

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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ELIZABETH COMBIER,

INDEX No: 115354/99

Plaintiff-Appellant,

REPLY AFFIRMATION TO
PRECLUDE DEFENDANTS'
ANSWER TO PLAINTIFF-
APPELLANT'S MOTION TO
VACATE ORDER TO CONSIDER
NEW EVIDENCE

-against-

FRED ANDERSON, CHARLES AMSTEIN,
J. RICHARD FREY, THE SESSION, THE
TRUSTEES, THE DEACONS OF MADISON
AVENUE PRESBYTERIAN CHURCH individually
and collectively in office on or about March 31, 1998

Defendants-Respondents
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I, Elizabeth Combier, the Plaintiff--Appellant Pro Se before the Courts of the State of
New York, affirms the following under the penalties of perjury:

[1] On March 10, 2005 this court erroneously and in a biased manner denied plaintiff-
appellant's opposition to defendant's motion to dismiss the Notice of Appeal filed in
February, 2004 objecting to Judge Marilyn Schafer's December 23, 2003 order denying
intentional infliction of emotional harm and defamation as causes of action and deeming
Kenneth Wasserman's conversations with defendant-appellees his work product.

[2] Plaintiff in that case and plaintiff-appellant in this matter found no justification for
Judge Shafer's order deeming Mr. Kenneth Wasserman's conversations with Defendants
as his work product in a case (Index number 115354/99) because he was never a party to
this case according to all documentation known to plaintiff-appellant for seven years,

March 17, 1998 to March 15, 2005, until the secret memo in the current matter before this Court was seen in the First Department Court file. (Motion to Vacate). Plaintiff was told not to perfect that Appeal due to the forcing upon her of two trials in March and May, 2004, with open discovery issues ignored by Judge Shafer and quashed by Judge Wilkins in the effort of both Judges to get the case with the Church closed as quickly as possible with no damages given to plaintiff in order to please the insurance company. The memo, written by Mr. Wasserman, who gave himself the title APPOINTMENT-RESPONDENT-PRO SE, was not only fraudulent because he, Mr. Wasserman, was never a party in the case to the knowledge of plaintiff-appellant, but also because his discussion of the case in the memo was erroneous, namely that the matter before this Court was a Church/religious matter, and could not be decided by a Civil Court at all.

[3] Plaintiff-Appellant understood immediately upon seeing, on March 15, 2004, the new, incorrect and fraudulent entry by Mr. Wasserman in the file of the case before this Court, that the Law Firm of Michael E. Pressman, hired by the Guide One Insurance Company and a subsidiary of AON Corporation currently being investigated by the Attorney General's office, had indeed prejudiced the case while still before Judge Shafer by secretly informing Judge Shafer without informing plaintiff that Mr. Wasserman was a Respondent in the matter with the Church, with the result being the December 23, 2003 fraudulent decision to deem conversations between Mr. Wasserman, supposedly the Attorney for Julia Danger in Surrogate Court, his work product and not for plaintiff to know anything about.

[4] Judge Shafer could not make a decision that a third party could keep information from a plaintiff, which is exactly what has happened in this case. Upon information and

belief, between September 11, 2001 and September 26, 2001 Defendants and their Attorney contacted Judge Shafer in a letter explaining the ‘hardship’ of losing so many employees of AON on 9/11 and asked her to dispose of this case before this Court in Appeal.

[5] Mr. Kenneth Wasserman withheld two emails from discovery for almost 6 years, from July 1998 to May 11, 2004, the second day of the second trial, showing that plaintiff’s sister Julia Danger wanted plaintiff-appellant to have their mother’s ashes back from the Church. As Mr. Wasserman had been the person to tell the Defendants to withhold the ashes from plaintiff-appellant, he kept these secret from plaintiff-appellant but not, upon information and belief, from Judge Shafer or Wilkins, until subpoenaed at trial.

[6] On April 7, 2005, plaintiff-appellant filed a motion to vacate this court’s denial of plaintiff-appellant’s opposition to defendant’s motion to preclude plaintiff-appellant from perfecting plaintiff-appellant’s appeal of the order denying intentional infliction of emotional harm and defamation as causes of action and deeming Kenneth Wasserman’s conversations with defendants in a will case as work product due to the unusual circumstance of finding the secret memo from Mr. Kenneth Wasserman on March 15, 2005 in the case file held in the Appellate Court First Department, stating that he, Mr. Wasserman, had entered a case that he was never, according to the plaintiff-appellant, a party to and gave himself the title APPOINTMENT-RESPONDENT-PRO SE. (Motion papers submitted to this court on 2005.04.07).

[7] Mr. Kenneth Wasserman is not a Respondent in the case before this Court, and Julia Danger is not a respondent or party either. Defendants were never parties in the Surrogate

Court case. The fact that Mr. Wasserman has been given, or gave himself, the title APPOINTMENT-RESPONDENT-PRO SE in the matter currently before this Court is impossible, and without merit. The fact that Mr. Wasserman's memo was in the file held by the Appellate Court First Department and that Mr. 'Dan Ramos' ripped this two page document up and told plaintiff-appellant that she "should never have seen this." is outrageous and actionable. This Court must deny all papers of Defendants on the basis of fraud, must vacate the December 23, 2003 order of Judge Marilyn Shafer, and must remand this matter back to Supreme Court or to Federal Court for a new trial.

TIME FOR SERVICE OF NOTICE AND AFFIDAVITS

[8] CPLR 2214[b] specifies that " A notice of motion and supporting affidavits shall be served at least eight days before the time at which the motion is noticed to be heard. Answering affidavits shall be served at least two days before such time. Answering affidavit shall be served at least seven days before such time if a notice of motion served at least twelve days before such time so demands; whereupon any reply affidavits shall be served at least one day before such time".

OVERVIEW OF DEFENDANT-APPELLANT'S FAILURE TO TIMELY SERVE ANSWER

[9] The plaintiff-appellant received, by regular mail, defendants' "Affirmation in Opposition" at 3:30 PM on April 15, 2005, the afternoon of the day submission was required in plaintiff-appellant's Motion papers submitted on April 7, 2005. The Notary Public stamped the document on April 14, as can be seen on the last page. EXHIBIT A.

[10] The plaintiff-appellant contends that defendant-appellees calculatedly failed to timely serve plaintiff-appellant for the express purpose of depriving plaintiff-appellant of the opportunity to reply to defendant-appellee's answer.

[11] Defendant-appellees failed to timely request, from either the court or plaintiff-appellant, an extension of the deadline within which to file an answer.

[12] The Plaintiff-appellant contends that The Appellate Court's inclusion in this case's file, as seen by plaintiff-appellant on March 15, 2005 at approximately 11:20AM, of comments from Mr. Kenneth Wasserman as the "APPOINTMENT-RESPONDENT-PRO SE" (EXHIBIT B, Motion to Vacate Order) is prejudicial to her case, is prejudicial to any Motion that she presents this Court, and to the equal consideration of timely submission to this Court. A previous untimely submission was made by Defendants on February 22, four days after the submission date set for February 18, 2005 on the matter set for This Court to consider plaintiff-appellant's request to Appeal the 2004.12.23 order of Judge Marilyn Shafer. Plaintiff-appellant did comply with submission timelines.

[13] The plaintiff-appellant contends that she is not given a fair hearing by this Court if defendant's "Affirmation in Opposition" is considered, due to the false claims made by Mr. Wasserman that he is an "APPOINTMENT-RESPONDENT-PRO SE" and that his description of the case Index #115354 in his memo, that this is a Church matter, is totally erroneous, due to the fact that plaintiff-appellant went to the Church Presbytery, then Synod, then General Assembly, and was told that this case is not a Church case but a civil matter, and Mr. Wasserman has never been a Respondent, Defendant, or any party in this case.

[14] Defendants' and their attorneys' Law firm of Michael E. Pressman are culpable in this matter as they knew, plaintiff-appellant alleges, Mr. Wasserman was not a respondent yet maintained this false claim for 7 years and withheld this prejudicial fact from plaintiff-appellant.

[15] Defendants are desperately trying to get rid of this matter without a damage award given to plaintiff for the intentional and malicious harm done to her, her family, and her

life by defendants, members of her Church, acting under color of religion. Proof is available in the previously submitted Motion to Vacate submitted on April 7, 2005, of Judge Wilkins' withholding of all the documents in this case before March 31 in her chambers until January 28, 2005. Plaintiff-Appellant is not an Attorney, yet understood from the Central Records' Clerk that these records were her right to see and use in the perfection of her Appeal. She was not able to have the records released from Judge Wilkins' chambers due to Judge Wilkins' partnership with the Defendants' Attorneys and Guide One Insurance Company in preventing any possibility of a damage award going to plaintiff-appellant.

[16] Plaintiff-appellant was told not to perfect the February Appeal, but to wait until after the trial (there were two) and then file a Notice of Appeal for the entire case. Judge Shafer ordered no re-argument and moved all issues to the trial court (Motion to Vacate).

[17] A Notice of Appeal and Civil Appeal, Preargument Statement was filed in a timely fashion on October 5, 2004 after a COPY ORDER/NOTICE OF ENTRY was added to the County Clerk's minute book in the Supreme Court on September 13, 2004 (Motion to Vacate, Exhibit H). Plaintiff-appellant will perfect her Notice of Appeal in accordance with CPLR §5701, from Judge Wilkins' order, and not from a judgement, which Defendants are preventing plaintiff-appellant from receiving. §5701 permits an Appeal from an order, and Administrative Judge Jaqueline Silbermann informed plaintiff-appellant that she must proceed from the order.

[18] WHEREFORE Plaintiff-appellant respectfully requests that Defendants' Affirmation in Opposition be denied in its' entirety, that this Court award plaintiff-appellant all costs for Defendants' frivolous and fraudulent opposition papers, and this

Court vacate Supreme Court Judge Marilyn Shafer's order dated December 23, 2003 as a fraudulent and false decision biased against plaintiff-appellant by secret correspondence between Mr. Kenneth Wasserman and Judge Shafer, together with all costs of this Matter and further relief as the Court may deem just and proper.

DATED: April 19, 2005

TO:
Law Offices of Michael E. Pressman
125 Maiden Lane
New York, NY 10038
212-480-3030

Elizabeth Combier
315 East 65th Street
New York, NY 10021

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