

FILED
AND ENTERED

ON 9-27-2006

WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
ELENA RUTH SASSOWER, individually, and as
Coordinator of the Center for Judicial
Accountability, Inc., CENTER FOR JUDICIAL
ACCOUNTABILITY, INC. and The Public
as represented by them,

Plaintiffs,

DECISION AND ORDER

Index No.: 05-19841

-against-

THE NEW YORK TIMES COMPANY, The New
York Times, ARTHUR SULZBERGER, JR., BILL
KELLER, JILL ABRAMSON, ALLAN M. SIEGAL,
GAIL COLLINS, individually and on behalf of
THE EDITORIAL BOARD, DANIEL OKRENT,
BYRON CALAME, MAREK FUCHS, and
DOES 1-20,

Defendants.

-----X
LOEHR, J.

Plaintiffs move to reargue and renew this Court's Decision and Order dated July 5, 2006 which dismissed plaintiffs' complaint. Additionally, plaintiffs move to vacate the Judgment that was entered on such Decision and Order pursuant to CPLR 5015(a)(3). Finally, plaintiffs move the Court to recuse itself from further consideration of this case and for its re-assignment to a different judge for a determination of the above motions.

By a Decision and Order dated July 5, 2006 (the "Decision"), this Court dismissed plaintiffs' complaint which asserted causes of action in defamation and for "journalistic fraud" based on a failure to state a cause of action. Plaintiffs did not seek leave to replead and none was granted. Although the Decision did not state that the dismissal was with prejudice, the dismissal was clearly on the merits. On August 1, 2006, the Clerk entered a Judgment on the Decision. The

Judgment provided that the complaint was dismissed with prejudice.

Plaintiffs first move for the Court to recuse itself from further consideration of this matter. The basis of the application is, as alleged by plaintiffs, that Judge Nicolai, the Administrative Judge of the District, has been engaged in an on-going retaliatory vendetta against the plaintiffs due to their crusade against judicial corruption; that Judge Nicolai wanted plaintiffs' complaint dismissed; and that Judge Nicolai assigned this case to this Court so as "to guarantee the outcome he desired: dismissal of the action." (Emphasis in original.)

Suffice it to say, the Court has no knowledge of Judge Nicolai's opinion with respect to this matter, assuming he has an opinion at all. Moreover, the case was not assigned to this Court to guarantee any particular result but because of the number of judges who had already recused themselves.¹ The motion to recuse is therefore denied.

The motion to reargue or renew is likewise denied. Renewal is denied based on plaintiffs' failure to submit any new facts or demonstrate a change in the law (CPLR 2221[a]). Reargument is denied for the reasons stated in the original Decision: the Court did not misapprehend the facts or the law.

With respect to the motion to vacate the Judgment, inasmuch as the Decision was on the merits, the dismissal was necessarily with prejudice (*McBride v Mariah Boats, Inc.*, 288 AD2d 359 [2d Dept 2001]; *Papa v Burrows*, 186 AD2d 375 [1st Dept 1992], *lv denied* 81 NY2d 707 [1993]). The Judgment entered was therefore in accordance with the Decision and not "fraudulent." Moreover, even if the "with prejudice" language was included in the Judgment in error, this Court would be without authority to remove it. Plaintiffs remedy would be an appeal

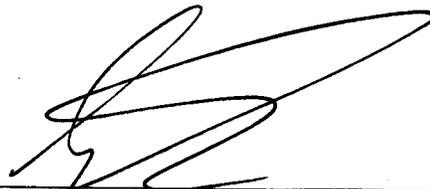
¹ It appears that at least nine of the Supreme Court or Acting Supreme Court Judges in this courthouse had issued standing recusal orders recusing themselves from any action involving the plaintiffs.

(*Roth v South Nassau Communities Hosp.*, 239 AD2d 331, 332 [2d Dept 1997]).

For the foregoing reasons, the motion is denied. This constitutes the decision and order of this Court.

The Court considered the following papers in connection with this application: (1) Notice of Motion dated August 21, 2006 together with Affidavit with exhibits attached; (2) Plaintiffs' Memorandum of Law; (3) Affidavit in Opposition and (4) Reply Affidavit of Elena Sassower, sworn to September 25, 2006.

Dated: White Plains, New York
September 27, 2006



HON. GERALD E. LOEHR
Acting J.S.C.

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