

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 GILBERT LAU,
4
5 Plaintiff,

5 v. 99 Civ. 4045 (CM)

6 MARK M. MEDDAUGH,
7 IRA J. COHEN,
8 STEVEN S. KATZ,
9
10 Defendants.

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10 September 24, 1999
11 3:45 p.m.

11 Before:

12 THE HONORABLE COLLEEN McMAHON,
13
14 District Judge

15
16 APPEARANCES

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18 GILBERT LAU
19 Pro se Plaintiff

20 APPELBAUM, BAUMAN & APPELBAUM
21 Attorneys for Defendants Cohen and Katz
22 MICHAEL J. FREY

23 ELIOT SPITZER
24 Attorney General for the State of New York
25 CHARLES F. SANDERS
Assistant Attorney General

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1 (Case called)

2 MR. LAU: I would like to hand up two courtesy copies
3 of a -- I just filed today a motion to compel for discovery.

4 THE COURT: You can keep that, sir. I'm going to
5 throw out your case, so you don't have to worry about it.

6 Next appearance, please.

7 MR. FREY: Your Honor, on behalf of Ira J. Cohen and
8 Steven S. Katz, Michael J. Frey of Appelbaum, Bauman &
9 Appelbaum.

10 MR. SANDERS: Charles F. Sanders, Assistant Attorney
11 General, New York State Office of the Attorney General.

12 THE COURT: All right. Everybody have a seat.

13 Unfortunately, you people were too fast for me. I
14 had Thursday morning planned to fax or to mail out to you the
15 following order, but you got your motions to dismiss in, and
16 I'm very sorry that you wasted the time.

17 This matter is before me on the application of the
18 plaintiff pro se, Gilbert Lau, for appointment of counsel.
19 The application is denied.

20 The complaint, as best I can construe it, alleges
21 misconduct by the Sullivan County Attorney and Justice Mark
22 Meddaugh of the Sullivan County Supreme Court.

23 The gravamen of his complaint is that Justice
24 Meddaugh denied his application for leave to file an action
25 against the Sullivan County Clerk in forma pauperis, dismissed

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1 his complaint as failing to state a claim, and subsequently
2 sanctioned plaintiff because he was made aware of prior orders
3 sanctioning Lau for abuse of the litigation process.

4 Those orders had been entered in two other suits, one
5 against the Sullivan County District Attorney, who was sued
6 for failure to prosecute a matter that Mr. Lau believed should
7 have been prosecuted, and one against the judge who had
8 dismissed the case against the District Attorney, Judge Katz,
9 I believe. What was that -- Judge Kane?

10 MR. SANDERS: Judge Kane.

11 THE COURT: Judge Kane, I'm sorry.

12 Mr. Lau here alleges that the Sullivan County
13 Attorney who was defending Cohen and Katz conspired with
14 Justice Meddaugh to bring about this inequitable result; that
15 Justice Meddaugh learned of the prior order sanctioning
16 plaintiff in an ex-parte communication; and apparently that
17 the plaintiff believes there to have been secret
18 correspondence between Justice Meddaugh and the County
19 Attorney's Office concerning the various actions described
20 above.

21 In addition to various state court actions, it
22 appears that Mr. Lau has previously filed an action against
23 the District Attorney in this court in which he alleged that
24 the District Attorney's failure to pursue the prosecution and
25 discretionary actions for which there is no cause of action

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1 whatsoever violated his constitutional rights. That case was
2 dismissed sua sponte by one of my colleagues with a notation
3 that the case had no merit and that any appeal taken would not
4 be in good faith under 28 United States Code, Section 1915.
5 Mr. Lau has appealed the dismissal of that action.

6 The application for appointment of counsel is denied,
7 and this complaint, which, like all of Mr. Lau's previous
8 complaints, is brought against state officers for acts for
9 which they enjoy immunity from prosecution and which is
10 frivolous on its face, is dismissed sua sponte. 28 United
11 States Code, 1915(e)(2)(B)(i)(iii). The case has no merit,
12 and an appeal taken from this order would not be taken in good
13 faith within the meaning of 28 United States Code, Section
14 1915.

15 Now, Mr. Lau, the last paragraph of this says that
16 you are ordered to show cause why I should not enter an order
17 enjoining you from filing any further actions in this court
18 unless your proposed complaint has been reviewed by the United
19 States Magistrate Judge and is deemed at least facially to
20 state a claim for relief. I planned to order you to be in
21 court in a couple of weeks to do that, but you are here now.
22 I didn't realize when I wrote this that you were going to be
23 here today.

24 So, Mr. Lau, why is it that I shouldn't enter an
25 injunction to stop you from bothering these people? You have

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1 no claim.

2 MR. LAU: I do have a claim. I want to explain that.
3 The judge went absent to his jurisdiction. And the
4 law is very clear under the U.S. Supreme Court Stamson v.
5 Sparksman, under 435 U.S. 349, page number 356-357, that when
6 a judge acts absent to clear jurisdiction, there is no
7 absolute immunity. And defendant Mark Meddaugh went absent to
8 his jurisdiction by going to a case that has to do with
9 appellate jurisdiction where he's a trial judge. Just like
10 you said in this other case, you have no authority to sit over
11 an appellate case. Well, this is what he did.

12 THE COURT: No, but Justice Meddaugh has a perfect
13 right, when he learns that you have been deemed a violator of
14 the litigation process, an abuser of the litigation process,
15 to take that into account in deciding to sanction you, just as
16 I'm about to take it into account in making a decision that
17 you have filed repeated frivolous lawsuits in the past against
18 the District Attorney, against the County Attorney and against
19 the judge who did something you didn't like.

20 MR. LAU: No, it's not something I didn't like, it's
21 a violation of my rights. The law says that if a judge
22 commits an ex-parte communication when the law does not, and
23 this clearly does not, under judiciary law, it's forbidden,
24 and that's a violation right there. It's very clear. You can
25 look up the judicial law.

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1 THE COURT: And all you had to do was to make a
2 report to the Committee on Judicial Conduct, and they would
3 have looked into it.

4 MR. LAU: Yes, but the reason why it's a violation is
5 because they were communicating with each other privately, and
6 I was not informed of that.

7 THE COURT: Mr. Lau.

8 MR. LAU: How that's not a violation towards my due
9 process?

10 THE COURT: Mr. Lau.

11 MR. LAU: I done nothing wrong. There I was accused
12 of something that I have not committed, and Judge Meddaugh
13 reverses decision because he knew I did nothing wrong and
14 everything -- the thing was frivolous. That's a third party
15 who had interest in my case. How is it frivolous if there is
16 a news reporter there?

17 It's not just that. The main thing is he was sitting
18 making a decision on another case that he was not assigned to
19 in another court, and he -- and it was an appellate case, and
20 he is a -- was a trial judge, and he was not sitting on it.
21 And the issue of what I did in the Appellate Division, Third
22 Department, is appellate jurisdiction, appellate issue, not a
23 trial issue. That's how he went absent to his jurisdiction.

24 THE COURT: Well, your position is interesting. It
25 reflects a complete and total misunderstanding both of what

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1 Justice Meddaugh was doing and of his right to do it. You
2 don't understand the law that's applicable here.

3 MR. LAU: Well, your Honor, what this is about is
4 something that -- he accused me of something that he knew that
5 I did nothing wrong. Why is it that he overturn his decision?

6 I mean, I explain the fact in my amended complaint
7 that he overturned himself, which that proves that he knew he
8 went absent to his jurisdiction, because if I did truly
9 something wrong, then why he didn't kept his decision?

10 And the facts show that he overturn himself because
11 you can't -- you can't change your mind if you know there's
12 something wrong, and he knew what he did was wrong. You have
13 to see that. That's the fact right there.

14 THE COURT: Anything else?

15 MR. LAU: Well, yes. The thing is the transcript
16 shows that I explain what happened, okay, how he did it, how
17 he went clear absent to his jurisdiction, and he -- he agreed
18 to me he going to overturn himself. You have to see that,
19 your Honor.

20 I'm not doing anything wrong. I've been violated and
21 I've been hurt, and I have a right for justice.

22 THE COURT: Anything else?

23 MR. LAU: Not that I can think of.

24 THE COURT: Mr. Lau, I've looked through your papers.
25 There is no indication here that any of your constitutional

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1 rights have been violated. I am sorry that you feel grieved,
2 but you are abusing the process of this court, as you
3 apparently abused the process in the state courts. I am,
4 therefore, having given you an opportunity to show cause why I
5 should not do so, entering an injunction.

6 I enjoin you -- that means you are forbidden -- from
7 filing any lawsuit arising out of any of these incidents;
8 Justice Meddaugh, Judge Katz, the County Attorney, the
9 District Attorney, the various transcripts that you have filed
10 with me or this case itself or the other case that you brought
11 in federal court. You are forbidden to file any further
12 action in the United States District Court for the Southern
13 District of New York, and that's here in White Plains or
14 downtown in Foley Square --

15 MR. LAU: So that means if I have --

16 THE COURT: Excuse me. I'm not through speaking --
17 unless you first submit the complaint to a United States
18 Magistrate Judge for vetting and for the judge to determine
19 whether it is frivolous on its face or is brought against an
20 officer for an act for which the officer enjoys immunity from
21 prosecution, in Violation of 28, United States Code, Section
22 1915(e)(2)(B)(i)(iii).

23 The Office of the Clerk of the Southern District of
24 New York is directed not to accept or file any papers from
25 Gilbert Lau, 207 East 85th Street, New York, New York, 10028

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1 until they have been vetted by a magistrate judge in
2 accordance with this injunction.

3 An injunction is an order of the Court that forbids
4 you, Mr. Lau, from doing something, and if you violate the
5 injunction, they can bring you back to me, and I can, after a
6 hearing, find you in contempt of court. And there are
7 penalties for contempt of court. They include jail. They
8 include fines. They include paying the expenses of people who
9 are forced into court by your vexatious litigation. And I'm
10 sorry, I know you don't feel this way, but it is vexatious,
11 meritless litigation.

12 MR. LAU: Let me ask something. There was another
13 fellow judge that I feel should be enjoined -- felt that I had
14 a case. Now, why you enjoin me for something that I have not
15 done? And they heard from the clerk. He represents the
16 County Attorney and Mr. Katz. It was posted by the clerk.
17 There was a motion to dismiss. I have not read that, and I
18 think that you basing what they say --

19 THE COURT: Mr. Lau, I'm telling you to get on with
20 your life and to put this behind you and to forget about it
21 because if you keep bringing it back to court, certainly if
22 you bring it to the United States District Court for the
23 Southern District of New York, you will not be allowed to
24 proceed and you are subjecting yourself to penalties. You are
25 abusing the litigation process.

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1 MR. LAU: How I'm abusing the -- explain that.

2 THE COURT: You are bringing frivolous claims against
3 people who the law says cannot be sued.

4 MR. LAU: But the law says they can be sued if they
5 go absent to jurisdiction. It's very clear in U.S. Supreme
6 Court --

7 THE COURT: Mr. Lau, Mr. Lau.

8 MR. LAU: -- and it's not a misunderstanding.

9 THE COURT: There is no indication on the record
10 before me, which is why I dismissed your complaint, that
11 anybody has exceeded his jurisdiction in this matter.

12 MR. LAU: All right. All right. Sorry, your Honor.
13 May I ask a question, please, respectfully?

14 THE COURT: May you what?

15 MR. LAU: May I respectfully ask a question?

16 THE COURT: You may ask a question.

17 MR. LAU: Yes. What constitutes clear absent of
18 jurisdiction?

19 THE COURT: No, this isn't law school, Mr. Lau. This
20 is not law school, and I'm not here to answer that question,
21 and I'm not here to answer questions in a vacuum.

22 I've told you I've dismissed your case. Your case is
23 dismissed as of this moment, and I have told you that I have
24 entered an injunction and that the clerk of this court in
25 either courthouse, Foley Square or White Plains, will not

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1 accept any further filings from you unless they go first to a
2 magistrate judge who decides that on their face they have some
3 merit. And if you start filing things and the magistrate
4 judge starts bouncing them because they have no merit, you're
5 going to be in violation of the injunction.

6 The idea is you're supposed to stop it, Mr. Lau.
7 It's over.

8 MR. LAU: It's not -- there's merit to my case, so
9 it -- how could I -- there's -- there's merit right there.
10 It's in the transcript. They've been talking. They've been
11 ex-parte communication. That's not due process?

12 THE COURT: Mr. Lau, I've ruled that there is no
13 merit to your case, and I have entered my injunction
14 accordingly because, when given an opportunity, you have not
15 demonstrated any reason why I should not put an end to this.

16 MR. LAU: All right. Let me ask another question.
17 That means that if it has nothing to do with Sullivan County,
18 if I get abused by police officer or --

19 THE COURT: I said that the injunction ran as to the
20 incidents over which you have been suing these people; the
21 decision of the Sullivan County District Attorney not to
22 indict somebody, the County Attorney's behavior, Judge
23 Meddaugh, Judge Katz, those people, the claim that you brought
24 previously in federal court, the incidents that are the
25 subject of this litigation.

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1 MR. LAU: So that means that only in Sullivan County,
2 nothing outside Sullivan County?

3 THE COURT: No, no. I said in the Southern District
4 of New York, in the Federal Court in the Southern District of
5 New York.

6 Now, you might go up to Ulster County Supreme Court
7 and file something, and they'll throw you out and they'll
8 sanction you.

9 Mr. Lau, give it up. Stop it. It's over. It's
10 finished. Move on in your life.

11 MR. LAU: All right. Now, I hope you're not doing
12 this because he's another judge and you're another judge.

13 THE COURT: I'm doing it because I'm required to,
14 sir, as a matter of law.

15 MR. LAU: Well, I can cite a matter of law that there
16 was a judge, another fellow judge, Judge Brieant, that denied
17 it, and he didn't felt that I did anything feeble. He felt
18 that I did state a claim on another case, and he denied the
19 motion to --

20 THE COURT: First thing, Judge Brieant, it appears to
21 me, dismissed the case sua sponte with a notation that the
22 case had no merit and that any appeal that you took would not
23 be in good faith.

24 MR. LAU: No. That's not true. He dismissed it
25 because of res judicata, and he denied on grounds of failure

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1 to state a claim. It's very clear. It's in his judgment.
2 And he denied the motion.

3 THE COURT: Well, I'm dismissing your case on grounds
4 that are set out in Section 1915 of Title 28 of the United
5 States Code. I'm very clear about that. I did not consider
6 the motion papers that were submitted -- sorry you guys did
7 the work -- either by the Office of Court Administration or by
8 the Sullivan County Attorney's Office. I reached this
9 decision before any of those motion papers reached my desk.

10 And Mr. Lau, for your own sake, please, whatever
11 happened, put it behind you and move on with your life.

12 MR. LAU: Whatever happened was injustice. I can't
13 put it behind me. They done a violation. That's nothing.
14 I'm not suing something I don't like. I'm suing that there
15 was a clear injustice done that was a violation. And if you
16 don't see that because he's another judge, as you are, I'm
17 sorry to say I will just have to take an appeal on that in the
18 U.S. Court of Appeals.

19 THE COURT: Obviously, any decision that I make you
20 are free to appeal to the United States Court of Appeals for
21 the Second Circuit. I understand that you've appealed Judge
22 Briant's decision. Then you go right ahead and appeal mine
23 as well.

24 MR. LAU: And what happens if you are reversed?

25 THE COURT: Oh, if I'm reversed, then they'll send

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1 you back here. Then they will have told me that I was wrong,
2 and then we'll have to deal with your case. I don't think
3 it's going to happen, Mr. Lau.

4 All right, this proceeding is concluded.

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