**Stephen Phillip Romine**

Pro se, Pro per, Sui Juris Litigant

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December16, 2020

Chief Clerk

John P. Asiello **VIA: Overnight Mail**

N.Y.S. Court of Appeals

20 Eagle Street

Albany, New York 12207-1095

Re: Romine vs. Laurito et al.

“Jurisdictional Response”

Dear Chief Clerk John P. Asiello,

I, Stephen Phillip Romine, pro se, pro per, sui juris plaintiff/appellant am here responding to your December 10, 2020 letter requesting comments justifying the retention of subject matter pertaining to whether a substantial constitutional question is directly involved in the August 6, 2020 Appellate Division order to support an appeal as of right. Attached at the end of this response is the August 6, 2020 Order, the Appellant’s Appeal Brief and Appellant’s Reply. My comments on those issues are as follows:

1- The first constitutional question raised is regarding whether plaintiff/appellant’s inalienable rights to due process, guaranteed by the US constitution, were violated by denying aggrieved plaintiff/appellant reciprocal discovery. This question was raised and answered in Appellant’s Brief in Point II, pages 26-28. The August 6th, 2020, beginning on the bottom of page 2 through page 3 of the Appellate Division Order rejected plaintiff/appellants arguments dealing with discovery that he originally claimed was a violation of due process so the issue of a due process violation was most certainly directly involved in the aforementioned order.

2- The issue of the lack of substantiality of a constitutional question is best gauged by the words of The US Supreme Court who held that the contention raised *“is clearly not debatable and utterly lacking in merit as to require dismissal for want of substance”* [Hamilton v. Regents of the University of California 293 U.S. 245, 258, 55 S. Ct., 197, 79 L. Ed., 343 (1934)].

With the aforementioned quote in mind*,* the United States Supreme Court also held that “*reciprocal discovery is required*” by the due process “*fundamental fairness”* guarantee. The Court stated “*discovery must be a two way street*." Wardius v. Oregon, 412 U.S. at 475, 93 S. Ct. at 2212, 37 L.Ed.2d at 88.

U.S. Supreme Court also held that “*a party should be afforded a reasonable opportunity to conduct discovery prior to the determination of summary judgment*” [Harvey v. Neals 61 AD3d 935 (2009)]

Furthermore on paragraph 2 of page 3 of the Appellate Division, Third Department Order improperly affirmed putting conditions on the plaintiff/appellant to obtain reciprocal discovery that the defendants/respondents were not required to meet to obtain discovery violates the requirement of ”*fundamental fairness*” expounded on in U.S. Supreme Court case law [Wardius v. Oregon 412 U.S. 470 (1973)] as stated on page 27 & 28 of Appellant’s Brief and on page 16 of Appellant’s Reply.

Additionally U.S. Supreme Court held: “Federal law and U.S. Supreme Court cases apply to state court cases “Howlett v. Rose , 496 U.S. 356 (1990), which affirms the primacy of US Supreme Court case law over any CPLR or state law that would deprive plaintiff/appellant of reciprocal discovery.

Therefore in light of the aforementioned rulings of the US Supreme Court, pro se plaintiff/appellant being denied and not obtaining any discovery whatsoever before a summary judgment was granted, while the defendants/respondents represented by professional attorneys were permitted and obtained all discovery demands, is a substantial constitutional question clearly with “*merit*” and “*substance*” (Hamilton v. Regents of University of California).

3- The second constitutional question raised is regarding whether plaintiff/appellant’s inalienable rights to equal protection under the law, guaranteed by the US constitution, was violated. This question was raised and answered in “Appellant’s Brief” in Point II, pages 26-28. The Appellate Division in their August 6th, 2020 order mentioned plaintiff/appellant’s constitutional claims beginning on the bottom of page 2 to top page 3. The Appellate Division, Third Department in affirming the lower courts decision to deny reciprocal discovery to the plaintiff/appellant, participated in violating his constitutionally protected right the requirement of “*fundamental fairness*” so the issue of equal protection under the law was most certainly directly involved in the aforementioned order.

4- As stated previously the issue of substantiality of constitutional question is best gauged by the words of The US Supreme Court who held that the contention raised *“is clearly not debatable and utterly lacking in merit as to require dismissal for want of substance”* [Hamilton v. Regents of the University of California 293 U.S. 245, 258, 55 S. Ct., 197, 79 L. Ed., 343 (1934)] and “*a party should be afforded a reasonable opportunity to conduct discovery prior to the determination of summary judgment*” [Harvey v. Neals 61 AD3d 935 (2009)]

As the subject Appellate Division order admitted on page 3, pro se plaintiff/appellant had less than a year to complete discovery and whereby the very same the Appellate Division, Third Department, ruled that a party having than “*less than a year were not afforded a reasonable opportunity to complete discovery*” [Timothy K. Fultz v. Benvenuti Properties 155 A.D. 2d 794, 548, N.Y.S. 2d 72 (19890]. To be clear that ruling did not say that one (1) year was the absolute rule for completion of discovery. The Third Department was simply stating that the professional attorney in that case had only been litigating less than a year so summary judgment was obviously inappropriate. Discovery is allowed much longer in many cases in NYS courts as case law will attest and NYS Court of Appeals is obviously cognizant of.

The plain fact is US Supreme Court case law affirms due process requires reciprocal discovery. To allow defendants/respondents to complete discovery while not allowing the plaintiff/appellant to obtain any discovery at all, is violating the plaintiff/appellants right to equal protection under the law that states reciprocal discovery is required for both parties.

The aforementioned Appellate Division, Third Department 1989 case law referenced affirms that being the professional attorneys in that case had less than a year to complete discovery, they were not afforded a reasonable opportunity, having obviously obtained some discovery before a summary judgment was granted. Yet the very same Appellate Division, Third Department would not afford that same consideration to a pro se litigant who obtained no discovery let alone completing it in less than a year, before the summary judgment was granted, violates the plaintiff/appellants equal protection under the law guaranteed by the U.S Constitution.

Furthermore on paragraph 2 of page 3 of the Appellate Division, Third Department Order improperly affirmed putting conditions on the plaintiff/appellant to obtain reciprocal discovery that the defendants/respondents were not required to meet to obtain discovery violates the requirement of ”*fundamental fairness*” expounded on in U.S. Supreme Court case law [Wardius v. Oregon 412 U.S. 470 (1973)] as stated on page 27 & 28 of Appellant’s Brief and on page 16 of Appellant’s Reply.

Furthermore “putting conditions on the plaintiff/appellant to obtain reciprocal discovery that the defendants/respondents were not required to meet to obtain discovery, is a constitutional violation of equal protection under the law and the requirement of *fundamental fairness*” expounded on in U.S. Supreme Court case law [Wardius v. Oregon 412 U.S. 470 (1973)] and stated on page 27 & 28 of Appellant’s Brief and page16 of Appellant’s Reply.

The U.S Constitution protects the individual from transgressions and encroachments of his civil rights including the law being applied equally to a pro se litigant as it is being applied to a professional attorney. The obvious denial of equal protection under the law demonstrated here and in the Appellant’s Brief and Reply meets the requirement of a substantial constitutional question raised and the merit that comes with referenced supporting case law.

5- Plaintiff/appellants claims of constitutional violations were mentioned on pages 16, 26, 27,28, 33, 34, 36, 45, 51, 52, 54, and 74 of his Appellate Division Third Department Appeal Brief and mentioned on pages10, 16, 18 and 23 of Appellant’s Reply.

The Appellant Division Third Department August 6th, 2020 order mentioned plaintiff/appellants claims of constitutional violations on the top of page 3 of subject order and without addressing any of his arguments dismissed his claims of constitutional violations in the middle of page 4 of aforementioned order. The fact the Appellate Division, Third Department turned a blind eye to all of the supporting U.S. Supreme Court case law and their own case law cited by the plaintiff/appellant in his Brief and Reply` , and cited only cherry picked Appellate Division case law cited by the Appellate Division to affirm the lower courts decision, further demonstrates that they have violated the constitutional guarantee of the right to equal protection under the law for the pro se plaintiff/appellant.

6- The preceding five (5) items of discussion should demonstrate that the aggrieved pro se plaintiff/appellant has been subject to the “*deprivation*” of his mentioned inalienable rights guaranteed by the US Constitution, thereby violating 42USC1983 requiring at the least an appeal to document these claims and other claims further. There has been obvious and abundant substance in plaintiff/appellant’s arguments together with solid merit supported by US Supreme Court case law. Plaintiff/appellant respectfully requests the N.Y.S Court of Appeals to grant an appeal on the grounds that the aggrieved plaintiff/appellant has met the criteria for an appeal as of by right.

Thank you for your time and consideration,

Stephen Phillip Romine, pro se plaintiff/appellant

Cc: Christina M. Bookless Esq. **Via U.S. Priority Mail**

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