

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

CENTER FOR JUDICIAL ACCOUNTABILITY, INC., and
ELENA RUTH SASSOWER, individually and as Director
of the Center for Judicial Accountability, Inc., acting on their
own behalf and on behalf of the People of the State of New
York & the Public Interest,

Index No 1788-14

Plaintiffs,

May 16, 2014

-against-

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, DEAN SKELOS in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, SHELDON, in his official capacity as
Assembly Speaker, THE NEW YORK STATE
ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official
capacity as Attorney General of the State of New York, and
THOMAS DiNAPOLI, in his official capacity as
Comptroller of the State of New York,

Defendants.

**MEMORANDUM OF LAW IN FURTHER SUPPORT OF
DEFENDANTS' MOTION TO DISMISS AND IN
OPPOSITION TO PLAINTIFFS' CROSS-MOTION**

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Adrienne J. Kerwin
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PRELIMINARY STATEMENT

In response to plaintiffs' lengthy and largely incomprehensible complaint, the defendants made a motion to dismiss the complaint pursuant to CPLR 3211(a)(1), (a)(2) and (a)(7). In response, plaintiff Sassower proceeded to continuously contact various members of the Office of the Attorney General and of the represented defendant, Office of the State Comptroller, making allegations of attorney fraud and misconduct and other outlandish and unsupported accusations. See 5/16/14 Sassower aff. at ¶¶7-36. Not surprisingly, plaintiffs then required an extension to respond to defendants' very straight-forward motion, see id. at ¶36, which is based on very basic issues of law because perhaps all of the originally-scheduled response time was spent harassing a defendant and defense counsel. See id. at ¶¶7-36.

Instead of making any kind of legal argument in response to those made by the defendants in support of their motion to dismiss, plaintiff has cross-moved for various types of relief – most of which are addressed in the affirmation of Adrienne J. Kerwin submitted herewith. This memorandum of law is submitted in further support of defendants' motion to dismiss the complaint and in opposition to plaintiffs' cross-motion.

ARGUMENT

POINT I

PLAINTIFFS' REQUEST THAT DEFENDANTS' MOTION TO DISMISS BE CONVERTED TO A MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED

Plaintiffs seek an order from the court converting defendants' motion to dismiss to a motion for summary judgment pursuant to CPLR 3211(c), see Plaintiffs' Memorandum of Law

at pp. 24-26, while simultaneously seeking pre-answer discovery and the production of documents. See id. at pp. 26-27. Since, as argued in defendants' moving papers, the complaint fails to state a cause of action as a matter of law, no extrinsic evidence is necessary to dispose of this case. Accordingly, plaintiffs' request should be denied.

In the event that, *arguendo*, the courts finds that the complaint states a claim on its face, the defendants have no objection to proceeding directly to summary judgment without discovery if the plaintiff is so inclined. However, to the extent that the court grants plaintiffs' request to convert defendants' motion to one for summary judgment, defendants respectfully request that the defendants be provided the opportunity to offer extrinsic evidence in support of such a motion.

POINT II

TO THE EXTENT THE ORDER TO SHOW CAUSE
WAS INTENDED TO SEEK A PRELIMINARY
INJUNCTION, SUCH AN APPLICATION SHOULD
BE DENIED

As the court is aware, plaintiffs Center for Judicial Accountability, Inc. and Elena Ruth Sassower brought an order to show cause on the eve of the vote on the 2014-15 State budget in an effort to obtain a temporary restraining order to block the vote on at least a portion of the budget. That application was denied. The plaintiff appears to allege that she was also seeking a preliminary injunction at that time. To the extent that the court deems the order to show cause to seek a preliminary injunction, such an application should be denied based on the complete lack of merit of any of plaintiffs' claims, as articulated in defendants' motion to dismiss. In addition, the plaintiff has utterly failed to offer any evidence that they would suffer irreparable harm if the budget is enacted during the pendency of this matter.

While plaintiffs allege that their application for a “stay” was unopposed by the defendants, plaintiffs know that is not accurate. At oral argument on plaintiffs’ order to show cause for preliminary injunctive relief, defendants – in addition to relying on CPLR 6313(a) -- also pointed out to the court that plaintiffs failed to present any evidence to the court sufficient to satisfy the elements for injunctive relief. See 5/16/14 Sassower aff. at Exh. Y, pp. 15-16. Specifically, defendants pointed out to the court that nothing before the court supported a finding that the plaintiffs were likely to succeed on the merits of the underlying case . See id. In fact, plaintiff failed to address the elements for a preliminary injunction¹ at all. See 3/28/14 Sassower aff. In any event, the record before the court fails to justify the need for any kind of preliminary injunctive relief and, therefore, any outstanding application for such relief should be denied.

POINT III

DEFENDANTS’ MOTION TO DISMISS SHOULD BE GRANTED

Despite spending pages on insulting defense counsel and the Attorney General, the plaintiff has failed to articulate how the on-point case-law relied upon by the defendants in their motion to dismiss is not dispositive. As discussed succinctly and clearly in defendants’ moving papers, the corporate plaintiff cannot proceed pro se, as a matter of law. Naroor v. Gondal, 5 N.Y.3d 757, 757 (2005); Cinderella Holding Corp. v. Calvert Ins. Co., 265 AD2d 444, 444 (2d Dept 1999). Additionally, the complaint fails to state a justiciable controversy – despite all of plaintiffs’ foot-stomping and insult-throwing to the contrary. Urban Justice Ctr. v. Pataki, 38 A.D.3d 20, 27, 30 (1st Dept 2006); Saxton v. Carey, 44 N.Y.2d 545, 550-51 (1978); Maybee v. State of New York, 4 N.Y.3d 415, 420 (2005); Matter of Gottlieb v. Duryea, 38 A.D.2d 634,

¹ To obtain a preliminary injunction, a plaintiff must clearly demonstrate that (1) it is likely to succeed on the merits of the action, (2) it will suffer irreparable injury absent the injunction, and (3) the balance of the equities tips in its favor. See Nobu Next Door, LLC v. Fine Art Housing, Inc., 4 N.Y.3d 839, 840 (2005).

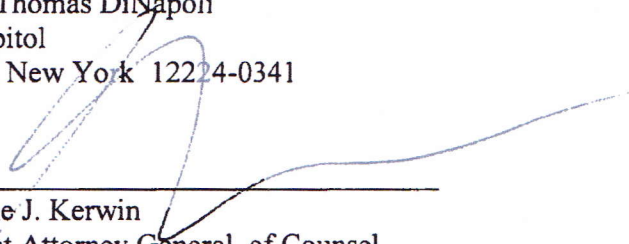
635 (1971), aff'd 30 N.Y.2d 807 (1972), cert. denied 409 U.S. 1008 (1972). Finally, Attorney General Schneiderman and State Comptroller DiNapoli are not proper parties in this litigation. For these reasons, defendants' motion to dismiss should be granted.

CONCLUSION

For the reasons discussed above, in the May 30, 2014 affirmation of Adrienne J. Kerwin and in defendants' moving memorandum of law, defendants' motion should be granted and plaintiffs' cross-motion should be denied.

Dated: Albany, New York
May 30, 2014

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