomination, and it does not limit the voting freedom of any judicial delegate at the convention in any way. Nor does it have any binding effect on voters at large, who are free to vote at the general election for either of: (i) the party's Judicial Nominating Convention choices; or (ii) candidates who independently petition to get onto the ballot.

Previously, on August 26, 2016, Plaintiff brought an action against Defendants in the United States District Court for the Eastern District of New York claiming that her constitutional rights, and in particular her right to equal protection, were violated because: (i) the Screening Committee allegedly did not follow its own rules in deciding to find her "Not Qualified" for the position of Supreme Court Justice; (ii) the Screening Committee allegedly violated its own rules when one or more of the Defendants allegedly disclosed to the press certain things understood by them concerning the plaintiff during the course of the Screening Committee's vetting process; and (iii) the Screening Committee allegedly violated its own Rules when it allegedly did not give Plaintiff adequate notice of concerns that the Screening Committee had with regard to her

performance as a sitting Supreme Court Justice. Plaintiff also alleged a conspiracy to violate her constitutional rights, as well as pendent state law claims, including a breach of contract claim predicated upon the Rules, and a libel and slander claim – state law claims that are substantively identical to Plaintiff's claims in this action.

On September 29, 2018, following a series of pre-motion conferences, and after providing Plaintiff an opportunity to amend her complaint, the United States District Court for the Eastern District of New York granted Defendants' motion to dismiss in its entirety, declining at that point to exercise supplemental jurisdiction over Plaintiff's state law claims (*see, Jacobson v Kings County Democratic County Committee*, No. 16-CV-4809, 2018 WL 10228395 (ED NY Sept. 29, 2018]). On October 30, 2018, Plaintiff filed a notice of appeal appealing, in its entirety, the District Court's dismissal, as it clearly notifies:

> Notice is hereby given that LAURA LEE JACOBSON, the plaintiff in the above named case hereby appeals to the United States Court of Appeals for the Second Circuit from: (i) the Memorandum and Order of the United States District Court for the Eastern District of New York (DeArcy Hall, D.J.), dated September 29, 2018 and entered in this action on the October 3, 2018, which order dismissed plaintiff's federal causes of action, finding that the defendants were not acting as state actors, and declined to exercise supplemental jurisdiction over plaintiff's New York state claims, and denied the plaintiff leave to further re-plead; and, (ii) the Clerk's Judgment, dated September 29, 2018, and entered October 3, 2018, ordering and adjudging the defendants' motions to dismiss as granted.

(NYSCEF Doc. No. 39.)[3] On October 8, 2019, the United States Court of Appeals for the Second Circuit affirmed the District Court's disposition (*see, Jacobson v Kings County Democratic County Committee*, 788 Fed Appx 770 [2d Cir 2019]).

[3] Defendants' motion to dismiss the libel and slander claims is based – in addition to substantive grounds – on the procedural assertion that the appeal did not include the portion of the District Court's declination to exercise supplemental jurisdiction over the state law claims and that, therefore, the pendency of the appeal could not have tolled the running of the libel and slander statute of limitations from the time of the District Court's dismissal (*see*, NYSCEF Doc. No. 26 at 10; NYSCEF Doc. No. 34 at 25). However, the language of the notice of appeal, quoted in full in the text, leaves no doubt that the appeal encompassed all aspects of the District Court's dismissal. Consequently, the statute of limitations argument asserted in reference to the libel and slander claims is without merit (*e.g., Bernardez v City of N.Y.*, 100 AD2d 798, 800 [1st Dept 1984] ["an action is not terminated within the

STANDARD OF REVIEW

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). "[The court] accept[s] the facts as alleged in the complaint as true, accord[ing] plaintiffs the benefit of every possible favorable inference, and determin[ing] only whether the facts as alleged fit within any cognizable legal theory" (*id*. at 87-88). Ambiguous allegations must be resolved in plaintiff's favor (*JF Capital Advisors, LLC v Lightstone Group*, LLC, 25 NY3d 759, 764 [2015]). "The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [citations omitted]). "[W]here . . . the allegations consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence, they are not entitled to such consideration" (*Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 [1st Dept 1994]).

DISCUSSION

Plaintiff Fails to State a Claim for Breach of Contract

Plaintiff's breach of contract claim is stated as an alleged breach of Screening Committee Rules 13 and 31 (b), which, respectively, provide for confidentiality of proceedings and withdrawal prior to "Not Qualified" publication; and of Paragraph 1 of the KCDCC Report, which also addresses such withdrawal (*see*, NYSCEF Doc. Nos. 9, 10). However, Plaintiff does not possess standing to assert a breach of the Rules or the KCDCC Report because she is not a member of the Screening Committee or the KCDCC. Nor is alleged reputational harm recoverable as a consequence of breach of contract.

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meaning of (CPLR 205) until the determination of the appeal"]). However, as discussed later in this decision, the libel and slander claims fail on substantive grounds.

"A third-party, who is not a member of the association or corporation nor a party to the bylaws, lacks standing to bring suit against an organization for violation of its bylaws" (*Alpha Phi Alpha Senior Citizens Center, Inc. v Zeta Zeta Lambda Co., Inc.*, 53 Misc 3d 1066, 1073 [Sup Ct Queens County 2016] [quotation marks omitted], *affd* 180 AD3d 630 [2d Dept], *appeal dismissed* 36 NY3d 955 [2020]; *see also, e.g., Golub v Simon*, 28 AD3d 359 [1st Dept 2006]; *Soho Bazaar, Inc. v Bd. of Managers*, 266 AD2d 65 [1st Dept 1999]; *Vayani v 146 W. 29th St. Owners Corp.*, No. 16-CV-1774, 2017 WL 3476046 at *5 [SD NY 2017] ["Because . . . the plaintiff was not a member of Local 32BJ . . . , the plaintiff has no standing to sue the Union defendants for breach of their constitution and bylaws"], *affd* 726 Fed Appx 71 [2d Cir 2018]).

Thus, even assuming the truth of Plaintiff's allegations – that any or all of the defendants violated the confidentiality and withdrawal provisions of the Rules and KCDCC Report, the Screening Committee and KCDCC – not Plaintiff – have the requisite standing to police their organizational members. This conclusion is also supported by the plain language of the Rules. While Plaintiff relies on Rule 13 as a basis for a private right of action for breach (*see*, Complaint ¶ 225), she overlooks the fact that Rule 13 vests remedial power in the Screening Committee Chair:

> Except for the Report to the Executive Committee of the Democratic Party, all proceedings before the panel and all investigative reports shall be treated as strictly confidential. Any inquiries concerning such proceedings or reports shall be referred to the Chair of this Committee. **In the event that a member violates this provision, the Chair must discharge that member from any further deliberations of the panel.**

(Complaint Exh. 9 [NYSCEF Doc. No. 10], Rule 13 [emphasis added]; *see also, id.*, Rule 17 ["In investigating the qualifications of a candidate, the Chair shall appoint a subcommittee of one or more members of the Committee . . . to conduct the necessary investigation, and submit a pre-screening report and recommendation to the Committee . . . . Any committee member who

distributes a copy of a pre-screening report without the consent of the Committee **shall be immediately suspended from the Committee.**"] [emphasis added].) The same observation pertains to any alleged breach based on the KCDCC Report, since that report coexists with, and is expressly designed to create and empower, the Screening Committee (*see*, NYSCEF Doc. No. 9 ¶ 1).

But even if Plaintiff did have standing to pursue claims for breach of the Rules and the KCDCC Report, her breach of contract claim must be dismissed because the type of injury – reputational harm (Complaint ¶¶ 122, 126) – is not recoverable as a consequence of breach of contract (*see, Rather v CBS Corp.*, 68 AD3d 49, 55 [1st Dept 2009] ["Rather's claim for damages for loss of reputation arising from the alleged breach of contract is not actionable"], *lv denied* 13 NY3d 715 [2010]; *In re JetBlue Airways Corp. Privacy Litig.*, 379 F Supp 2d 299, 326-27 [ED NY 2005] [noting "the well-settled principle that 'recovery in contract, unlike recovery in tort, allows only for economic losses flowing directly from the breach'"]; *Katz v Dime Sav. Bank, FSB*, 992 F Supp 250, 255 [WD NY 1997] ["under New York law, non-economic loss is not compensable in a contract action"]).

"Although certain cases recognize that damages due to a loss of reputation may be recovered under New York contract law, these cases carefully limit such claims by requiring the plaintiff to allege specific business opportunities lost as a result of the plaintiff's diminished reputation" (*I.R.V. Merchandising Corp. v Jay Ward Productions, Inc.*, 856 F Supp 168, 175 [SD NY 1994] [collecting cases]).

Here, Plaintiff has not alleged any lost business, or other pecuniary, consequences – whether to the extent of her judicial salary, or to the extent of the potential for earning capacity within any other sector of the broader legal industry, or any other industry.

Accordingly, the first cause of action, for breach of contract, must be dismissed.

Plaintiff Fails to State a Claim in Quasi-Contract/Promissory Estoppel

The doctrine of promissory estoppel "allows for the enforcement of a promise in the absence of bargained-for consideration" (*Merex A.G. v Fairchild Weston Sys., Inc.*, 29 F3d 821, 824 [2d Cir 1994], *cert denied* 513 US 1084 [1995]). One cannot achieve through quasi-contract theory that which is unattainable through contract theory because all the former does, when applicable, is to fill in the gap that contractually-binding consideration furnishes (*see, Paxi, LLC v Shiseido Americas Corp.*, 636 F Supp 2d 275, 287 [SD NY 2009] ["promissory estoppel is a legal fiction ***which is used as consideration*** for contractual consideration where a party relies, to its detriment, on the promises of another without having entered into an enforceable contract"] [emphasis added]). As already discussed, any alleged injury to Plaintiff's reputation is not recoverable in contract – and, by virtue of same, in quasi-contract – because non-economic harm is not redressable under contract theory (*see also, Karetsos v Cheung*, 670 F Supp 111, 115 [SD NY 1987] ["The plaintiff fails to produce any evidence showing the extent of the harm, if any, that has been caused to her reputation by the alleged breach. Even were proof to be offered, such damages are generally not recoverable for breach of contract in New York State"]).

Thus, as with Plaintiff's breach of contract claim, her promissory estoppel claim must be dismissed because the only injury she identifies – reputational harm – is not recoverable under a promissory estoppel theory where, as here, Plaintiff has failed to allege the loss of specific business or other pecuniary opportunities (*see, e.g., Abate v Fifth Third Bank*, No. 13-CV-9078, 2018 WL 1569260, at *7 [SD NY 2018] ["the alleged reputational damage asserted by Plaintiffs is typically not compensable under claims for breach of contract, fraud, or promissory estoppel"], *appeal withdrawn* 2019 WL 5549334 [2d Cir 2019]; *I.R.V. Merch. Corp., supra*, 856 F. Supp. at

175 ["Although I.R.V. has broadly claimed a loss of reputation, it has not enumerated any specific harms arising from the alleged loss of reputation. The court must therefore dismiss, as a matter of law, I.R.V.'s contract and promissory estoppel claims . . . ."]).

Accordingly, the second cause of action, for quasi-contract/promissory estoppel, must be dismissed.

Plaintiff Fails to State a Claim for Libel and Slander

"Expressions of opinion . . . are deemed privileged and, no matter how offensive, cannot be the subject of an action for defamation" (*Mann v Abel*, 10 NY3d 271, 276 [2008], *cert denied* 555 US 1170 [2009]; *accord Rinaldi v. Holt, Rinehart & Winston, Inc.*, 42 NY2d 369, 380 ["However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas"] [quotation marks omitted], *rearg denied* 42 NY2d 1015, *cert denied* 434 US 969 [1977]). "Whether a particular statement constitutes an opinion or an objective fact is a question of law" (*Mann, supra,* 10 NY3d at 276).

The foregoing policy most aptly applies here because the "[t]he public, clearly, has a vital interest in the performance and integrity of its judiciary" and in "the free flow of information to the people concerning the performance of their public official" (*Rinaldi, supra,* 42 NY2d at 380). As the Court of Appeals held in *Rinaldi, supra*, "[e]specially in a State in which Judges are elected to office, comments and opinions on judicial performance are a matter of public interest and concern . . . . The expression of opinion, even in the form of pejorative rhetoric, relating to fitness for judicial office or to performance while in judicial office, is safeguarded . . . . Plaintiff may not recover from defendants for simply expressing their opinion of . . . judicial performance, no matter now unreasonable, extreme or erroneous these opinions might be." (*Id.*, at 380-81.)[4]

[4] The Court of Appeals in *Rinaldi v Holt, Rinehart & Winston* (41 NY2d 369 [1977]) declared:

Plaintiff's cause of action for libel and slander fails to state a claim under New York law. Plaintiff alleges that Defendants defamed her by stating that she is unqualified and by criticizing her reputation, intellect, work ethic, and general judicial capabilities. These are exactly the sorts of statements the Court of Appeals found to be protected opinion (*see, Rinaldi, supra,* 42 NY2d at 381 ["To state that a Judge is incompetent is to express an opinion regarding the Judge's performance in office. . . . Plaintiff may not delimit that debate by seeking to punish, through libel damages, those who would contribute to the debate through the circulation of strong, even harsh, contrasting opinions."]; *accord Williams v Varig Brazilian Airlines*, 169 AD2d 434, 438 [1st Dept] ["Plainly, comments . . . concerning plaintiff's work and attitude are expressions of opinion which, as a matter of law, do not constitute defamatory statements"], *lv denied* 78 NY2d 854 [1991]).

The foregoing holds true regardless of whether a plaintiff characterizes statements made as libel *per se*, or not (*see, Torati v Hodak*, 147 AD3d 502, 503 [1st Dept 2017] [dismissing claim for libel *per se* on the ground that "the challenged statements are not actionable, because they are expressions of opinion"]; *Jessel Rothman, P.C. v Sternberg*, 207 AD2d 438, 439-40 [2d Dept 1994] [dismissing claim for libel *per se* on the ground that the challenged statements "consisted of nonactionable statements of personal opinion"]).

Accordingly, the third and final cause of action, for libel and slander, must be dismissed.

The sum total of all the foregoing analyses is this: while one may be inclined to sympathize with the plaintiff, or with those who may be similarly situated to her – the state of the

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> Judges are supposed to be men of fortitude, able to thrive in a hardy climate. Judicial office is not a place for those who are oversensitive to comments made in the public press. . . . An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case. Judicial office demands an even higher price. . . .

(*Id.*, at 381 [citations and quotation marks omitted], *rearg denied* 42 NY2d 1015, *cert denied* 434 US 969 [1977].)

law governing causes of action sounding in breach of contract, quasi-contract/promissory estoppel, and libel and slander simply do not allow for the causes of action asserted in the Complaint to be cognizable, as pled. Accordingly, the Complaint is dismissed.

Plaintiff's Cross-Motion for Disqualification[5]

Plaintiff has cross-moved for disqualification of counsel for defendants Seddio, Bichotte, and KCDCC – the law firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrera, Wolf & Carone, LLP. It is based on the assertion that two members of that firm – Frank Carone, Esq., and Ethan Gerber, Esq. – had certain direct interactions with Justice Jacobson which, by their nature, render them unfit to serve as defense counsel in this case. Specifically, the Complaint alleges that her Honor, prior to the events underlying this case, had rendered decisions in some cases, that were unfavorable to clients of Mr. Carone, including Mr. Seddio (*see*, Complaint ¶¶ 190-222). As for Mr. Gerber, the cross-motion identifies him as a member of the Screening Committee and, therefore, unfit to serve as defense counsel under the "Lawyer as Witness" rule – Rule 3.7 of the Professional Conduct Rules ("RPC") (*see*, NYSCEF Doc. No. 50 [Cross-Moving Mem.] at 28-29).

Regarding Mr. Carone: the court perceives of no legal or ethical basis to disqualify him as defense counsel merely because of some prior history involving litigation before Justice Jacobson in which some cases, or aspects of some cases, were determined by her Honor contrary to Mr. Carone's preferences or his clients' preferences or positions in such litigation. Moreover, that certainly does not implicate the Lawyer as Witness Rule, which pertains to a circumstance where "the lawyer is likely to be a witness on a significant issue of fact" (RPC 3.7 [a]). The court does not perceive any such likelihood here, as regards Mr. Carone.

[5] Although the Complaint is dismissed, a disposition of the cross-motion is still necessary as relates to any possible post-dismissal incidents resulting from this litigation and the within decision.

Regarding Mr. Gerber: while not named as a defendant in this lawsuit, there seems to be no dispute that he was a member of the Screening Committee during the period relevant to this action. His name is mentioned once in the 78-page, 285-paragraph, verified complaint in this action (*see*, Complaint ¶ 14), and even then, only benignly, as a then-member of the Screening Committee. Indeed, Plaintiff's counsel goes no further than characterizing Mr. Gerber as having had "temporary-permissible-access" to any information under consideration by the Screening Committee (NYSCEF Doc. No. 50 at 29). In view of the limited or slight nature of Mr. Gerber's involvement in any underlying events, the court is not persuaded that enough has been presented to implicate Mr. Gerber as a lawyer "likely to be a witness on a significant issue of fact" (RPC, *supra*). That said, however; and given said limited or slight nature of involvement, this court can fashion a remedy short of disqualification of the entire law firm, under Rule 3.7 (b), which provides: "A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9." Those referenced rules would stand in the way of the representation allowed in Rule 3.7 (b) only where it could give rise to a conflict of interest adverse to current clients or former clients of the firm. No such conflict is at all apparent here.

Given the fact that other very able attorneys at the Abrams Fensterman firm have been dedicated to the defense of Mr. Seddio, Ms. Bichotte, and KCDCC in this lawsuit, and given the reasonable presumption that Mr. Gerber has had no participation in that representation, this court perceives of no sufficient ground to disqualify the firm, as long as Mr. Gerber continues to be excluded by the firm from any involvement in the representation. Thus, per PRC 3.7 (b), the

cross-motion for disqualification of the firm of Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrera, Wolf & Carone, LLP, *sans* Ethan Gerber, Esq., is denied.[6]

CONCLUSION

Accordingly, it is

ORDERED that plaintiff's cross-motion for disqualification of certain defense counsel herein is denied, except that Ethan Gerber, Esq., shall not have any involvement as counsel with regard to this action now or in the future; and it is further

ORDERED that defendants' motions to dismiss the verified complaint in this action are granted and, accordingly, the verified complaint in this action is dismissed.

This will constitute the decision and order of the court.

ENTER:

8/15/2022
DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

[6] This disposition is, naturally, made even more appropriate in light of the limited role of defense counsel at this post-dismissal stage.