STATE OF NEW YORK
SUPREME COURT : COUNTY OF OSWEGO

JOSEPH PARKER, and all those similarly Situated within Oswego County,

Petitioners,

v.

DON HILTON, in his capacity as Sheriff for Oswego County,

Defendant.

DECISION & ORDER
Index No.: EFC-2023-1580

HON. GREGORY R. GILBERT, JSC

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BACKGROUND

This matter involves a petition filed November 8, 2023 for declaratory judgment to invalidate the practice of assigning town justices and magistrates to hear arraignments of persons with two previous felony convictions and find that the same constitutes a violation of the accused's due process rights as the lower court judge is without jurisdiction to decide bail. The County has filed a pre-answer motion to dismiss and for additional time to answer in the event that the motion is denied. The motion is opposed and was fully submitted with decision being reserved.

DISCUSSION

Aside from objections as to the form of this proceeding and the failure to join necessary parties, the County seeks dismissal based on failure to state a cause of action for which relief may be granted. A motion to dismiss for failure to state a cause of action is restricted to the pleading itself rather than the determination of the facts of a given case. Stukuls v. State, 42 NY2d 272 (1977); Mansour v. Abrams, 120 AD2d 933 (4th Dept 1986). The Court is to look to the four corners of the petition. 511 West 232nd Owners Corp. v. Jennifer Realty Co., 98 NY2d 144 (2002); Cole v. O'Tooles of Utica, Inc., 222 AD2d 88 (4th Dept 1996); Nestor v. Putney Twombly Hall & Hirson, LLP, 153 AD3d 840 (2nd Dept 2017).

The factual allegations of the pleading is to be taken as true together with all favorable inferences that may be drawn or reasonably implied therefrom. Connaughton v. Chipotle Mexican Grill, Inc., 29 NY3d 137 (2017); Choromanskis v. Chestnut Homeowners Association, Inc., 147 AD3d 1477 (4th Dept 2017); Palladino v. CNY Centro, Inc., 70 AD3d 1450 (4th Dept 2010). The

complaint is to be given a liberal construction as prescribed by CPLR §3026. See ABN AMRO Bank, NV v. MBIA Inc., 17 NY3d 208 (2011).

The Court is required to accept every factual allegation of the pleading as true without regard to the ability of petitioner to ultimately establish the truth of the facts that have been asserted, particularly on a motion such as this presented prior to any disclosure. 219 Broadway Corp. v. Alexander's, Inc., 46 NY2d 506 (1979); Davis v. Boeheim, 24 NY3d 262 (2014). If the motion is to be granted, it must be because the petition states no cause of action or documentary or other evidence that is submitted conclusively shows there to be no cause of action as attempted. Smith v. Clark, 185 Misc2d 1 (Sup Ct, Monroe County 2000) affirmed 286 AD2d 880 (4th Dept 2001) motion for leave to appeal denied 97 NY2d 608.

In short, there must be sufficient factual allegations in the petition for the Court to conclude that there is basis for a cause of action that is stated and not just conclusory statements lacking factual support. Sager v. City of Buffalo, 151 AD3d 1908 (4th Dept 2017); Miller v. Allstate Indemnity Company, 132 AD3d 1306 (4th Dept 2015); Dominski v. Frank Williams & Son, LLC, 46 AD3d 1443 (4th Dept 2007); Olszewski v. Waters of Orchard Park, 303 AD2d 995 (4th Dept 2003).

In the context of a declaratory judgment action, CPLR 3211 (a) (7) allows a court to grant judgment on the pleadings even in the absence of a motion for summary judgment. Boryszewski v Brydges, 37 NY2d 361 (1975). In other words, assuming that the case is properly one for declaratory relief, the court may properly proceed, on the motion to dismiss to consider petitioner's claims on the merits and to thereupon immediately "declare the rights of the parties, whatever they may be". St. Lawrence University v. Trustees of Theological School of St. Lawrence University, 20 NY2d 317 (1967). Given the foregoing, a motion to dismiss a declaratory claim under CPLR 3211(a)(7) must be analyzed in three steps. Matter of Kerri W.S. v. Zucker, 202 AD3d 143 (4th Dept 2021) leave to appeal dismissed 38 NY3d 1028; Plaza Drive Group of CNY, LLC v Town of Sennett, 115 AD3d 1165 (4th Dept 2014).

The first step is to determine whether the jurisdiction of the court is properly invoked to make a declaratory judgment, while avoiding the question of whether a party is entitled to a specific declaration. County of Monroe v Clough Harbour & Assocates, LLP, 154 AD3d 1281 (4th Dept 2017). If the first question is answered in the negative such as where the pleading is so imprecise and badly stated that it fails to state an identifiable cause of action, then the pleading would be dismissed with no declaration of rights. McFadden v Schneiderman, 137 AD3d 1618 (4th Dept 2016). Assuming that the pleading is sufficient, the inquiry moves to step two.

The second step addresses the question of whether factual issues preclude a summary determination of the matter being presented. Hoffman v. City of Syracuse, 2 AD2d 653 (4th Dept 1956) modified on other grounds 2 NY2d 484 (1957). If fact issues are identified, then the motion to dismiss would be denied and the matter would proceed in ordinary fashion with no immediate . declaration of rights between the parties. Where there are no fact issues identified, as in Hoffman, and all that remains are questions of law or statutory interpretation, the inquiry moves to step three.

At the third step, and upon denial of the motion to dismiss, the court should immediately resolve the case before it by treating the dismissal motion as one calling for a declaration rights between the parties or motion for judgment on the pleadings. Chavez v Occidental Chemical Corp., 35 NY3d 492 (2020); New Yorkers for Constitutional Freedoms v. New York State Senate, 98 AD3d 285 (4th Dept 2012) leave to appeal denied 19 NY3d 81. The Court has exceedingly broad discretion at this third step to declare the rights and legal relations of the parties and to grant such appropriate relief as may be deemed necessary even where that relief has not been expressly sought by a party. Cahill v Regan, 5 NY2d 292 (1959).

The County denies that there is a justiciable controversy in the first instance and that petitioner, in effect, is seeking an impermissible advisory opinion. Premier Restorations of New York Corp. v. New York State Department of Motor Vehicles, 127 AD3d 1049 (2nd Dept 2015). Petitioner alleges that Parker, as a two-time convicted felon arrested on a third felony (and various misdemeanor charges), was arraigned before a Fulton City Court Judge who had no power to consider bail pursuant to CPL §530.20(2)(a) and that this violated Parker's right to due process under the State and Federal Constitutions.

At issue is the "Double Predicate Rule". CPL §530.20 specifically provides for an initial arraignment of any felony suspect by a local criminal court while detailing arraignment dispositions for specific charges. In the case of a Class A Felony or a defendant appearing for arraignment for a felony charge with two previous felony convictions, a city court, town court or village court is statutorily prevented from ordering a release on recognizance or bail. This was the specific holding in response to Parker's Habeas Corpus Petition by County Court Judge Karen M. Brandt Brown. The Decision by Judge Brandt Brown also noted that Parker had already requested and been granted a bail review hearing which had been set in front of County Court Judge Armen J. Nazarian.

The essential argument by the County is that given that Parker's bail status has already been determined pursuant to statute, there is no basis stated for declaratory relief. The County goes on to argue that all that is left of the Petition is an attack on CPL §530.20(2)(a) on due process constitutional grounds that fails to articulate how Parker's due process rights were violated. The Court agrees with this sentiment and a constitutional attack on CPL §530.20 is not warranted. Further, the claim that the "practice" of presenting Parker and similarly situated defendants to a local criminal court for arraignment does not state a valid cause of action.

However, the Court is of the view that the Petition, given a liberal construction as required, states a viable claim as to the interpretation and application of CPL §530.20 as it was applied to Parker and as it may come to be applied to subsequent felony charged defendants with two or more previous felony convictions who are presented to local criminal courts for arraignment. The first step in the analysis is successfully met by Parker despite the badly drawn petition assuming that Parker's detention was not warranted by application of the Double Predicate Rule. The heart of the dispute is not any action taken by the Sheriff but rather whether the local criminal court must remand a given defendant such as Parker to the custody of the Sheriff under the Double Predicate

Rule. Such a remand renders the Sheriff a party adverse to whatever rights Parker possessed under the Double Predicate Rule and related bail statutes although this is through no fault of the Sheriff.

The second step of analysis is straight forward. There is no factual dispute. When he was presented for arraignment, the Double Predicate Rule was applied to Parker and he was remanded to the custody of the Sheriff. Parker was subsequently granted a released from custody following his bail hearing. All that is left for this Court to determine is the proper application and interpretation of CPL §530.20(2)(a).

The motion by the County will be denied and the Court will, as required, declare the rights between these parties. Contrary to the position advanced by the County, the declaratory judgment determination in People ex rel Bradley v. Baxter, 79 Misc3d 988 (Supreme Court Monroe County 2023) is indistinguishable from the case before this Court. The Court concurs with the analysis of the issue detailed by Justice Elena F. Cariola.

It is noted that the underlying facts of the Baxter case are nearly identical with those presented in this matter and the procedural differences mandate no differing result. The Baxter matter started with application for a Writ of Habeas Corpus premised on the same Double Predicate Rule at issue here. The Appellate Division converted the matter to a declaratory judgment action and transferred the case to the Supreme Court for determination resulting in the decision issued by Judge Cariola. CPL §530.20(2)(a) and the Double Predicate Rule must be read in conjunction with CPL §510.10 and the "Qualifying Offense Rule". Accordingly, it is

ORDERED, that the motion to dismiss by the respondent, Don Hilton, in his capacity as Sheriff for the County of Oswego, is **DENIED** in part; and it is

ORDERED, that the Petition under CPLR §3001 by Joseph Parker and those similarly situated for a Declaratory Judgment is **GRANTED** in part; and it is

ORDERED and DECLARED, that the provisions of CPL §530.20(2)(a) known as the Double Predicate Rule, shall apply only to qualifying offenses enumerated in CPL §510.10(4) known as the Qualifying Offense Rule; and it is

ORDERED, that the petition is otherwise **DISMISSED** in all respects and all requests for relief not otherwise granted hereby are **DENIED**.

IT IS SO ORDERED.

ENTER

Dated: January 22, 2024
Oswego, New York

HON. GREGORY R. GILBERT
SUPREME COURT JUSTICE