

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LUISA C. ESPOSITO,

Docket No: 07-Civ-11612 (SAS)

Plaintiff,

--against--

AFFIRMATION IN SUPPORT
OF MOTION FOR REARGUMENT
AND RECONSIDERATION

THE STATE OF NEW YORK, ET.AL.

Defendants.

Affirmation in Support of Motion For Reargument & Reconsideration Based Upon Fraud On The Court, And Newly Discovered Evidence FRCP 60 (b) (3), (6),and extraordinary circumstances, etc.

I, LUISA C. ESPOSITO., make the following affirmation under penalties of perjury:

I, Luisa C. Esposito, am the Plaintiff in the above entitled action, and respectfully makes this Motion for reargument and reconsideration with respect to the Courts May 12, 2016 Order.

Plaintiff respectfully seeks reconsideration for various reasons;

1. Plaintiff case wasn't untimely as it pertained to newly discovered evidence that was not previously available;
2. Plaintiff's case involves fraud on the court, which has no statutory limit;
3. Plaintiff has presented ample evidence in support of her claims.

I. Standard For Motion For Reconsideration

Under Federal Rule Civ. P 59 (e) and local Rule 6.3 motions for reconsideration may be granted where (1) the moving party can show an intervening change in the controlling law; (2) upon discovery of new evidence not previously available; (3) on a showing of the need to correct a clear error of law or prevent manifest injustice. Plaintiff seeks under (2), and (3).

The reasons why Plaintiff, Esposito is entitled to the relief are the following:

**II. Basis For Reconsideration- Plaintiff's Case Involves
New Evidence, Fraud On the Court, And Exceptional Circumstances**

1. Plaintiff brought these actions within her complaint involving **FRAUD**, denial of due process, denial of her civil rights, etc. before the Court for several years. She has been trying to get justice since 2005, from various investigatory agencies and as a result of these flagrant abuses she instituted a Federal Civil Rights complaint in 2007. Each and every agency has turned a blind eye to these crimes and her rights under federally protected laws as a crime victim.

2. On March 17th, 2016, Plaintiff filed a motion to reopen based on new evidence, fraud on the Court, *inter alia*.. etc.

3. On May 12, 2016 Judge Côte issued an order stating Plaintiff's motion to reopen was untimely.

III. FRAUD

Fraud, whether intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party are express grounds for relief by motion under amended subdivision (b). There is no sound reason for their exclusion. The incorporation of fraud and the like within the scope of the rule also removes confusion as to the proper procedure. It has been held that relief from a judgment obtained by extrinsic fraud could be secured by motion within a "reasonable time," which might be after the time stated in the rule had run. *Fiske v. Buder* (C.C.A.8th, 1942) 125 F.(2d) 841; see also inferentially *Bucy v. Nevada Construction Co.* (C.C.A.9th, 1942) 125 F.(2d) 213. On the other hand, it has been suggested that in view of the fact that fraud was omitted from original Rule 60(b) as a ground for relief, an independent action was the only proper remedy. *Commentary, Effect of Rule 60b on Other Methods of Relief From Judgment* (1941) 4 Fed.Rules Serv. 942, 945. The amendment settles this problem by making fraud an express ground for relief by motion; and under the saving clause, fraud may be urged as a basis for relief by independent action insofar as established doctrine permits. See *Moore and Rogers, Federal Relief from Civil Judgments* (1946) 55 Yale L.J. 623, 653–659; 3 *Moore's Federal Practice* (1938) 3267 et seq. And the rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause. As an illustration of this situation, see *Hazel-Atlas Glass Co. v. Hartford Empire Co.* (1944) 322 U.S. 238.

"Fraud on the Court, or Fraud upon the Court, is where a material misrepresentation has been made to the court, or by the court itself. The main requirement is that the impartiality of the court has been so disrupted that it can't perform its tasks without bias or prejudice."

Some examples of fraud on the court include:

- Fraud in the service of court summons (such as withholding a court summons from a party)
- Corruption or influence of a court member or official
- Judicial fraud
- Intentionally failing to inform the parties of necessary appointments or requirements, in efforts to obstruct the judicial process.
- “Unconscionable” schemes to deceive or make misrepresentations through the court system.

Upon information and belief, Agencies and Court Appointed Officials involved in Fraud Upon the Court.

A. Manhattan District Attorney Office- Sex Crimes Unit-ADA Lisa Friel, Jennifer Steiner Crowell, Jennifer Gaffney, Colleen Balbert, Esq.s- this agency and individuals were involved in white-washing the criminal investigation of Ms. Esposito’s case.

B. New York Attorney Generals Office- Eliot Spitzer-Andrew Cuomo- this agency represented some of Esposito’s defendants when there clearly was a conflict of interest.

C. Departmental Disciplinary Committee-Naomi Goldstein, Referee Albert Blinder, Thomas Cahill. Alan Friedberg.-please read the article below “Former Insider Admits To Wiretaps for Ethics Bosses”, as it pertains to Ms. Esposito.

D. Internal Affairs Bureau- Ms. Esposito filed numerous complaints against Lt. Adam Lamboy, Det. Robert Arbuiso, ADA Lisa Friel, etc. her complaints fell upon “deaf ears”. Plaintiff was recently apprised by an Internal affairs officer that the complaints she filed in 2006, and 2007, against Lamboy and Arbuiso were closed by their boss, Captain Orski.

E. Manhattan Special Victims Squad- this Agency failed to protect Ms. Esposito’s constitutional rights under federally protected laws. Lt. Adam Lamboy as well as other individuals within this Agency were involved in white-washing crimes for her assailant, Allen Isaac. Therefore, denying Ms. Esposito’s constitutional and civil rights as a crime victim.

F. Upon information and belief, Plaintiff believes the above listed attorney's and agencies including the attorneys representing some of the defendants were involved in suppressing felonious evidence.

G. Jane and John Does, etc.

IV. New Evidence-Exceptional Circumstances-Law Enforcement Corruption

The evidentiary standard applied by the federal courts is sufficient to protect the integrity of our judicial system, and discourage the type of egregious and purposeful conduct designed to undermine the truth-seeking function of the courts, and impede a party's efforts to pursue a claim or defense. We adopt this standard and conclude that in order to demonstrate fraud on the court, the non-offending party must establish by clear and convincing evidence that the offending 'party has acted knowingly in an attempt to hinder the fact finder's fair adjudication of the case and his adversary's defense of the action'. (McMunn, 191 F Supp 2d at 445, citing *Skywark v. Isaacson*, 1999 WL 1489038, 14 [SD N.Y. Oct. 14, 1999, No. 96 CIV. 2815(JFK)] affd 2000 WL 145465, 1 [SD N.Y. Feb. 9, 2000]). A court must be persuaded that the fraudulent conduct, which may include proof of fabrication of evidence, perjury, and falsification of documents concerns 'issues that are central to the truth-finding process. (McMunn, 191 F Supp 2d at 445). Essentially, fraud upon the court requires a showing that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense."

Upon motion by either party, Rule 60 allows a court, in its discretion, to relieve that party from "final judgment, order, or proceeding" for the following pertinent reasons: "(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); . . . or (6) any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(2), 60(b)(6). Rule 60(b) is "extraordinary judicial relief" and can be granted "only upon a showing of exceptional circumstances." *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir.1986). To prevail on a Rule 60(b)(2) motion, the party must show that "(1) newly discovered evidence is of facts existing at the time of [the prior decision]; (2) the moving party is excusably ignorant of the facts despite using due diligence to learn about them; (3) the newly discovered evidence is admissible and probably effective to change the result of the former ruling; and (4) the newly discovered evidence is not merely cumulative . . . of evidence already offered." *Tufts v. Corp. of Lloyd's*, 981 F. Supp. 808, 812 (S.D.N.Y. 1996) (quoting *Mancuso v. Consol. Edison Co. of N.Y., Inc.*, 905 F. Supp. 1251, 1264 (S.D.N.Y.1995)).

Rule 60(b) allows a party to seek relief from a final judgment in a limited set of circumstances, including mistake, excusable neglect, newly discovered evidence, fraud or other reason justifying relief. Fed. R. Civ. P. 60 (b); Here, Plaintiff seeks relief under subsection (6) of Rule 60(b), which permits a district court to exercise its discretion to set aside a final judgment for "any other reason justifying relief from the operation of the judgment." **The Third Circuit "has consistently held that the Rule 60(b) ground for relief from judgment provides for extraordinary relief and may only be invoked upon a showing of exceptional circumstances."**

***Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 273 (3d Cir. 2002); see also, e.g., *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) ("[O]ur cases have required a movant seeking relief under Rule 60(b), (6) to show 'extraordinary circumstances' justifying the reopening of a final judgment."); *Ackermann v. United States*, 340 U.S. 193 (1950), *Stradley v. Cortez*, 518 F.2d 488, 493 (3d Cir.1975).**

Moreover, although “relief under 60(b), (6) is not limited by any strictly defined time period,” such relief “can be afforded under this rule [only] if it is sought within a reasonable time.” *Stradley v. Cortez*, 518 F.2d at 493 (internal quotation marks omitted).

V. Jurisdiction

Jurisdiction is invoked herein pursuant to 28 U. S. C Sections 1331, 1343, this being an action seeking redress for the violation of Plaintiffs Constitutional and Civil Rights.

VI. Venue

Venue is properly laid in this district under 28 U. S. C Section 1391 (a) and (b).

VII. Newly Discovered Evidence

4. Newly discovered evidence pertaining to Defendant Adam Lamboy and fraud upon the court was not untimely. This is newly discovered evidence-the case of Rachel Izzo vs. The City of New York, Adam Lamboy, et.al. 15-CV-7685 (RMB). That the actions of the defendants represent a gross and repugnant dereliction of their duties and a severe abuse of their position, power as Police Officers charge with the obligation to serve protect the public, not Plaintiffs assailant, Defendant Allen H. Isaac. All of the aforementioned acts deprived Plaintiff of the right privileges and immunities guaranteed to citizens of the United States by the First, Fourth and Fourteenth Amendments to the Constitution of the United States and in violation of 42 U. S. C § 1983. Defendants, collectively and individually while acting under the color of state law engaged in conduct which constituted 42 U. S. C §§1983 and 1988 for the wrongful, acts of defendants. By these actions, these Defendants have deprived Plaintiff of rights secured, inter-Alia, by the First, Fourth, and Fourteenth Amendments of the United States Constitution in violation of 42 U. S. C for which the defendants are individually liable. Specifically, the City, including the NYPD, are liable for, *inter-alia*, the following unconstitutional practices and procedures.

A. Failing to establish proper policies or protocols governing the conduct of police officers.

- B. Failing to properly train police officers in the sex crimes unit as to the protocols in conducting and collection evidence during a criminal investigation.
- C. Failing to incorporate a “code of ethics” for police officers which specifically address matters pertaining to sex crimes.

5. Defendants collectively and individually while acting under the color of state law were directly and actively conspired in violating Plaintiffs constitutional and civil rights. When Plaintiff went to the Manhattan Special Victims Unit with additional evidence (other woman who were similarly victims by Isaac) she was thrown out of the Precinct. Therefore, she was once again denied her constitutional rights as a crime victim to file a complaint against her assailant.

Please see Daily News link below along with some quoted paragraphs.

<http://nydn.us/1ysGLjx>

“A pair of sex-crime cops, who were supposed to be investigating a rape allegation, flew cross-country ready to party-and party hard.”

“Officer Lukasz Skorzewski, 31 and Lt. Adam Lamboy, 44 pleaded guilty to departmental charges of prohibited conduct”.

“At the time of the July 2013 incident, Lamboy was under investigation for getting paid for overtime he hadn't worked”.

“He pleaded guilty to that charge and was ordered to pay back more than \$5,000 for 76 hours”.

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“Lt. Adam Lamboy was stripped of his gun and badge”.

VIII. Factual Background

The Sexual Assault

Respectfully, Plaintiff directs the Court to item number (1) on the docket of the instant case, Complaint, Sections 20, 21, and 22, pages 7 and 8.

Plaintiff met with Detective Arbuiso of the Manhattan Special Victims Unit

Respectfully, Plaintiff directs the Court to item number (1) on the docket of the

instant case, Complaint, Sections 25, 26, 27, 28, 29, 30 pages 9, 10, 11, and 12.

Plaintiff Files a Complaint with the DDC

Respectfully, Plaintiff directs the Court to item number (1) on the docket of the instant case, Complaint, Sections 31, 32, 33, 34, 35, pages 12, and 13.

6. Plaintiff, Luisa Esposito's complaints were wrongfully dismissed by the U.S. District Court for the Southern District of New York, and the Second Circuit Court of Appeals. Her complaints regard fraud upon the court, denial of due process, civil rights violations, Federal crimes relating to "Law Enforcement Corruption", by covering up Sexual Assault, Extortion, Coercion, Obstruction of Justice, Prosecutorial Misconduct, etc; Plaintiff presented the Manhattan District Attorney's Office, ADAs Lisa Friel, Jennifer Steiner Crowell, Colleen Balbert, Jennifer Gaffney, Martha Bashford, Manhattan Special Victims Unit, Detective Robert Arbuiso, Lieutenant Adam Lamboy, etc., with incontrovertible evidence of felonious crimes, taped recordings of admissions from her assailant along with witnesses and other woman who had been similarly victimized by Allen Isaac. Esposito's pleas for justice were white-washed dismissed and further ignored.

7. Plaintiff's case wasn't about "you can't force the Police or DA to prosecute", her case was white-washed because "favors were called in" and because her assailant, Allen Isaac, has "Political Connections". Defendant Detective Arbuiso told Plaintiff on more than one occasion that "favors were getting called in and THEY weren't allowing the arrest". She recorded the conversation because she couldn't believe what she was hearing. Plaintiff also witnessed firsthand the widespread corruption at the New York State Appellate Division, First Department, Departmental Disciplinary Committee in New York, The New York County District Attorney's Office, The Attorney General's Office, and other various investigatory agencies. Defendant Allen Isaac is heard on tape admitting to his crimes along with his ability to influence his

“friends” who are judges.

Listed below is part of the conversation between Allen Isaac and Luisa Esposito, which can be heard on the A/V DVD tape (evidence), where Isaac makes reference, regarding the JUDGES at the Appellate Court, First Department:

"Yesterday, I was in the Appellate Court, First Department, not the Second Department the Second Department is tougher than the First Department." "I was in the First Department there were 16 cases and my case was the last. I wasn't arguing it, but the client wanted me to be there because some of the judges on the panel are very close to me. So, I wanted them [the appellate judges] to know that I'm really interested in the case. This is all bullshit politics, and they saw me, so I wanted them to know that I'm really interested in that case. That case, you know, is worth \$200 million dollars, not this."

IX. Fraud On And Upon The Court

8. Plaintiff now moves for the herein relief on the extraordinary and newly discovered evidence, regarding Rachel Izzo, and fraud upon the court. Defendant Adam Lamboy, etc. Lamboy was assigned to investigate Esposito's claims of sex abuse, extortion, unlawful imprisonment, coercion, and obstruction of justice. Arbuiso and Lamboy promised Esposito there was going to be an arrest made based upon her incontrovertible evidence, witnesses and other woman who were similarly victimized by Defendant, Allen Isaac. Unfortunately, when Ms. Esposito went to Manhattan Special Victims Squad to report the new evidence (re: the other women) she was treated as if she was the criminal. Ms. Esposito tried to hand Lt., Lamboy a sworn affidavit along with additional evidence, hoping they wouldn't white-wash her evidence for the second time. However, Lamboy wouldn't accept her statement, nor would he take a written statement from her. Lamboy told Esposito to go home and have the statement notarized. Ms. Esposito complied with Lt. Lamboy wishes and had her statement notarized. When she later tried to revisit the "MSVS" to hand in her statement to Lamboy, she was asked to leave. They wouldn't let her file a criminal complaint against Defendant Allen Isaac, regarding newly

discovered evidence. The Manhattan Special Victims Squad denied her access to her constitutional rights as a crime victim. She was virtually thrown out of the Police station. This was video recorded by Esposito. Esposito has many taped recordings of how various investigatory agencies denied her due process as a crime victim. On one specific recording, Det. Arbuiso can be heard telling Ms. Esposito that “favors” were being called in and they weren't allowing the arrest. Arbuiso also told Esposito that her case is a “crime” and that it “fell upon deaf ears”. When Esposito realized her complaints were being white-washed against her assailant, Allen Isaac, she filed complaints with the Internal Affairs Bureau. Esposito recently contacted the Internal Affairs Bureau to check on the status of her complaints against Arbuiso and Lamboy, she was told that her complaints were closed soon after. Esposito asked the officer who closed the complaints, he responded by telling her that Lamboy’s boss, Captain Orski, closed them.

9. This Court must insure that any plaintiff such as Esposito is allowed proper *due* process. It is written that federally protected laws allow proper due process for everyone. Plaintiff Esposito was never afforded that right. Plaintiff’s case was unjustly dismissed. Plaintiff provided the court with incontrovertible evidence that involved massive cover-ups of crimes.

10. Plaintiff’s allegations regarding fraud upon the court, the systemic corruption within the DDC, New York County District Attorney's Office, Manhattan Special Victims Squad, etc. these claims must be addressed in the interest of justice.

11. Importantly, Courts have an obligation to report and order investigation into official, fraud upon the court and at times criminal misconduct. This is a duty of a Court.

12. Plaintiff is, and always has been, deserving of her constitutionally protected rights to discovery and a fair trial. This denial of basic rights and fraud upon the court must now meet

correction in the interest of justice.

13. Plaintiff Esposito filed this motion within “a reasonable time” pursuant to FRCP 60 (b),

(3), (6) and has demonstrated the requisite “exceptional circumstances.” Accordingly, this motion

for reargument and reconsideration should be granted in its entirety and Case No: 07-CV-11612 (DLC) be re-instated to its original status.

For the reasons set forth herein, Plaintiff meets the high standard for reconsideration based on new evidence, fraud on the court and the many facets of injustice surrounding her case.

WHEREFORE, for all foregoing reasons, Plaintiff respectfully requests that the Court grant her instant motion for reargument and Reconsideration of the May 12th, 2016 Order and in the interest of justice, and for such other relief that the Court may deem just equitable and proper.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that she is the Plaintiff in the above action, that she has read the above and that the information contained herein is true and correct, 28 U.S.C. § 1746; 18 U.S.C § 1621.

Dated: West Hempstead, N.Y

May 26th, 2016

Respectfully submitted,

/s/ Luisa C. Esposito, Plaintiff, pro-se
571 Roy Street
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[\(516\) 741-0320](tel:5167410320) (Fax) [\(516\) 652-1639](tel:5166521639) (cell)

AFFIRMATION OF SERVICE

I, Luisa Esposito hereby certify that a true and correct copy of the foregoing motion for reargument and reconsideration has been furnished to defendants this 26th day of May 2016, by ECF to the below listed Attorney's.

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May 26th, 2016

Respectfully submitted,

/s/ Luisa C. Esposito, Plaintiff, pro-se

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