Commonwealth of Massachusetts

Supreme Judicial Court

No.SJC-12119

Bharanidharan Padmanabhan MD PhD
Plaintiff-Petitioner(Dr Bharani),

v.

Board of Registration in Medicine (BORIM)
Defendant,

and

Division of Administrative Law Appeals (DALA)
Defendant.

OPPOSITION TO DEFENDANTS' MOTION TO STRIKE

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1 July 2016

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Plaintiff-Appellant Dr. Bharani respectfully submits this Opposition to the Defendants' Motion to strike.

The motion filed by the defendants is an unjust delay tactic aimed solely at buying time and delaying the deadline within which they must file their response brief.

This Court has already declared that motions to strike based on quibbling over form are not favored.

> "Motions to Strike. Motions to strike are referred to the panel that hears the case. Correctable defects in form or timing of filings are generally not dispositive of cases pending on appeal and motions to strike on those bases are not favored."
> (Clerk's Guide to Filing Cases in the Supreme Judicial Court)

Despite the rules, it is further ironic that Defendants' motion was presented to this Court in Times New Roman. It is a fact known even in the popular press that the SJC requires that only a monospaced typeface be used. See Boston Globe, November 2, 2014, "Modern typefaces vs. the Massachusetts court system." Also Mathews v. Commissioner of Corrections, 449 Mass. 1021 (2007)

> Mass.R.A.P.20(a)(2) also states:
> "The typeface shall be a monospaced font (such as pica type produced by a typewriter or a Courier font produced by a computer word processor) of 12 point or larger size and not exceeding 10.5 characters per inch."

Defendants' motion to strike therefore is a classic case of the kettle calling the pot black and cherry picking outrage.

It gets worse.

There are many fundamental factual misrepresentations in Defendants' motion about the gist of their case, especially their long-dead claim that this is an interlocutory appeal. To persons of a certain age therefore Defendants' quibble about the form of Plaintiff-Appellant's brief and asking for a delay on the basis of form is instantly reminiscent of the massive delay in the Paris peace talks and consequent additional casualties in the thousands because of the shape of the table. Defendants' motion to strike is downright Nixonian and must be rejected by this Court.

The Attorney General filed a motion to dismiss in the lower proceeding that the court respected as it came from the Attorney General (AG) on behalf of the Defendants. This motion to dismiss was similar to that filed in the Nashoba Winery case where too the AG declared that some state agency must be allowed to turn a person's life and economic existence into dust before he may seek relief from the court and that in no circumstance was there a <u>legal</u> basis in Massachusetts for a person to prevent his life from being turned into dust by government bureaucrats (despite robust case law and Supreme Court rulings to the contrary as detailed in the brief for this case).

In the Nashoba Winery case however, the Attorney General

reversed herself totally based solely on the political winds and totally repudiated the very legal argument she had formally filed in the form of a motion to dismiss just a month earlier.

Similarly, the claim that this is an interlocutory appeal despite the dictate of 801 CMR has no legal basis and the Attorney General must not simply be taken at her word by this Court when black letter law/regulation proves otherwise.

Defendants claim that the form of Plaintiff-Appellant's brief and appendix prejudices the Defendants. Motion to strike, page 2.

Plaintiff-Appellant's brief forms his prayer to this Court to order the Defendants to accept the primacy of 801 CMR 1.01(11)(c)(3) thus ending their six-year long conscious violation of his right to earn a living. One of the main points in his complaint is that the Defendants have deliberately delayed their actions and this has massively prejudiced him.

It is therefore unacceptable that Defendants claim that not being allowed to delay filing their response brief prejudices them and that having to read through one of the five (5) documents that form the appendix, all documents Defendants already have in their possession and are fully familiar with, prejudices them.

Even if for the sake of argument we were to accept that

unjustifiable assertion, it pales in comparison to deliberate delays that have blocked a person from earning a living for six years and have deliberately destroyed him economically.

Defendants' claim that they have been overly burdened and prejudiced by having to read five (5) documents that they are already fully familiar with, establishes a fraud on this Court.

Defendants then allege the form of the Plaintiff-Appellant's brief and appendix "complicate the ability of the Court and the defendants to grapple with the plaintiff's appellate arguments."

Plaintiff-Appellant's brief is all of twenty (20) well-organised pages with clear headings and subheadings. There is no need to "grapple" at any level with his arguments. The arguments are clearly laid out and supported by the plain language of 801 CMR 1.01(11)(c)(3), a clear regulation the Defendants indisputably continue to ignore, which undermines the rule of law - the most important rule we have.

It is also vital to note that the Defendants are fully familiar with Plaintiff-Appellant's arguments as they were presented in the original complaint itself. There is nothing new or confusing here for them to "grapple" with.

Defendants' reliance on Shawmut Community Bank, N.A. vs. Zagami, 411 Mass. 807 (1992), to claim that Plaintiff -

Appellant's brief must be struck, is in bad faith and a fraud on this Court.

While Defendants may defend themselves by pointing to their including the term inter alia when they wrote "appendix not compliant because, inter alia, pages were not numbered consecutively" the facts of Shawmut are wildly different from this case as in Shawmut both "parties failed to present an adequate record appendix" which the court could rely on to arrive at a decision.

It is impossible that Defendants did not know this fact when they chose to engage in conscious factual misrepresentation to this Court in their motion.

It is readily apparent from Plaintiff-Appellant's brief that he refers to whole documents rather than individual pages and thus there was no need to refer to individual pages. Defendants themselves state this as if it were a defect:

> "(References to plaintiff's opposition to motion to dismiss, the Magistrates tentative decision, and the Board's response to the Magistrate's tentative decision.)"

It is totally clear that part of Plaintiff-Appellant's prayer to this Court is his wish for the entire record to be considered rather than cherry-picked portions from select pages. Again, Defendants are fully familiar with all these documents.

Defendants also complain that the appendix does not include

"relevant docket entries in the proceeding below."

To begin with, the proceeding below consisted of one complaint, one motion to dismiss, one opposition to the motion to dismiss and one dismissal, all of which were included in the appendix.

Furthermore, Plaintiff-Appellant was informed by the clerks office for the SJC of Suffolk County that they would transmit the docket and the entire original record to this Court and that it was the standard procedure.

Defendants claim that Plaintiff-Appellant deliberately did not include the docket entries despite being "well-acquainted with appellate procedure." This is far from the truth.

Plaintiff-Appellant, pro se, has indeed become conversant with procedure in the First Circuit Court of Appeals. This however is very different from appellate procedures before the SJC, including the understanding of an addendum, and Plaintiff-Appellant relied upon the recommendations of the clerk's office and his pro se reading of the rules.

As Defendants have deliberately blocked Plaintiff-Appellant from earning a living for six (6) years, he was mainly aware of the requirement for eighteen spiral-bound copies and the associated cost.

Furthermore, Plaintiff-Appellant did note the following in Mass.R.A.P. 18 and filed accordingly:

> "In civil cases, the appendix shall contain:
> (4) any other parts of the record to which the parties wish to direct the particular attention of the court. Except where they have independent relevance, memoranda of law in the lower court should not be included in the appendix."

Plaintiff-Appellant did not find the exhibits attached to Defendants' memorandum of law relevant to the primacy of 801 CMR 1.01(11)(c)(3) which is the point of the appeal.

Plaintiff-Appellant rushed to file his brief, addendum and appendix within the allowed fourteen (14) days in good faith based on his understanding of the rules and maintains his brief and appendix are compliant on the whole and do not in any way prejudice the defendants or hinder the Court's review of the claims in any way.

Plaintiff-Appellant has been extremely prejudiced by being deliberately blocked by the Defendants from earning a living for six (6) long years.

Having to read through a complaint or ruling pales in comparison in terms of burden or prejudice.

Plaintiff-Appellant shall be further extremely prejudiced by any further delay in receiving relief from this honorable Court.

CONCLUSION

Plaintiff-Appellant respectfully requests this Court that Defendants' motion to strike on the bad faith reasons of alleged burden and form must not be favored and must be dismissed.

One of the court rules is if it is not right don't do it and if it is not true don't say it. The Defendants have shown extreme contempt for the machinery of the court process by filing a motion that is not right and not true. Plaintiff-Appellant has a substantial non-discretionary right to the rule of law.

Defendants must be reminded that they should have filed their motion to strike immediately after being served the brief on June 7, 2016, and that they shall be held to their original deadline for filing their response brief.

Deliberately waiting till they were required to file a response brief and then seeking an extension of time is "gaming the system" in extreme bad faith and intended fully to further violate Plaintiff-Appellant's human rights just as Defendants have done for six (6) years already so far through delay.

Indulging Defendants' transparently dilatory tactics would not be in the interest of justice.

Respectfully submitted,

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Certificate of Service

Dr Bharani, pro se, certifies that he sent a copy of this opposition to Defendants via Counsel via First Class mail.

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