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## Westchester Quarterly Roundup: Notable Decisions of the Westchester County Federal and State Courts

### **Judge Karas Grants Defendants' Motion to Dismiss Complaint Alleging Due Process Violations under the Fourteenth Amendment**

In *Twardosz v. Yonkers Public School District*, No. 19-CV-6138 (KMK), 2020 WL 6135114 (S.D.N.Y. Oct. 19, 2020), Judge Kenneth Karas dismissed the plaintiff's complaint alleging due process violations under the Fourteenth Amendment, as well as loss of reputation, humiliation, embarrassment, and severe emotional distress. The plaintiff, a bus driver employed by a private bus company to transport students to and from Yonkers Public Schools, was notified in an email from the Director of Transportation for the Yonkers Public School District that she was harassing parents, students, and the bus monitor, and was therefore removed from her requested route under the Local 100 Collective Bargaining Act ("CBA"). The plaintiff brought suit in federal court claiming she had (a) a constitutionally protected property interest in keeping her selected route and (b) a stigma-plus claim against the defendants for violating her protected interest in her reputation. The defendants moved to dismiss the plaintiff's complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and the Court agreed.

Assessing the plaintiff's property interest claim under the Fourteenth Amendment, the Court held that while due process rights include those secured through a CBA, "not every breach of contractual right rises to the level of a deprivation of property." Instead, the due process clause protects contractual benefits, such as welfare payments (extreme dependence) or public employment loss (permanence). Here, the Court found that revoking the plaintiff's selected route under the CBA did not rise to the level of a constitutional violation. Additionally, the plaintiff did not allege she lost her job, forfeited economic benefits, or suffered any hardship because of the route change. While the plaintiff alleged hardship in obtaining a raise/promotion, the plaintiff's allegation was conclusory and so failed to state a claim. Regarding the stigma-plus claim, Judge Karas noted the plaintiff had to show the government made stigmatizing statements "that call into question good name, reputation, honor or integrity," that the statements were publicized, and that the statements were made concurrently with a loss of employment or some other legal right. As the email was not publicized, the plaintiff failed to state a stigma-plus claim. For those reasons, the Court granted the defendants' motion to dismiss.

### **Judge Román Denies Plaintiff's Motion for Sanctions in a Foreclosure Mortgage Case**

In *Miss Jones LLC v. Stiles, Moy Rlty, LLC. Van Hasselt Auto Service*, No. 17-cv-1450 (NSR), 2020 WL 7043508 (S.D.N.Y. Dec. 1, 2020), Judge Nelson Román denied the plaintiff's motion for sanctions holding the defendant in contempt for failing to abide by a court order. In this mortgage foreclosure action, the Court had entered an order on December 5, 2019, directing the defendant to turn over all rents he collected on certain property to an appointed receiver. That order, in turn, was based on the plaintiff's representations to the Court that the defendant had amended a lease with one of his tenants for the express purpose

of circumventing his obligation to pay over rents to the receiver. In March 2020, the plaintiff moved for sanctions contending the defendant had failed to turn over any rents and so was in violation of the order.

In its contempt analysis, the Court noted it was undisputed that an order was in place and that the defendant had violated the order by failing to turn over collected rents since April 22, 2019. Judge Román, however, declined to impose sanctions based on two findings. First, the Court concluded the plaintiff had misrepresented the status of the lease when it sought the initial order and that, in fact, the defendant never amended a lease or attempted to mislead the Court. Second, the defendant submitted evidence to the Court of an inability to pay sanctions. The Court therefore exercises its discretion to deny the motion for sanctions while warning the defendant to turn over all rents to the receiver or risk further contempt proceedings.

### **Judge Bricceti Grants Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint Alleging Violations of the First and Eighth Amendments**

In *Harden v. Badger & Sahad*, 19-CV-3839 (VB), 2020 WL 7211295 (S.D.N.Y. Dec. 7, 2020), Judge Vincent Bricceti granted the defendants' motion to dismiss the plaintiffs' second amended complaint (SAC). The plaintiff, proceeding pro se, was incarcerated at the Green Haven Correctional Facility. He filed his complaint pursuant to 42 U.S.C. § 1983, alleging he was the subject of cruel rumors and abusive statements, and that staff members at the facility conspired to have him murdered, failed to give him medical care, and withheld his personal mail.

To state § 1983 claim, a plaintiff must plead that an official has violated the Constitution and was personally involved in the violation. Construing the complaint liberally, the Court began with an Eighth Amendment analysis, finding the plaintiff's claims could be characterized as (1) deliberate indifference to conditions of confinement, and (2) deliberate indifference to medical needs. For the conditions of confinement claim, the plaintiff alleged staff voyeurism, derogatory statements, pornographic videos posted to social media, and threats. The Court dismissed those claims because the plaintiff did not allege who was responsible for the misconduct. Second, for the deliberate indifference to serious medical needs claim, while the plaintiff claimed he had severe stomach pain for days, he failed to allege that the defendants were personally involved with his medical care. He also failed to allege that prison personnel employees were "deliberately indifferent to his complaints" of stomach pain. Judge Briccetti then examined the complaint's allegation of retaliation under the First Amendment. To state such a claim, the plaintiff had to plausibly allege that he engaged in protected speech, that the defendants took adverse action, and that the protected speech and adverse action were connected. While the plaintiff claimed he was accused of being a whistleblower and removed from his work assignment, he failed to demonstrate a connection between the protected activity and the adverse action because it was undisputed that the adverse action occurred before the alleged whistleblowing. Next, the Court dismissed the plaintiff's First Amendment claim based on interference with the free flow of mail because there were no plausible allegations of repeated interference. Finally, regarding the conspiracy claim under § 1983, the Court found no factual basis for the plaintiff's allegation that one of the defendants wanted the plaintiff murdered and no plausible allegations that there was the "meeting of the minds" necessary to establish a conspiracy. Upon granting the motion to dismiss, the Court denied the plaintiff leave to amend a second time and so dismissed the complaint with prejudice.

### **Judge Seibel Grants Defendants' Motion to Dismiss in a Fair Debt Collection Practices Act Dispute**

In *Sabel v. Halsted Financial Servs. LLC*, No. 20-CV-1216 (CS), 2020 WL 6274986 (S.D.N.Y. Oct. 26, 2020), Judge Cathy Seibel granted the defendants' motion to dismiss in a Fair Debt Collection Practices Act ("FDCPA") collection letter dispute. The letter at issue contained two concluding paragraphs: (1) a notification that a negative credit report may be submitted to the plaintiff's credit reporting agencies if he did not fulfill his credit obligations and (2) a "validation notice" informing the plaintiff, inter alia,

that he had 30 days to dispute the debt. The plaintiff claimed the credit reporting language violated FDCPA § 1692g and §1692e by “overshadowing the validation notice” and coercing payment from consumers with the threat of imminent credit reporting. Judge Seibel disagreed and dismissed the complaint.

With respect to 1692g of the FCPA, the Court assessed whether: (1) the plaintiff pleaded a contradiction between the demand for payment language and the validation language; and (2) the contradiction would mislead the least sophisticated consumer into disregarding his/her rights. Here, Judge Seibel found that the credit reporting language was permissive and did not contradict the validation notice. The Court further concluded that even the least sophisticated consumer would not be misled by the letter because the validation notice made clear the plaintiff had 30 days to dispute the debt. Accordingly, the Court dismissed the plaintiff’s § 1692g claim. For the §1692e claim, the plaintiff alleged the collection letter served as an impermissibly “direct threat of negative credit reporting against the plaintiff’s account.” However, the Court held the collection letter did not contain such a threat. Instead, the letter simply informed the plaintiff that the defendants “may” report an unpaid account and made no request for payment within a validation window. The Court therefore granted the defendants’ motion to dismiss in its entirety.

### **Westchester Supreme Court Judge Lefkowitz Dismisses New York Complaint in Favor of Similar Hawaii Proceedings**

In *TIG Insurance Co. & The North River Insurance Co., v. Catholic Foreign Mission Soc’y of America, Inc.*, 69 Misc.3d 1208(A) (N.Y. Sup. Ct. West. Cty. 2020), Justice Joan Lefkowitz dismissed the plaintiffs’ insurance coverage action pursuant to CPLR 3211(a)(4) in favor of a similar pending lawsuit in Hawaii. The plaintiff insurers filed the lawsuit in New York on May 27, 2020, seeking a judgment declaring they were not obligated to indemnify the defendant religious organization in litigation in Hawaii, alleging sexual abuse by the defendant’s priests. On July 28, 2020, the defendant filed a competing insurance coverage lawsuit in Hawaii against 10 insurance companies, including the plaintiffs, seeking a declaratory judgment that the plaintiffs must defend against the abuse lawsuits. After the Hawaii coverage action was filed, the plaintiffs filed an amended complaint in the New York action. The defendant moved to dismiss, arguing the insurance issues should be decided by the Hawaiian court.

The Court examined: (1) the identity of parties and claims; (2) how comprehensive each action was; (3) whether the actions had commenced reasonably close in time, and (4) the courts’ significant nexus to the controversy. The Court found the two coverage actions were filed reasonably close in time and there was a substantial identity of the parties and claims. The Court also found Hawaii had a more substantial nexus to the controversy because the underlying lawsuit occurred in Hawaii. While the plaintiffs argued they filed the lawsuit in New York two months before the Hawaii coverage action was filed, the Court held “chronology is not dispositive” when lawsuits are in the early stages of litigation. Finding all the factors weighed in favor of the Hawaii court determining the insurance coverage issues, the Court dismissed the New York action.