

**Matter of Uzung Yoon v Office of the Nassau County
Attorney**

2024 NY Slip Op 35708(U)

March 18, 2024

Supreme Court, Nassau County

Docket Number: Index No. 613142/2023

Judge: Eileen C. Daly-Sapraicone

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**SUPREME COURT – STATE OF NEW YORK
COUNTY OF NASSAU**

**PRESENT: HON. EILEEN C. DALY-SAPRAICONE,
JUSTICE OF THE SUPREME COURT**

-----X
**In the Matter of the Application of
UZUNG YOON,**

Petitioner,

**TRIAL/IAS, PART 21
Index No.: 613142/2023**

-against-

**Motion Seq. No.: 001, 002, 003
Motions Submitted:**

**001 & 002 12/21/23
003 02/14/24**

**OFFICE OF THE NASSAU COUNTY ATTORNEY
Thomas Adams**

**DECISION AND ORDER
XXX**

**NEW YORK ATTORNEY GENERAL
Letitia James**

**NEW YORK OFFICE OF COURT ADMINISTRATION
Christopher Gibson
Marie Rosemy**

**NASSAU COUNTY SUPREME COURT
Hon. Vito DeStefano
Paul Lamanna
Margaret Paczkowski**

AND

**John Doe or Jane Doe 1-12 whose true names are unknown,
Respondents.**

-----X
The following papers were read on this motion

NYSCEF
DOCUMENT NUMBERS

Notice of Petition, Petition, Exhibits, Affidavit of Service 1 – 7; 9
Notice of Motion, Affirmation, Affidavit, Memorandum of Law,
Affirmation of Service 10 – 15
Amended Petition, Amended Notice of Petition, Exhibits 17 – 24; 26 – 27
Affidavit in Reply, Exhibits 29 – 38; 40

Notice of Motion, Memorandum of Law Affirmation, Affidavit, Exhibits	39, 41 – 45
Affidavit, Exhibits	47 – 56

Upon the foregoing e-filed documents, the within proceeding commenced by the Petitioner, UZUNG YOON (hereinafter the Petitioner), for a judgment granting immediate, unfettered and continuing access to “all legal proceedings, records, documents and files” referable to litigation in which he is a party and irrespective of whether or not he is represented by counsel, together with an award of costs and fees (Motion Sequence #001), the cross motion interposed by Respondent, the HONORABLE VITO DESTEFANO (hereinafter, Honorable Vito DeStefano), for an order dismissing the petition pursuant to CPLR §§ 307 (2), 308, 7804 (c), 3211 (a) (7) and (8) (Sequence #002), and the motion interposed by Respondents, HONORABLE VITO DESTEFANO, LETITIA JAMES, CHRISTOPHER GIBSON, MARIE ROSEMY, PAUL LAMANNA, AND THE NEW YORK OFFICE OF COURT ADMINISTRATION (hereinafter collectively, the State Respondents), for an order pursuant to CPLR §§ 304 (a), 307 (2), 308, 7803, 7804 (c) and 3211 (a) (7) and (8) dismissing the Amended Petition (Sequence #003), are consolidated for disposition and determined as set forth below.

The Petitioner is a litigant in a pending matrimonial action who is represented by counsel (NYSCEF Doc No. 18 at ¶¶16,17,19). On May 20, 2022, the Petitioner, in an attempt to obtain access to all e-filed documents referable to the matrimonial litigation (hereinafter, the Matrimonial File), submitted an email to the New York State Electronic Filing system regarding which respondent, Christopher Gibson, is the Director of the E-Filing Division (*id.* at ¶22;NYSCEF Doc Nos. 19,43). Said request was denied by Court Clerk Training Specialist and individual respondent, Marie Rosemy, who stated that access could not be granted as the Petitioner “already . . . [had] an attorney who . . . [had] recorded consent to e-filing on . . . [his] behalf” (NYSCEF Doc No. 19).

On April 22, 2023, the Petitioner sent an e-mail to Deputy County Clerk and Respondent, MARGARET PACZKOWSKI (hereinafter, Paczkowski), again seeking access to the Matrimonial File (NYSCEF Doc No. 20). On May 16, 2023, access was denied at which time Paczkowski apprised the Petitioner that as he had “an attorney signed on as . . . [his] representative, . . . [he] should not have access to e-filing” and “[a]ccess should be given to filers who actively consent to represent themselves” (*id.*). On May 17th, May 24th and June 2nd, 2023, the Petitioner sent three additional emails demanding clarification as to the precise legal basis upon which access to the Matrimonial File was precluded regarding which no further responses were provided by Paczkowski (*id.*). On June 30, 2023, the Petitioner filed an employee complaint with Respondent, Honorable Vito DeStefano, alleging that “Margaret Paczkowski failed to provide prompt responses and diligently discharge administrative responsibilities that are provided to the public”(NYSCEF Doc No. 22). This matter was referred to the District Executive and named Respondent, Paul Lamanna, Esq., who immediately responded to Petitioner stating “[o]nly a person with credentials issued by the NYSCEF Resource Center can view documents on the e-filing system in a matrimonial action and the NYSCEF Resource Center only issues credentials to parties which are unrepresented” (NYSCEF Doc No. 23).

On August 15, 2023, the Petitioner commenced the within proceeding by filing a Petition asserting that “there is no law or written policy that prevents a litigant’s access to the e-filing system when represented by an attorney” and, as such, Honorable Vito DeStefano’s actions were arbitrary and capricious and undertaken in direct contravention to the Fourteenth Amendment to the United States Constitution, as well as the Code of Judicial Conduct (NYSCEF Doc No. 1 at ¶¶62-95). By notice of motion dated, October 11, 2023 (Sequence #002), Honorable Vito DeStefano cross moved for dismissal of the Petition (NYSCEF Doc No. 10). Subsequently, on October 28, 2023, the Petitioner served an Amended Petition asserting claims substantively identical to those set forth in the original petition but added the State Respondents as named parties, which now collectively move for dismissal of the amended pleading (NYSCEF Doc No. 18 at ¶¶72-105; NYSCEF Doc No. 41).

As an initial matter, as the Petition regarding which Honorable Vito DeStefano cross moved to dismiss has been superseded by the Amended Petition (*R & G Brenner Income Tax Consultants v Gilmartin*, 166 AD3d 685, 688 [2d Dept 2018]), said application is denied as moot. As to the motion specifically directed toward the Amended Petition, the State Respondents maintain that same must be dismissed due to this Court’s lack of jurisdiction and for failure to state a cause of action (NYSCEF Doc No. at 41; NYSCEF Doc No. 42 at pp. 4-11).

CPLR § 307 (2) provides, in pertinent part, that “[p]ersonal service on a state officer sued solely in an official capacity or state agency, which shall be required to obtain personal jurisdiction over such an officer or agency, shall be made by (1) delivering the summons to such officer or to the chief executive officer of such agency or to a person designated by such chief executive officer to receive service, or (2) by mailing the summons by certified mail, return receipt requested, to such officer or to the chief executive officer of such agency, and by personal service upon the state in the manner provided by subdivision one of this section.” Relatedly, subdivision one of CPLR § 307 states that “[p]ersonal service upon the state shall be made by delivering the summons to an assistant attorney-general at an office of the attorney-general or to the attorney-general within the state.”

Having reviewed the record, the Court finds the Petitioner has failed to demonstrate that service was properly effectuated in accordance with the statute. Initially, the Petitioner has failed to establish that service of the amended pleading was personally effectuated upon each of the respondents or upon an individual specifically designated as required by CPLR § 307 (2) (1). Rather, with respect to Christopher Gibson and Marie Rosemy, the Affidavit of Service submitted by the Petitioner indicates that said parties were served on October 27, 2023 by “substituted service” when a copy of the Amended Petition was given to an unspecified individual at 25 Beaver Street, New York, New York (NYSCEF Doc No. 38). As to Honorable Vito DeStefano and Paul Lamanna, Esq. the Affidavit of Service states that service was effectuated on October 27, 2023 by “substituted service” when a copy of the Amended Pleading was delivered to an unnamed individual at 100 Supreme Court Drive, Mineola, New York (*id.*). Moreover, according to the Affidavit of Service, the same unspecified individual was somehow served with the amended pleading at both Beaver Street and Supreme Court Drive (*id.*).

In addition to the foregoing, on October 30, 2023, Christopher Gibson, Marie Rosemy, Honorable Vito DeStefano and Paul Lamanna, Esq. were further served by certified mail (*id.*). When such method is employed, the statute requires the pleadings also be personally served upon “an assistant attorney-general at an office of the attorney-general or to the attorney-general within the state” (CPLR § 307 [1],[2]). With respect thereto, while the Petitioner submits an Affidavit indicating service was accomplished upon the Attorney General on October 30, 2023, said affidavit recites an index number of 913142/2023 purchased on October 27, 2023 which neither corresponds to the index number referable to the within proceeding nor with its date of procurement (NYSCEF Doc No. 38; NYSCEF Doc Nos. 1,2). However, even in the absence of the discussed service infirmities, the Amended Petition fails to state a claim and dismissal thereof is warranted (CPLR § 3211 [a][7]).

In the matter *sub judice*, the Petitioner’s claims coalesce in totality around the State Respondents wrongfully denying ongoing and unimpeded access to the Matrimonial File which denial was allegedly issued without any supporting legal authority (NYSCEF Doc No. 18 at ¶¶1, 72,82,93). As relevant here, 22 NYCRR § 202.5-b provides that “an authorized e-filing user” is either “[a]n attorney admitted to practice in the State of New York, or a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action” or “an unrepresented litigant”, the latter of which “shall mean a party to an action who is not represented by counsel” (22 NYCRR §202.5-b [a][2][ix],[c][2][I]). Here, it is undisputed that the Petitioner is represented by counsel in the matrimonial action and, as such, the refusal to grant access to the corresponding Matrimonial File was solidly grounded upon the controlling regulations (*id.*).

Based upon the foregoing, it is hereby

ORDERED that the within proceeding seeking judgment granting the Petitioner immediate, unfettered and continuing access to the Matrimonial File, together with costs and fees, is **DENIED** (Motion Sequence #001); and it is further

ORDERED that the cross motion interposed by respondent, the Honorable Vito DeStefano, for an order dismissing the petition pursuant to CPLR §§ 307 (2), 308, 7804 (c), 3211 (a) (7) and (8) is **DENIED** as moot (Motion Sequence #002); and it is further

ORDERED that the motion interposed by State Respondents, the Honorable Vito DeStefano, Letitia James, Christopher Gibson, Marie Rosemy, Paul Lamanna, and the New York Office of Court Administration, for an order dismissing the Amended Petition is **GRANTED** pursuant to CPLR §§ 307 (2), 3211 (a) (7) and (8) and the Amended Petition is dismissed (Motion Sequence #003); and it is further

ORDERED that any relief not specifically addressed herein is **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: March 18, 2024
Mineola, New York

ENTER:


HON. EILEEN C. DALY-SAPRAICONE, J. S. C.

ENTERED

Mar 21 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE