

Freedman v Rakosi

2024 NY Slip Op 33525(U)

September 24, 2024

Supreme Court, New York County

Docket Number: Index No. 655608/2023

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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LINDA M. FREEDMAN, STANLEY SPERBER,

Plaintiff,

- v -

MICHAEL F. RAKOSI, STANLEY ROSENBLOOM,
WEBER-FARHAT REALTY MANAGEMENT INC., WEBER
REALTY MANAGEMENT LLC

Defendant.

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INDEX NO. 655608/2023

MOTION DATE 08/02/2024

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311

were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, the motion (Mtn. Seq. No. 007) is DENIED.

A judge must always avoid even the appearance of impropriety and must always act to promote public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2; Advisory Comm on Jud Ethics Op 22-172 [December 15, 2022]). A judge must not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment (*see* 22 NYCRR 100.2[B]). In addition, a judge is disqualified in situations where the judge’s impartiality “might reasonably be questioned” (22 NYCRR 100.3[E][1]), including where required by rule or law (*see* Judiciary Law § 14).

“Absent a legal disqualification under Judiciary Law § 14, a Trial Judge is the sole arbiter of recusal. This discretionary decision is within the personal conscience of the court” (*People v.*

Moreno, 70 N.Y.2d 403, 405 [1987]). Judiciary Law § 14 requires recusal only as to “an action,

claim, matter, motion or proceeding to which [the Judge] is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree” (Judiciary Law § 14).

At bottom, the motion seeking recusal is predicated on the assertion that because it was alleged that Frank Seddio in a case brought against him (*John Geraci, John Grifonetti and Douglas Sanzone v. Frank R. Seddio, Esq. and Seddio & Associates, P.C.*, Index No. 152922/2024) was hired in a different case in which I was the presiding judge based on an alleged promise by Mr. Seddio that he could deliver a result based on some purported influence over me but failed to deliver on any such promise (because he did not have the influence that he allegedly promised) and that I in fact acted properly (because I denied the relief Mr. Seddio sought which the complaint indicates that I was right to deny), the retention of Mr. Seddio in this case creates the appearance of impropriety warranting my recusal. The argument is as convoluted as it is without merit.

Litigants and their lawyers cannot fabricate circumstances warranting a court’s recusal. It is the court, the court's conduct and any purported bias the court has which is at issue in a recusal motion. As the opposition papers make clear, I am not related to Mr. Seddio. According to the opposition papers, the *Geraci* case was voluntarily dismissed. Most importantly, the allegations in the *Gerraci* case undermine the argument that recusal is appropriate based on Mr. Seddio’s representation of a party in this case because the *Geraci* plaintiffs allege that my conduct was beyond reproach.

In addition, the *Geraci* case itself was discussed with the parties when I was asked by the parties to try to assist the parties in settling this case. When presented with the *Geraci* case and an article from the newspaper which make clear that I was not subject to any purported improper influence and in fact decided the case appropriately, all parties in this matter indicated on the record that they were comfortable with the Court proceeding with settlement discussions, including having the Court shuttle between the parties to have *ex parte* communications to facilitate the settlement (NYSCEF Doc. No. 299).¹

At that time, I indicated that I would not subsequently recuse based on Mr. Seddio's involvement in the case but left open (as I would in any case involving settlement discussions in which I am asked to participate and shuttle between the parties) the possibility that I might recuse if I learned anything that made me feel that it would impede, impair or otherwise interfere with my ability to impartially decide this case on the merits (22 NYCRR 100.2):

THE COURT: Okay. Good afternoon to all of you. So let me start by saying that I want to thank you for indicating your desire to have me try to negotiate a settlement in your case. Your case is very important to both you and to me. Negotiating a settlement will undoubtedly involve settling² between the parties and their lawyers. Rest assured that anything that you would tell me would be held in the strictest of confidence and that I would only communicate information to the other side that you specifically authorize me to communicate. You can also expect amnesia from me should the settlement not occur. That said, if I feel that by virtue of my involvement with the settlement conversations that it would be inappropriate for me to continue as the Judge in the case, I may recuse in accordance with my ethical obligations. Before we proceed, I want to make sure that you're comfortable during the course of the settlement discussions with me, talking with me with the other side without you present, and that you understand and have discussed this, and the possibility that I might ultimately have to recuse myself from further proceeding should settlement not be achieved. I also in this court bring to your attention a recently-filed case against Frank Seddio and his firm in an article written in The New

¹ For the avoidance of doubt, inasmuch as the *Geraci* case or the facts alleged in the *Geraci* case do not present a basis for recusal, the argument now advanced that the consent to my involvement in *ex parte* settlement conversations was for that alone fails.

² The Court notes there is a typographical error in the transcript. The word is supposed to be "shuttling."

York Law Journal. The case is captioned John Geraci, John Grifonetti and Douglas Sanzone versus Frank Seddio and Seddio & Associates. The article in the Law Journal appeared Friday, March 29th. Have you had a chance to review the complaint and the article? And would you like to proceed with me trying to facilitate a settlement at this time?

MR. BREED: Your Honor, speaking for Michael Rakosi, we have reviewed the article, we have reviewed the complaint. And we are completely comfortable with proceeding with settlement negotiation at this time.

THE COURT: Thank you.

MR. SCHRECK: And I would enter the same sentiments for my client, Stanley Rosenbloom and Susan Rosenbloom. I have reviewed complained. We are comfortable proceeding.

THE COURT: Okay.

MR. MURPHY: Same answer for the Weber defendants, your Honor.

MR. SEDDIO: And may I say, your Honor, the complaint is totally outrageous. You in that case ruled on behalf of the other party in that case. And I have not even been served with this matter as yet, to be quite frank, at least to the Law Journal, without ever serving me in any of the papers in this. So other than reading it in the Law Journal, I haven't even seen the actual complaint yet.

MS. KAUFMAN: And on behalf of plaintiffs, we are very comfortable proceeding with you, your Honor, with that understanding.

THE COURT: Have you had the opportunity to review the complaint? And you've discussed it with your client?

MS. KAUFMAN: We have.

THE COURT: About the article?

MS. KAUFMAN: Yes.

THE COURT: And you're comfortable –

MS. KAUFMAN: We are.

THE COURT: -- proceeding in this case?

MS. KAUFMAN: We are.

THE COURT: And you too, Mr. Seddio? You're comfortable proceeding in this case?

MR. SEDDIO: Absolutely, your Honor. I don't find you to be anything but absolutely fair and handle matters in the most professional matter. And if anything, probably have been one of the finest jurists on the bench here in New York and in Brooklyn.

THE COURT: Okay. Well, if everyone's comfortable with me proceeding, great. I just needed to make that disclosure and I wanted to put all of that on the record, so I appreciate you letting me do that. If there's anything that any of you want to put on the record at this time, let's do that. Otherwise, I think, as with most settlement conversations, we'll do that off the record. And perhaps with your permission, you'll let me talk with -- and I assume when you say you're comfortable with me proceeding, what you meant by that, you should tell me otherwise now, is that I disclosed to you that the process of settlement will necessarily involve me shuttling between the parties that will necessarily have me talking to both sides without the other side present. I'm going to take you saying that you're comfortable with me proceeding as you understand that that will be part of the process; you've discussed those types of ex-parte communications with your clients, and you're comfortable with me having those. And if not, speak now or forever hold your peace. As I mentioned to you, if I feel like, in any case, in the context of settlement, this being no different than if I were to get too much in the weeds and that recusal is appropriate, that may be a possibility at some point, that having nothing to do with the issues that I've specifically disclosed as it relates to Mr. Seddio, that complaint and that article.

MR. BREED: We understand, your Honor. And we agree with that framework. And we understand the dynamics of the settlement conference.

THE COURT: Okay.

MR. SCHRECK: Same for my clients, your Honor.

MR. MURPHY: Same for the Weber defendants.

THE COURT: And true for plaintiffs and Mr. Seddio as well?

MS. KAUFMAN: Absolutely.

MR. SEDDIO: Yes.

THE COURT: Okay. Thank you. All right. Thank you.

(NYSCEF Doc. No. 299 at 4:1-8:7).

I learned no such facts and have no such impediment to deciding this case fairly and impartially on the merits.

As discussed at oral argument (tr. 9.24.24), the complaint requires certain corrections. “Susan Rosenbloom as attorney-in-fact for Stanley Rosenblum” is named as a defendant in this action. The allegations against Stanley Rosenbloom relate solely to his action/inaction or capacity as a partner. As the Court has explained, he cannot exercise his fiduciary duties by virtue of a power of attorney (NYSCEF Doc. No. 290 ¶ 2, citing *In re Alan G.W.*, 51 Misc 3d 998 [Sup Ct 2016]). Thus, although Ms. Rosenblum could be potentially sued for her own conduct (including potentially any aiding and abetting breach of fiduciary duty), she can not be sued as “attorney-in-fact” for Stanley Rosenblum’s proper or improper actions as a partner and the action against her “as attorney-in-fact” for his partnership conduct must be dismissed. But it may be that Stanley Rosenblum is not a partner at all. To wit, the complaint follows form to the partnership agreements indicating that certain individuals hold partnership interests when the parties have now explained that in fact at the time the partnership agreements were executed, many of the interests were transferred to or otherwise held by certain trusts and continue to be held by those trusts. This may matter as it relates to the allegations against Mr. Rosenblum and how the parties understood that succession would be addressed if there was an appointment of a successor trustee to a trust attributable to Mr. Rosenblum’s interest (if there is one). It also may be that the trust and the trustee on behalf of the trust is the proper defendant and not Mr. Rosenblum himself if he is not in fact a partner. It also may be that if Linda Freeman is not a partner herself, that she herself is not a proper plaintiff and thus may not have standing to sue as an individual. All of this together with any other deficiencies need to be addressed in an amended complaint.

As such, the plaintiffs shall serve an amended complaint by October 18, 2024. If the defendants move to dismiss, they shall do so by November 27, 2024, the plaintiffs shall file opposition no later than December 13, 2024 and reply shall be filed no later than December 27, 2024. If the defendants do not file a new motion to dismiss, the pending motion shall be applied as against the amended complaint. The parties shall email Part 53 when the motion is fully submitted.

Accordingly, it is hereby

ORDERED that the branch of the motion seeking the Court's recusal is denied; and it is further

ORDERED that the branch of the motion seeking the dismissal of the case as against Susan Rosenbloom "as attorney-in-fact" for Stanley Rosenblum is granted; and it is further

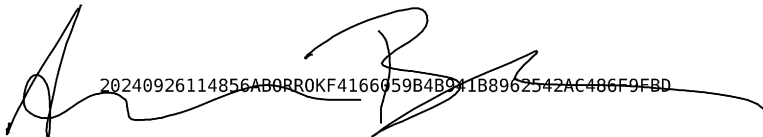
ORDERED that the plaintiffs in this action will serve an amended complaint by October 18, 2024; and it is further

ORDERED that, if the defendants move to dismiss, they shall do so by November 27, 2024; and it is further

ORDERED that opposition will due by December 13, 2024; and it is further

ORDERED that the defendants' reply will be due by December 27, 2024.

SC: January 14, 2025 @ 11:30 am


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9/24/2024

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE