

20 - 2223

UNITED STATES COURTS OF APPEALS
FOR THE SECOND CIRCUIT

MICHAEL D. MARKHAM,

Plaintiff - Appellant,

v.

MATHEW A. ROSENBAUM, RICHARD A. DOLLINGER, ADAM J.
BELLO, TIMOTHY E. INGERSOLL, MAUREEN A. PINEAU, GREGORY J.
MOTT, SHARON KELLY SAYERS, CYNTHIA L. SNODGRASS, DAVID
CORON, JENNIFER SPELLER, DIANE R. DELONG,

Defendants - Appellees

On Appeal from the United States District Court
for the Western District of New York

SUPPLEMENTAL REPLY BRIEF OF MICHAEL D. MARKHAM

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STATEMENT OF THE FACTS

This U.S.C., §1983 action is NOT a continuation of this Appellant's divorce proceedings which were before the New York Supreme Court as Mr. Franco alleges in his Brief for Defendant -Appellee Gregory J. Mott. As both Mr. Mott and his counsel Mr. Franco is very well aware, the divorce and custody issues Mr Franco refers to were all concluded and settled via a stipulated settlement agreement that was finalized and agreed to by all parties in December of 2018.

This U.S.C.,§1983 action was brought by this Appellant to federal court to address the constitutional injury and deprivation of constitutional due process rights that occurred in the New York Supreme Court due in large part to the collusion and conspiring of Mr. Mott with Judge Dollinger ("the State"), and the other named defendants. By evidence of record, nowhere in his pleadings in his amended complaint in circuit court or in his Briefs in support of his appeal in the Second Circuit Court of Appeals does this Appellant ever ask the court to review, amend, or reject any state court decision. Nor does this Appellant, anywhere in his amended complaint seek injunctive relief requesting a restoration of parental rights or a modification of custody, that as falsely stated by Mr Franco, represents nothing more than a deliberate effort by himself and Mr Mott to willfully deceive this court as evidence of the record will show. Rather, this appellant has ONLY asked the federal courts to consider the procedural due process rights violations that occurred during the pendency of the New York State court proceedings, an important legal distinction, conveniently lost on Mr. Mott and his questionably competent counsel Mr. Franco.

In his Amended Complaint to the U.S. Circuit Court - Western District of NY, this Appellant alleges that Appellee Mott (this Appellant's second attorney) conspired with Judge Dollinger, Attorneys Pineau, Sayers, & Riley, and this Appellant's ex-wife, Appellee DeLong, when he refused to act in the interests of his client and rather chose to conspire and collude with the Dollinger court to put forward a false narrative regarding a trial that he knew was completely fabricated, hearings that he knew were falsified and court records that Mr Mott knew were all destroyed. Mr Mott said he knew these facts in writing on his Davidson & Fink letterhead signed with his 'wet' signature.

In his Amended Complaint 6:20-cv-06039, Dkt 30, pg. 39, this Appellant states, "The evidence will show that Gregory J. Mott knowingly and willfully conspired with the other defendants to deprive the Plaintiff, *this Appellant*, of his Constitutional right to due process in a United States Court of Law." This Appellant goes on to say, "Mr Mott refused to take action in spite of his clients desperate pleas for help. *He, Mr Mott,*

instead chose to use his position as an officer of the court to cover up the terrible crimes of his law colleagues for his own selfish agenda and interests.”

This Appellant makes it very clear and provides the court with an abundance of evidence that Mr Mott knew that there was no trial, there were no Lincoln Hearings and all of the court records were destroyed in an attempt to hide evidence of the crimes his client alleged occurred in the New York State Supreme Court. In his pleading to the circuit court (6:20-cv-06039, Dkt 30, pg. 39) this Appellant states, “Gregory J. Mott, in his letter to Sharon Kelly Sayers dated July 27, 2018, (20-2223, Dkt 164, pg. 9) states, “In talking to Mark Bezinque, Esq., he admitted that there was no hearing.” In the same paragraph Gregory J. Mott later states, “Fisher says he held a Lincoln Hearing. He refers to ‘Mother’s Testimony’, but there is no transcript in existence and no reference to a default hearing or notice of a default hearing.” This Appellant then goes on to say in his Amended Complaint, “Clearly, Gregory J. Mott and Sharon Kelly Sayers were aware that the trial was fabricated, the hearings falsified, and the records destroyed, yet Mr Mott refused to take any action on behalf of his client, in spite of his clients desperate pleas for help.”

As Mr Mott states in his Brief before this court “On or about February 14th, 2020, Appellee *Mott* moved to dismiss the Appellant’s Complaint for lack of jurisdiction and failure to state a claim.” On June 18th, 2020 the heavily conflicted and contested Frank Geraci court, granted Appellee Mott’s Motion to Dismiss falsely noting, “Plaintiff fails to allege that Mott was a state actor or that his actions alone or in concert with others convert him into a state actor for purposes of 42 U.S. Code §1983.” Due to his wildly inaccurate portrayal of the facts in his Decision and Order, this Appellant is not certain that the presiding Hon. Frank Geraci, Jr. actually read his Amended Complaint or perhaps Judge Geraci was just so bereft of any real legal argument to get his friends and colleagues on the bar and bench off the hook that he only pretended that this Appellant never alleged that Appellee Mott conspired with Judge Dollinger and the named defendants making him liable under 42 U.S. Code, §1983. A quick look at this Appellant’s Amended Complaint, 6:20-cv-06039, Dkt 30, pg. 39, will show that in his opening sentence he very clearly states, “The evidence will show that Gregory J. Mott knowingly **conspired with the other defendants, including Judge Dollinger**, to deprive the Plaintiff, *this Appellant*, of his Constitutional right to due process in a United States Court of Law.” For purposes of liability under 42 U.S. Code, §1983, this Appellant is not sure how much clearer Mr Mott’s collusion with Judge Dollinger and the other named defendants could have been stated?

STATEMENT OF THE ARGUMENT

In his Brief, Mr Mott states, “In order to state a claim under 42 U.S.C., §1983, ‘the conduct must have been committed by a person acting under color of law.’” *Cornejo v. Bell*, 592 F.3d 121, 127 (2d Cir. 2010). As Mr Franco points out on behalf of his client Mr Mott, “A private person is generally not considered a state actor unless; the state provides significant encouragement to the entity, or **the entity is a willful participant in joint activity with the state.**” *Justice v. King*, No. 08-cv-6417-FPG, 2015 WL 1433303, at *15 (W.D.N.Y. Mar.27, 2015). In his pleadings, this Appellant argues exactly that, that Mr Mott willfully colluded with and conspired with Judge Dollinger and the other named Appellees when he refused to protect or advocate for his client when he knew the criminal acts committed in New York State Supreme Court deprived his client of due process, in clear violation of his 14th Amendment constitutional rights. When Mr Mott chose to collude and conspire with the state (Judge Dollinger) and the other defendants, Mr Mott extinguished any available argument to escape accountability for his unlawful and despicable actions under 42 U.S.C., §1983. Through his willful participation with Judge Dollinger, he himself in essence became a state actor....at least as far as his liability is concerned.

What is the evidence on the record that Mr Mott was a **willful participant in joint activity with the state**, acting to deprive his client, this Appellant of his constitutionally protected right to due process in a court of law:

- 1) In his reply brief 20-2223, *Dkt 164*, pg. 2, this Appellant states that on September 14, 2017, Hon, Elma Bellini vacated the Decision and Order for Divorce of Judge Kenneth Fisher at a Special Session Hearing held on that day. Livid that his D&O was vacated by Judge Bellini, Judge Fisher went to the Supervising Chief Justice Mathew Rosenbaum who without explanation and over great protest installed Judge Richard Dollinger to take over this Appellant’s case. Judge Dollinger was installed before Judge Bellini could even commit her Order to Vacate to paper. The heavily corrupted Judge Dollinger then wrote up Judge Bellini’s Order as if he was the presiding Judge at the Special Session Hearing on September 14, 2017. He was not and his nonsensical Order to Vacate, Supplemental Reply Appendix, pg. 7, that falsely states that he was the Judge presiding 20-2223, *Dkt 164*, pg14, is nothing more than an unlawful crime being presented fraudulently as a ‘quintessential judicial act’. The minutes of

that Special Session Hearing in evidence clearly show that it was the Honorable Judge Bellini presiding and NOT Judge Richard Dollinger as he fraudulently states to deceive anyone reviewing the record later without the benefit of the court minutes of that hearing. *Special Session Minutes - 20-2223, Dkt 164, pg 17. (Supplemental Reply Appendix, pg. 10.* During the pendency of this conspicuous crime, Mr Mott was the Attorney for this Appellant and despite his client's well documented pleas for help, Mr Mott refused to address the fraud and by evidence of record, Mr Mott chose to conspire with the Dollinger court rather than advocate for the interests of his client. It is very clear that Mr Mott was a **willful participant in joint activity with the state**, Judge Richard A. Dollinger, making him legally liable for damages under a 42 U.S.C., §1983 claim.

- 2) In opposition to the false claims of Mr Mott and his counsel Mr Franco that this Appellant has never accused him of conspiring with 'the State', this Appellant offers as proof that he has conspicuously stated on record that Mr Mott, conspired with Judge Dollinger and the other named Appelles, this Appellant would once again call to the court's attention the letter from Mr Mott (on his Davidson & Fink letterhead) to Appellee Sharon Sayers (third attorney for Appellant), stating among other things that the attorney for this Appellant's ex-wife (Mark Bezinque, Esq.) and the opposition of his client, confessed to him that the reason why there were no records for a trial or hearings is because in his words, attorney Mark Bezinque, Esq., told him, "there was no hearing." *Supplemental Reply Appendix pg. 4.* In that letter presented to the circuit court as part of this Appellant's Amended Complaint, this Appellant offered, "Gregory J. Mott in his letter to Sharon Kelly Sayers dated July, 2018 states, 'In talking to Mark Bezinque, Esq., he admitted that there was no hearing. Fisher says he held a Lincoln Hearing, He refers to 'Mother's Testimony', but there is no transcript in existence and no reference to a default hearing or notice of a default hearing." *20-2223, Dkt 164, pg 9.* As further proof that this Appellant argued that Mr Mott was conspiring with the state, in his Amended Complaint this Appellant offers, "Clearly Gregory J. Mott and Sharon Kelly Sayers were aware that the trial was fabricated, the hearings falsified, and the records destroyed yet Mr Mott (and Sayers) refused to take any action in spite of his client's desperate pleas for help." Mr Mott's conspicuous refusal to help or advocate for his client in spite of admitting to him in writing what he knew of the crimes they did, again

demonstrated for all to see that Mr Mott was a **willful participant in joint activity with the state**. Even though he acknowledged knowing the crimes that the Fisher and Dollinger courts committed, Mr Mott publicly denied the nefarious acts of the court he conspired with and he consciously and with malice deprived his client of his constitutional right to due process in a court of law. Again this is already in this Appellant's pleadings and is further evidence that Mr Mott was a **willful participant in joint activity with the state**. Because of his willful participation with the state, Mr Mott is liable for the constitutional injury of this Appellant under 42, U.S.C., §1983.

- 3) It's clear now that Mr Mott, this Appellant's attorney knew very early on that there was no default trial and all references in the court record to a default trial were lies and completely fabricated. Mr Mott self-reported that he himself had solicited a confession from attorney Mark Bezinque and he also reported that he knew that there was in his words, "no transcript in existence, no reference to a default hearing *on the court docket*, or notice of a default hearing." With that background and understanding, on December 14th, 2017, Mr Mott had the opportunity to formally depose his clients ex-wife Appellee Diane R. DeLong (Markham) and opposition. On two separate occasions during that deposition, Mr Mott asked Appellee DeLong if she testified at the fraudulent default trial and twice Ms DeLong answered that she did testify at the default hearing. Appellee DeLong gave sworn testimony to Mr Mott that she testified at a default hearing that Mr Mott stated in writing that he knew never happened. On page 33 of the deposition transcript, 6:20-cv-06039, Dkt 30, pg. 102, cell 36, (*Supplemental Reply Appendix, pg 12*). Mr Mott asks, "Q: Did you testify to anything at the default inquest?" To which Appellee DeLong (Markham) responds, "A: I did testify." That lie by Ms DeLong (Markham) under oath went unchallenged by Mr Mott. Moments later Mr Mott again asks, "Q: Did you ever testify in open court?, A: I did, Q: When? A: At the Judgment of Divorce. Q: The default inquest? A: At default trial. Q: November of 2016? A: Correct. Q: And Mark Bezinque was your attorney? A: Correct." 6:20-cv-06039, Dkt 30, pg. 102, cell 43. Again, At the time of Deposition Mr Bezinque had already left the case and confessed to Mr Mott about the faked trial yet Ms DeLong's lies about her participation in a default trial went completely unchallenged. Much to the chagrin of this Appellant, there were no follow up questions during the

deposition and when this Appellant demanded that Mr Mott challenge what Mr Mott openly acknowledged was false testimony, Mr Mott yet again in collusion with the court, to cover for his friends on the bar and bench, refused to challenge the court, demonstrating his willful participation in a conspiracy with the state and willful participation in the conspicuous denial of the constitutionally protected right of due process in a United States Court of law.

- 4) The forth attorney for this Appellant's ex-wife was a miserable dishonest, cheating, and lying outlaw by the name of Maureen Pineau, Esq., At the time that Ms DeLong retained her, Mr Mott told this Appellant that he, *along with the rest of the Monroe County Bar*, found Ms Pineau's manner and behavior so unpleasant and unethical that he felt that he could only tolerate her if I would allow him to assign Sharon Kelly Sayers as co-counsel, an attorney familiar with Ms. Pineau's theatrics and a demonstrated ability to deal with her often unlawful antics. With very few other options this Appellant reluctantly agreed.....a decision he would soon come to regret. It quickly became clear that rather than challenging Ms Pineau, Ms Sayers and Mr Mott fully intended to conspire with her against the expressed wishes and best interests of their client, this Appellant. Neither Mr Mott nor Ms Sayers would say or do anything to challenge the repeated false testimony of Maureen Pineau, nor would Judge Dollinger do anything to reign in the absurdly fraudulent and criminal testimony that he demonstrably knew to be false. Completely unopposed by Mr Mott or Mrs Sayers, as evidence of the false narrative they did nothing to challenge on behalf of their client, on November 7th, 2018, Maureen A. Pineau, Esq., attorney for Appellee Diane R. DeLong, wrote a sworn affirmation for the court. Ms Pineau, clearly a hired gun retained with the clear blessing of the Dollinger court set out to shut up and shut down this Appellant's ongoing complaints of court fraud for good, by whatever means necessary. By evidence of record, Maureen Pineau had absolutely no problem lying under oath, especially since she clearly had the blessing and understanding of Judge Dollinger and was acting after all, also for his protection and benefit. In that attorney affirmation dated November 7, 2018, Maureen Pineau fraudulently states, "The Deponent has personally reviewed the file at the Monroe County Clerk's Office. All of the exhibits admitted at the trial are in a box that the Monroe County Clerk is storing in this manner. I believe the minutes of

the trial are in the box as well as the motions, pleadings, orders - all the usual documents associated with an action.” *Supplemental Reply Appendix, pg. 2*. Mr. Mott, as evidenced by the Mark Bezinque confession letter, knew beyond any doubt that there were no trial records as falsely sworn to by the hired gun and outlaw Maureen Pineau, yet despite his client’s desperate pleas for help, Mr Mott did nothing but collude and conspire with his friends and colleagues on the bar and bench and later abandon his client at the pleasure of the court when he insisted on reporting the crimes he knew that they had committed to the New York State Commission on Judicial Conduct, the New York State Office of Court Administration, the United State Office of the Attorney General, and the Federal Bureau of Investigation.

- 5) When it became clear that this Appellant was going to report the crimes of the Dollinger Court to the aforementioned authorities, rather than advocate for his client and work in his best interest as he was hired to do, unsurprisingly Mr Mott, who was now shamelessly colluding with the Dollinger court, without explanation or notice fired his client and demanded the court allow him to be discharged as his counsel, effectively abandoning him, to the agreement and absolute pleasure of the Richard A. Dollinger court. Shortly thereafter Sharon Kelly Sayers followed suit and in a threatening and hostile letter wrote this Appellant, “If you do not sign a voluntary discharge, I will put forth a rationale which I can assure you, will not put you in a sympathetic light.” This Appellant did not sign either Mr Mott’s or Mrs Sayer’s voluntary discharge and unsurprisingly, in collusion with the heavily corrupted Dollinger court, Richard Dollinger signed the discharge orders for both attorneys without a hearing or any discussion or input allowed from this Appellant. The foregoing is on the record and ample proof that Appellee Gregory J. Mott was a **willful participant in joint activity with the state**. The evidence shows that Mr Mott, along with Judge Dollinger and the other named defendant-Appellees conspired to deprive this Appellant of constitutionally protected right to due process in a United States Court of law.

In his pleadings before this Appellate Court and the United States District Court, this Appellant alleges that Mr Mott willfully and deliberately **conspired** with Judge

Dollinger and the other Appellee-Defendant's which resulted in a deprivation of his rights protected by the Fourteenth Amendment of the United States Constitution.

"To demonstrate that a private party was a state actor engaged in a conspiracy with other state actors under §1983, a plaintiff must allege (1) an agreement between the private party and state actors, (2) concerted acts to inflict an unconstitutional injury, (3) an overt act in furtherance of that goal." Young v. Suffolk Cty., 705 F. Supp. 2d 183, 197 (E.D.N.Y. 2010).

"Although a plaintiff is not required to list the place and date of defendants meetings and summary of his conversations, when he pleads conspiracy, the pleadings must present facts tending to show agreement and concerted action." Conception v. City of NewYork, 2008 U.S. Dist. LEXIS 91554, 2008 WL 2020363, (S.D.N.Y. May 7, 2008). Fisk v. Letterman, 401 F. Supp. 2d 362, 376 (S.D.N.Y. 2005).

All of the necessary requirements are present for this Appellant to plead conspiracy with regard to Mr. Mott and Judge Richard A. Dollinger (the State).

- By evidence of record as previously presented in his pleadings to the circuit court, Mr Mott was engaged in willful agreement with the state to deny the true narrative presented by this Appellant stating that the state faked a trial, fabricated testimony at hearings that never happened and then conspired to destroy all of the court records in an attempt to hide those criminal acts.
- The acts as outlined above are all concerted acts committed by Mr Mott that were intended to and did in fact inflict a huge measure of unconstitutional injury on this Appellant. Injuries so severe, he will likely never fully recover.
- Likewise all of those acts including the act of legal abandonment and the demand for involuntary discharge without notice or explanation are all overt acts committed in the furtherance of that goal - *to inflict constitutional injury.*

"The Court should not dismiss the complaint if the Plaintiff (Appellant) has stated enough facts to state a claim for relief that is plausible on its face, and must accept as true all of the factual allegations contained in the complaint." Bell Atl. Corp v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955. 167 L.Ed. 2d 929 (2007).

"A court must draw all reasonable inferences in Plaintiff's favor." Faber v. Metro. Life Ins. Co., 648 F. 3d 98, 104 (2d Cir. 2011).

"A claim has facial plausibility when the plaintiff (Appellant) pleads factual content that allows the court to draw the reasonable inference the defendants (Appellees) are liable for the misconduct alleged." Ashcroft v Iqbal, 556 U.S. 662, 678, 129 S. Ct 1937, 173, L.Ed 868 (2009).

“The court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff.” Council v. Johnson, 461, F.3d 164, 171 (2d Cir. 2006).

“When faced with a pro se complaint, the Court must construe the complaint liberally and interpret it to raise the strongest arguments that it suggests.” Chavis v. Chappius, 618 F. 3d 162, 170 (2d Cir. 2010).

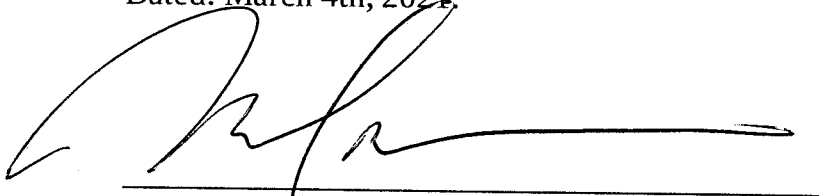
The court erred in granting the Appellee’s Motion to Dismiss for failure on the part of the Appellant to state a claim Ruled 12(b)(6). The claims as stated by this Appellant in his Amended Complaint against Defendant - Appellee Mott are clearly stated, supported with facts and evidence and have facial plausibility. The accusations are specific, and detailed with examples and are neither vague nor conclusory.

All of the criteria are met for Mr Mott’s participation in a conspiracy under 42 U.S.C., §1983 and likewise his conversion into a state actor. Under that statute, Appellee Gregory J. Mott shall be liable to the injured party for the deprivation of this Appellant’s rights, privileges guaranteed by the Fourteenth Amendment of the United States Constitution.

The circuit court erred in Granting Gregory J. Mott’s Motion to Dismiss based on Rule 12(b)(6),and 12(b)(1), and this Appellant respectfully requests that it be overturned and this Appellant be given the full measure of relief requested and any other relief as seems just and proper to the Court.

I, Michael D. Markham, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: March 4th, 2021.



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CERTIFICATE OF COMPLIANCE

Michael D. Markham, certifies that his Supplemental Reply Brief for Case # 20-2236 contains:

The exact word count is: **3,864.**

The exact page count is: **9.** (15 page limit)

UNITED STATES COURT OF APPEALS for the SECOND CIRCUIT

Michael D. Markham,

Plaintiff - Appellant,

V.

CERTIFICATE OF SERVICE

COA Docket Number: 20-2223

DC Docket #: 20 - CV - 6039

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Cynthia L. Snodgrass,

Gregory J. Mott

Sharon Kelly Sayers

Jennifer Speller

David Coron

Timothy E. Ingersoll

Adam J. Bello

Diane R. DeLong (Markham) &

Maureen A. Pineau.

Defendants - Appellees.

I Michael D Markham, hereby certify under penalty of perjury that on March 4th, 2021, I served a copy of **Supplemental Reply Brief, Supplemental Reply Appendix, and Proof of Service** by U.S. Postal Service Priority Mail delivery signature required to the Clerk of United States Court of Appeals for the Second Circuit, and by mailing the same by USPS First Class Mail in a sealed envelope, with postage-paid thereon, in an official depository of the U.S. Postal Service within the State of Hawaii addressed to those persons whose names are set forth on these three numbered pages.

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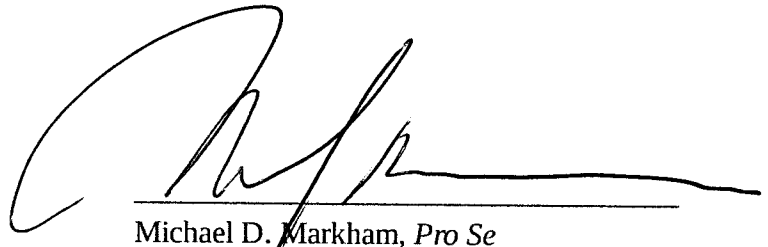
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Dated: March 4th, 2021

A large, stylized handwritten signature in black ink, appearing to read 'M. Markham', is written over a horizontal line.

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