

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: ALEXANDER W. HUNTER JR.
Justice

PART 33

Index Number : 100299/2013
HOLLANDER, ROY DEN
vs.
NYC COMMISSION ON HUMAN RIGHTS
SEQUENCE NUMBER : 003
AMEND SUPPLEMENT PLEADINGS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 14, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1-3</u>
Answering Affidavits — Exhibits _____	No(s). <u>4-10</u>
Replying Affidavits _____	No(s). <u>11-14</u>

Upon the foregoing papers, it is ordered that this motion is

*decided in accordance with the
Order and Judgment annexed hereto.*

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/8/14

AWH, J.S.C.
ALEXANDER W. HUNTER JR.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

-----X
In the Matter of the Application of
Roy Den Hollander,

Index No.: 100299/13

Petitioner,

Order and Judgment

-against-

The City of New York Commission on Human Rights,

Respondent.

-----X
HON. ALEXANDER W. HUNTER, JR.

Two separate applications, a motion to supplement the petition and a motion to reargue, were filed in this matter under motion sequences #3 and #4. Both applications will be decided herein.

The application of petitioner for an order pursuant to CPLR 3025(b), granting leave to supplement the verified petition by adding a 42 U.S.C. § 1983 substantive due process cause of action, an equal protection cause of action, and adding as a defendant Carlos Velez, Executive Director of Law Enforcement for the City of New York Commission on Human Rights (the "Commission"), in his individual capacity, is denied.

The application of petitioner for an order, granting leave to reargue the Order and Judgment dated July 30, 2013, is denied.

By Order and Judgment dated July 30, 2013, this court denied the application of petitioner for an order pursuant to CPLR Article 78, reversing the determination of the Commission and finding that petitioner was unlawfully discriminated against because of his age by the nightclub Amnesia J.V. LLC ("Amnesia") and dismissed the proceeding without costs and disbursements to either party.

On the same date that this court dismissed the underlying proceeding, petitioner filed the instant motion to supplement the petition. Petitioner avers that respondent deprived petitioner of his federally protected rights to speak, to sue, and to marry under the Fourteenth Amendment to the U.S. Constitution, when respondent and Carlos Velez determined that petitioner was not discriminated against by Amnesia because of his age. Petitioner avers that the lack of investigation by Carlos Velez was motivated by bigotry against the Euro-American protestant ancestry of petitioner and motivated by an effort to punish petitioner for complaining about Carlos Velez and for exercising his federally protected rights to speak, to sue, and to marry. Petitioner contends that the Commission and Carlos Velez treated petitioner differently than others who filed age discrimination complaints with the Commission.

Respondent opposes the application of petitioner to supplement the petition on the ground that the motion is procedurally improper. Respondent avers that because the underlying proceeding has been dismissed, there is no longer any operative pleading in this case to be supplemented. Additionally, respondent avers that the proposed supplement to the petition is futile and subject to dismissal on the merits, as the claim that the Commission insufficiently investigated the complaint of petitioner was previously rejected in the Order and Judgment of this court dated July 30, 2013.

In reply, petitioner avers that the instant motion is procedurally proper pursuant to CPLR 3025(b).

Although “a party may amend his or her pleading, or supplement it...at any time by leave of court or by stipulation of all parties” and “leave shall be freely given,” leave to amend is “committed almost entirely to the court’s discretion.” See CPLR 3025(b); Murray v. City of New York, 43 N.Y.2d 400, 404-405 (1977). To conserve judicial resources, “an examination of the underlying merits of the proposed causes of action is warranted.” Eighth Ave. Garage Corp. v. H.K.L. Realty Corp., 60 A.D.3d 404, 405 (1st Dept. 2009). “[P]laintiff need not establish the merit of its proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit...” (internal citations omitted). MBIA Ins. Corp. v. Greystone & Co., Inc., 74 A.D.3d 499, 500 (1st Dept. 2010). Where the court finds that the proposed amendment clearly lacks merit, leave is properly denied. See Eighth Ave. Garage Corp., 60 A.D.3d at 405; Davis & Davis v. Morson, 286 A.D.2d 584, 585 (1st Dept. 2001).

There is a lack of credible evidence that respondent and Carlos Velez deprived petitioner of his federally protected right to speak, to sue, or to marry, thus the proposed substantive due process cause of action is devoid of merit. There is a lack of credible evidence that respondent and Carlos Velez treated petitioner differently than those who filed age discrimination complaints with the Commission, thus the equal protection cause of action is devoid of merit. Accordingly, the proposed supplement to the verified petition clearly lacks merit and leave to supplement the petition is denied.

Petitioner subsequently filed a motion for leave to reargue. Petitioner avers that the Order and Judgment dated July 30, 2013 does not take into account his motion for leave to supplement the petition that was filed on the same day.

Respondent opposes the instant application on the ground that the motion by petitioner to supplement the petition presents no basis for reargument.

“A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.” CPLR 2221. A motion to reargue is not

designed to allow parties "to present arguments different from those originally asserted." **William P. Pahl Equip. Corp. v. Kassis**, 182 A.D.2d 22 (1st Dept. 1992). "Reargument is not available where the movant seeks only to reargue 'a new theory of law not previously advanced.'" **DeSoignies v. Cornasesk House Tenants' Corp.**, 21 A.D.3d 715 (1st Dept. 2005).

Petitioner failed to meet his burden of proof in demonstrating that this court overlooked or misapprehended the facts or law so as to warrant reargument. By adding a new defendant and new causes of action that were not previously asserted, petitioner is seeking reargument on the basis of a new theory of law not advanced. **DeSoignies**, 21 A.D.3d at 718. Accordingly, the motion by petitioner for leave to reargue the July 30, 2013 Order and Judgment is denied.

Accordingly, it is hereby

ADJUDGED that the application of petitioner for an order pursuant to CPLR 3025(b), granting leave to supplement the verified petition, is denied. The application of petitioner for an order, granting leave to reargue the Order and Judgment dated July 30, 2013, is denied.

Dated: January 8, 2014

ENTER:

J.S.C.



ALEXANDER W. HUNTER JR.

UNFILED JUDGMENT

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