App. 1
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
April 19, 2022, Decided
21-886

ALEXANDER MOSKOVITS,

Plaintiff-Appellant,

v.

BANK OF AMERICA, N.A., SCHOEMAN UPDIKE KAUFMAN & GERBER LLP, BETH L. KAUFMAN, SILVIA S. LARIZZA, CALVIN B. GRIGSBY, ROGER J. BERNSTEIN, BARRY R. OSTRAGER, SUED INDIVIDUALLY AND AS A JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, DOES 1 THROUGH 10,

Defendants-Appellees.

Present: DEBRA ANN LIVINGSTON, Chief Judge, BARRINGTON D. PARKER, BETH ROBINSON, Circuit Judges.

Opinion

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is AFFIRMED.

In December 2018, Plaintiff-Appellant Alexander Moskovits ("Moskovits"), a *pro se* litigant and resident of Brazil, filed suit in New York state court against Bank of America, N.A., the country of Brazil, three Brazilian states, two Brazilian nationals, and a

United States resident named Calvin Grigsby, alleging unjust enrichment and breach of contract based on certain alleged business transactions. *Moskovits v. Grigsby*, 132 N.Y.S.3d 741 (Table), 69 Misc. 3d 1215[A], 2020 NY Slip Op 51345[U], 2020 WL 6704176, at *1-2 (N.Y. Sup. Ct. Nov. 12, 2020). In November 2020, after removal of the case to federal court, Moskovits's voluntary dismissal of Brazil and the Brazilian states as defendants, and remand to the state court, New York State Supreme Court Justice Barry Ostrager dismissed the action. *See* 132 N.Y.S.3d 741, *Id.* at *3-8; *see also Moskovits v. Grigsby*, No. 19-cv-3991, 2020 U.S. Dist. LEXIS 100793, 2020 WL 3057754, at *1, *3 (S.D.N.Y. June 9, 2020). Before dismissing the suit, Justice Ostrager sealed past and future entries to the case to everyone except the court and the parties because of the "inflammatory and threatening nature of some of the filings by plaintiff." [Fn.]1 * * *

While his appeal of the state court decision was pending, [Fn.]2 Moskovits filed the present case in district court against Bank of America and Grigsby, both of whom were defendants in the state court action; Schoeman Updike Kaufman & Gerber LLP, Beth L. Kaufman, and Silvia S. Larizza, counsel for Bank of America in the state court action; Roger J. Bernstein, counsel for Grigsby; Justice Ostrager individually and as a Justice of the New York Supreme Court; and "Does 1-10," including but not limited to the individuals constituting the "Court Administration" referenced in the state court sealing order (collectively, "Defendants-Appellees"). *See Moskovits v. Bank of America N.A.*, No. 20-cv-10537, 2021 U.S. Dist. LEXIS 48005, 2021 WL 965237, at *1

(S.D.N.Y. Mar. 12, 2021); Amended Compl. ¶¶ 8-15. His complaint arose from Defendants-Appellees' involvement in the sealing order and related proceedings, alleging (1) conspiracy to violate his First Amendment and Fourteenth Amendment rights pursuant to 42 U.S.C. §§ 1983, 1985, and 1988, (2) deprivation of his right to a fair and public hearing under Article 10 of the United Nations Universal Declaration of Human Rights in violation of the Alien Tort Statute, 28 U.S.C. § 1350, and (3) "fraud on the court." *See* Amended Compl. ¶¶ 34-62. The district court *sua sponte* dismissed his original complaint and amended complaint, holding that Justice Ostrager and Does 1-10 were immune from suit and that Moskovits failed to state a claim for relief under sections 1983, 1985, and 1988 or pursuant to the Alien Tort Statute. [Fn.]3 *See Moskovits,* 2021 U.S. Dist. LEXIS 48005, 2021 WL 965237, at *2-3; *Moskovits v. Bank of America N.A.*, No. 20-cv-10537, 2021 U.S. Dist. LEXIS 12299, 2021 WL 230193, at *4-7 (S.D.N.Y. Jan. 20, 2021). Moskovits appeals, and we now affirm. We otherwise assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal, which we reference here only as necessary to explain our decision. Moskovits appeals from both the January 2021 order dismissing his original complaint and the March 2021 order dismissing his amended complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii). * * * Section 1915 requires courts to dismiss an "action or appeal" that "fails to state a claim on which relief may be granted," 28 U.S.C. § 1915(e)(2)(B)(ii), or "seeks monetary relief against a defendant who is immune from such relief," id. § 1915(e)(2)(B)(iii). Our review of such dismissals

is *de novo*. *See Hardaway v. Hartford Pub. Works Dep't*, 879 F.3d 486, 489 (2d Cir. 2018). We affirm the district court's dismissal on the basis of judicial or quasi-judicial immunity and failure to state a claim, largely for the same reasons cited by the district court.[Fn.]5 *See Moskovits*, 2021 U.S. Dist. LEXIS 48005, 2021 WL 965237, at *2-3; *Moskovits*, 2021 U.S. Dist. LEXIS 12299, 2021 WL 230193, at *4-7. We note that the district court did not explicitly address Moskovits's "fraud on the court" claim to the extent that the claim operated independently of Moskovits's other allegations. Nonetheless, we conclude that the district court properly dismissed the claim since the amended complaint fails to plausibly allege "fraud which does or attempts to[] defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Transaero, Inc. v. La Fuerza Area Boliviana*, 24 F.3d 457, 460 (2d Cir. 1994) (*quoting Kupferman v. Consol. Rsch. & Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972), as corrected (May 12, 1972)); *see also Gleason v. Jandrucko*, 860 F.2d 556, 559 (2d Cir. 1988) (stating that "fraud on the court" claims must involve conduct that "seriously affects the integrity of the normal process of adjudication"). We thus need not reach the parties' arguments as to the alternative grounds for the district court's decision, including the *Rooker-Feldman* doctrine and other abstention doctrines. *See In re Arab Bank, PLC Alien Tort Statute Litig.*, 808 F.3d 144, 157 (2d Cir. 2015), as amended (Dec. 17, 2015) (noting that we may affirm for any reason supported by the record). * * *

* * * Accordingly, we AFFIRM the judgment of the district court. * * * (brackets added; footnote 4 and other irrelevant language omitted).

Footnotes

1 The sealing order came after Moskovits requested "full disclosure" of transactions between Justice Ostrager and various entities and stated that he had "initiated a full investigation of this trial court and all of its extrajudicial affairs." Amended Compl. ¶ 19. Justice Ostrager asserts that Moskovits filed in state court a report that included, *inter alia,* his date of birth, present and former residential addresses, most of his Social Security number, contact information, and personal information about his relatives. Br. for Appellee Justice Barry R. Ostrager at 4. Moskovits argues that he requested "only facts that would present valid grounds for mandatory statutory recusal," Appellant's Br. at 10, and denies that he made threatening filings.

2 Moskovits appealed from the sealing order in September 2020 and moved to stay the underlying state court proceedings pending review of the sealing order. Amended Compl. ¶ 21. The Appellate Division denied his motion for a stay in November 2020 after Justice Ostrager dismissed Moskovits's suit. *See Moskovits v. Grigsby*, 2020 N.Y. Slip Op. 74772, 2020 WL 6733586, at *1 (N.Y. App. Div. 1st Dep't Nov. 17, 2020). Moskovits appealed the state court decision. *See* Amended Compl. ¶ 28.

3 In dismissing the original complaint, the district court also held that the *Rooker-Feldman* doctrine barred Moskovits's claims. *See Moskovits,* 2021 U.S. Dist. LEXIS 12299, 2021 WL 230193, at *3. Yet the order dismissing the amended complaint relies principally on judicial immunity and failure to state a claim as grounds for dismissal. *See Moskovits,* 2021 U.S. Dist. LEXIS 48005, 2021 WL 965237, at *2 ("[T]he amended complaint is dismissed for failure to state a claim on which relief may be granted, and on immunity grounds."). * * *

5 Moskovits argues that his claim under the Alien Tort Statute was premised on not only Article 10 of the Universal Declaration of Human Rights but also Article 19 of the Universal Declaration of Human Rights and other principles of international law. We do not consider this argument as it was raised for the first time

on appeal. *See Greene v. United States*, 13 F.3d 577, 586 (2d Cir. 1994) ("[I]t is a well-established general rule that an appellate court will not consider an issue raised for the first time on appeal.").

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
March 12, 2021, Decided
20-CV-10537 (LLS)

ALEXANDER MOSKOVITS,

Plaintiff,

-against-

BANK OF AMERICA N.A.; SCHOEMAN UPDIKE KAUFMAN & BERGER, LLP; BETH KAUFMAN; SILVIA LARIZZA; CALVIN GRIGSBY; ROGER BERNSTEIN; BARRY OSTRAGER; DOES 1 – 10,

Defendants.

ORDER OF DISMISSAL
LOUIS L. STANTON, United States District Judge:

Plaintiff, who is proceeding *pro se*, paid the filing relevant fees to file this complaint under 28 U.S.C. §§ 1331 and 1332; the Alien Tort Statute, 28 U.S.C. § 1350; 42 U.S.C. §§ 1983 and 1988 [sic]; and Article 10 of the United Nations' Universal Declaration of Human Rights. By order dated January 20, 2021, the Court directed Plaintiff to amend his complaint to address deficiencies in his original pleading. * * * Plaintiff filed an amended complaint on February 24, 2021, and the Court has

reviewed it. The action is dismissed for the reasons set forth below.

BACKGROUND AND DISCUSSION

The Court's prior order detailed the allegations in Plaintiff's original complaint. Familiarity with that order is assumed, and the Court will summarize Plaintiff's allegations here only briefly. This action arises out of a matter that Plaintiff filed in New York State Supreme Court, New York County, in 2019. In the state court case, Plaintiff alleged claims of unjust enrichment and breach of contract, arising out of a business deal in Brazil, and he sought millions of dollars in compensatory and punitive damages against Calvin Grigsby and Bank of America (BoA), among others. *See Moskovitz v. Grigsby*, Ind. No. 650617/2019. * * * On November 12, 2020, the state court dismissed Plaintiff's claims against Grigsby and BoA on the merits, and dismissed the claims against other defendants without prejudice "to an action in Brazil or another forum, if appropriate." *Id.*, 69 Misc. 3d 1215[A], 132 N.Y.S.3d 741, 2020 NY Slip Op 51345[U]. Plaintiff appealed in the state courts; the status of those proceedings is unclear. Plaintiff filed this complaint against Grigsby and his attorney, Roger Bernstein; Justice Barry Ostrager, who presided over the state court matter; Schoeman Updike Kaufman & Berger, LLP (Schoeman), Beth Kaufman, and Silvia Larizza, the law firm and attorneys representing BoA; and Doe defendants "including but not limited to the individuals who here constituted the 'Court Administration.'" Plaintiff alleges that after the state court matter was dismissed, Justice Ostrager unlawfully sealed the entire court record, based on false claims that some of

Plaintiff's filings were "threatening," "scurrilous," inflammatory," and contained irrelevant and "personal information" about Justice Ostrager. Plaintiff asserts that Justice Ostrager did so the day after Plaintiff asked him to "disclose all of [his] extrajudicial relationships," which would have shown that Justice Ostrager either had a conflict of interest or was biased against Plaintiff. According to Plaintiff, the other Defendants, "aided and abetted" Justice Ostrager's "fraud" by making false statements and submitting fraudulent documents to the court. Plaintiff seeks millions of dollars in damages, alleging that the sealing of the entire state court record violated his constitutional rights, human rights, and other federally protected rights. * * * Plaintiff's amended complaint is substantially similar to the original complaint. In it, Plaintiff names the same Defendants, alleges essentially the same facts, and asserts the same legal claims. In the January 20, 2021 order to amend, the Court held that the original pleading failed to state a claim. The amended complaint is inadequate for the same reasons stated in that order. Plaintiff asserts in the amended complaint that Defendants violated his right to equal protection because they were "motivated by a class-based, invidious discriminatory animus against [him] due to his status as a felon." (ECF 22 ¶ 3.) To state an equal protection claim, a plaintiff must allege that he is a member of a suspect or quasi-suspect class of persons, *see Giano v. Senkowski*, 54 F.3d 1050, 1057 (2d Cir. 1995); such classes include, but are not limited to, classes identified by race, gender, alienage, or national origin, *see Myers v. Cnty. of Orange*, 157 F.3d 66, 75 (2d Cir. 1998). The plaintiff must also

allege facts showing that the defendants have purposefully discriminated against the plaintiff because of his membership in that class. *See Turkmen v. Hasty*, 789 F.3d 218, 252 (2d Cir. 2015) (*quoting Iqbal*, 556 U.S. at 676, *rev'd and vacated in part on other grounds sub nom., Ziglar v. Abbasi*, 137 S. Ct. 1843, 198 L. Ed. 2d 290 (2017)); *Giano*, 54 F.3d at 1057. Plaintiff recounts the following facts in support of his equal protection claim: Defendant Grigsby, in *pro se* court filings of 2020, accused Plaintiff of "devilment" and cited *United States v. Moskovits*, 86 F.3d 1303 (3d Cir. 1996), clearly demonstrating his class-based, invidious discriminatory animus against Plaintiff due to his status as a felon in flagrant violation of constitutional rights. (*Id.* ¶ 32.) According to Plaintiff, once the other defendants "learned of" his criminal history, they "joined in the class-based discrimination as evidenced by the flagrant violation of his rights to expose foreign corrupt practices to close contracts with [BoA], including but not limited to attempted murder, to the public and the press." (*Id.* ¶ 33.) These facts wholly fail to give rise to a viable equal protection claim. And this argument does not remedy the other problems with Plaintiff's amended pleading. Accordingly, the amended complaint is dismissed for failure to state a claim on which relief may be granted, and on immunity grounds. *See* 28 U.S.C. § 1915(e)(2)(B)(ii), (iii). District courts generally grant a *pro se* plaintiff leave to amend a complaint to cure its defects, but leave to amend may be denied if the plaintiff has already been given an opportunity to amend but has failed to cure the complaint's deficiencies. *See Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008); *Salahuddin v.*

Cuomo, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's amended complaint cannot be cured with a further amendment, the Court declines to grant Plaintiff another opportunity to amend. * * *

CONCLUSION

* * * The amended complaint is dismissed. *See* 28 U.S.C. § 1915(e)(2)(B)(ii), (iii). * * * SO ORDERED. (footnotes omitted)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
January 20, 2021, Decided
20-CV-10537 (LLS)

ALEXANDER MOSKOVITS,

Plaintiff,

-against-

BANK OF AMERICA N.A.; SCHOEMAN UPDIKE KAUFMAN & BERGER, LLP; BETH KAUFMAN; SILVIA LARIZZA; CALVIN GRIGSBY; ROGER BERNSTEIN; BARRY OSTRAGER; DOES 1-10;

Defendants.

ORDER TO AMEND

LOUIS L. STANTON, United States District Judge:

Plaintiff Alexander Moskovits, a resident of Brazil, filed this *pro se* action, for which the filing fee has been paid, asserting claims under 28 U.S.C. §§ 1331, 1332, 1350, and 42 U.S.C. §§ 1983, 1988, and Article 10 of the United Nations' Universal Declaration of Human Rights.

For the reasons set Forth below, the Court grants Plaintiff leave to file an amended complaint within sixty days of the date of this order.

STANDARD OF REVIEW

The Court has the authority to dismiss *sua sponte* a complaint for which the filing fee has been paid where the pleading presents no arguably meritorious issue, *see Fitzgerald v. First East Seventh Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000) (*per curiam*), or for lack of subject matter jurisdiction, *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999), so long as the plaintiff is given notice and "an opportunity to be heard." *Thomas v. Scully*, 943 F.2d 259, 260 (2d Cir. 1991) (*per curiam*); *see also Perez v. Ortiz*, 849 F.2d 793, 797 (2d Cir. 1988); Wright & Miller, Federal Practice and Procedure § 1357, at 301 & n.3. The Court is obliged, however, to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

This action relates to a complaint that Plaintiff filed in 2019, in New York State Supreme Court, New York County, alleging claims of unjust enrichment and breach of contract, and seeking millions of dollars in compensatory and punitive damages. *See Moskovitz v. Grigsby*, Ind. No. 650617/2019. The named defendants in that case are Calvin Grigsby; Bank of America N.A. (BoA); Raimundo Colombo; Jorge Siega; the Federal Republic of Brazil; the State of Santa Catarina, Brazil; the State of Maranhao, Brazil; and

the State of Mato Grosso, Brazil. Defendants removed the matter to this District, but Judge Broderick remanded it after determining that diversity jurisdiction was lacking. *See Moskovits v. Grigsby*, ECF 1:19-CV-03391 (VSB) (S.D.N.Y. June 9, 2020) (granting Plaintiff's motion to remand).

In his complaint to this Court, Plaintiff quotes Judge Broderick's summary of the allegations in Plaintiff's state court complaint: Moskovits [Plaintiff] provided Grigsby with a loan structure which would allow Grigsby and BOA to secure credit for sub-sovereign state transactions guaranteed by the Brazilian Government, and provided Grigsby with potential clients for such transactions. ... For Moskovits's work, Grigsby promised compensation, valued at 35% of 1% of the transaction value for a transaction value over $500 million, or 35% of 2% for a transaction value under $500 million. . . . Moskovits further alleges that three deals totaling $1.9 billion were consummated by Grigsby and BOA, using his financial structure. To date, Moskovits has not received any compensation in relation to these deals. (ECF 1 ¶ 4.). On November 12, 2020, the state court dismissed Plaintiff's claims against Grigsby and BoA on the merits, and dismissed the claims against Colombo and Siega without prejudice "to an action in Brazil or another forum, if appropriate." *Id.*, 132 N.Y.S.2d 741. Plaintiff filed this "complaint for damages" against individuals and entities involved in the state court matter, including Grigsby and his attorney, Roger Bernstein; Justice Barry Ostrager; the law firm and attorneys representing BoA, Schoeman Updike Kaufman & Berger, LLP, Beth Kaufman, and Silvia Larizza; and Doe defendants

"including but not limited to the individuals who here constituted the 'Court Administration' as entitled by" Justice Ostrager. (ECF1 at 1.) The complaint contains the following allegations. Justice Ostrager committed "fraud on the court" by sealing the "entire commercial case," in violation of the First Amendment and Judge Broderick's remand order. Justice Ostrager failed to disclose his prior affiliation with Simpson Thatcher & Bartlett LLP, which "regularly advised" BoA, and is "headed" in "Brazil by a relative of the former Brazilian Senate President (2013) who signed a document" that Justice Ostrager "ignored . . . to lawlessly dismiss the sealed case in its entirety." Justice Ostrager sealed the case the day after Plaintiff asked him to "disclose all of the extrajudicial relationships between him and/or his related entities, case counsel and the parties and/or related entities." Justice Ostrager's allegedly improper sealing deprived him of jurisdiction under municipal regulations and state case law. (*Id.* ¶¶ 13-17.) The other named Defendants in the case, Grigsby, BoA, and its attorneys, "aided and abetted" Justice Ostrager's fraud by acting "with reckless disregard for the truth," and making false statements and submitting fraudulent documents, all of which resulted in a "gross deprivation" of Plaintiff's rights. (*Id.*) Plaintiff appealed in the state courts; the complaint does not indicate whether or not that matter remains pending. On October 7, 2020, First Department Judge Dianne Renwick referred Plaintiff's motion for a stay to a full panel, setting October 16, 2020, as the filing due date for any opposition, October 23, 2020, as the filing due date for any reply. Plaintiff alleges that on October 8, 2020,

Justice Ostrager issued a "*post hoc*" order falsely claiming that he sealed the case because of filings from Plaintiff that he characterized as "threatening," "scurrilous," "inflammatory," and containing "personal information relating to this Court that has no relevance to these proceedings." Plaintiff denies these assertions, describing such filings as "non-existent." (*Id.* ¶ 18-19.) On October 16, 2020, Defendants Kaufman, Larizza, Schoeman, and Bernstein relied on previously submitted documents in their oppositions and "failed to prevent a continuation of the *Star Chamber*. Defendants have aided and abetted rather than prevent the sealing in violation of the U.S. Constitution and the Law of Nations." Attached to the complaint are state court documents, including orders sealing the case and dismissing the case, and defense submissions. (ECF 1-1 through 1-11.)

DISCUSSION

A. *Rooker-Feldman* Doctrine

Plaintiff brings this complaint challenging aspects of the state court proceeding, including Justice Ostrager's orders dismissing the case and sealing the court file. Plaintiff's claims are barred under the *Rooker-Feldman* doctrine. The doctrine – created by two Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983) – precludes federal district courts from reviewing final judgments of the state courts. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (holding that federal district courts are barred from deciding cases "brought by state-court losers complaining of injuries caused by state-court

judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."). The *Rooker-Feldman* doctrine applies where the federal-court plaintiff: (1) lost in state court, (2) complains of injuries caused by the state-court judgment, (3) invites the district court to review and reject the state court judgment, and (4) commenced the district court proceedings after the state-court judgment was rendered. *Vossbrinck v. Accredited Home Lenders, Inc.*, 773 F.3d 423, 426 (2d Cir. 2014). There is no fraud exception to the *Rooker-Feldman* doctrine in this Circuit. *See Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002) (noting that Plaintiff's claim "sounds in fraud, yet we have never recognized a blanket fraud exception to *Rooker-Feldman*.") (internal quotation omitted)); *Roberts v. Perez*, No. 13-CV-5612 (JMF), 2014 WL 3883418, at *4 (S.D.N.Y. Aug. 7, 2014) ("[C]ourts in this District have consistently held that claims that a state-court judgment was fraudulently procured are subject to *Rooker-Feldman*"). Plaintiff attached to his complaint state court orders and defense submissions, and essentially invites this Court to overturn Justice Ostrager's decisions. Because Plaintiff (1) lost in state court; (2) "complains of injuries caused by [a] state-court judgment;" (3) asks this Court to review and reject the state court's judgment; and (4) alleges that the state court judgment was rendered before he filed his case in this Court, his claims are barred under the *Rooker-Feldman* doctrine. Plaintiff has already availed himself of the New York State appellate process by appealing the state court judgment to the Appellate Division, First Department, which is the

proper process for seeking judicial review of state court orders, including sealing orders. [Fn.]1

B. Section 1983 Claims

The Court will now consider Plaintiff's claims under 42 U.S.C. § 1983, to the extent any of those claims are not precluded by the *Rooker-Feldman* doctrine. Section 1983 provides redress for a deprivation of federally protected rights by persons acting under color of state law. *See Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155-57 (1978). To state a claim under § 1983, a plaintiff must allege both that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law, or a "state actor." *West v. Atkins*, 487 U.S. 42, 48-49 (1988).

1. Justice Ostrager

Plaintiff focuses a large portion of his complaint on Justice Ostrager's actions or omissions in the state court matter, including the dismissal of the case and the sealing of the court record, for which Plaintiff seeks money damages. Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, "acts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). "Even allegations of bad faith or malice cannot overcome judicial immunity." *Id.* (citations omitted). This is because "[w]ithout insulation from liability, judges would be subject to harassment and intimidation . . . ." *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994). In addition, as amended in 1996, § 1983 provides that "in any action brought against a judicial officer for an act or omission taken

in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Judicial immunity does not apply when the judge takes action "outside" his judicial capacity, or when the judge takes action that, although judicial in nature, is taken "in absence of jurisdiction." *Mireles*, 502 U.S. at 9-10; *see also Bliven*, 579 F.3d at 209-10 (describing actions that are judicial in nature). But "the scope of [a] judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump v. Sparkman*, 435 U.S. 349, 356 (1978). Here, Plaintiff asserts that Justice Ostrager improperly sealed the court record, and he suggests that Justice Ostrager's failure to "disclose" his prior affiliation with Simpson Thatcher proves bias or a conflict of interest. But Plaintiff's claims are based on Justice Ostrager's decisions, which are judicial in nature, and amount to a challenge to Justice Ostrager's handling of the state-court case. Plaintiff does not allege facts showing that Justice Ostrager acted outside his judicial capacity or took action against Plaintiff without jurisdiction. It is not clear whether Plaintiff moved for Justice Ostrager's recusal in the state court matter, but even if he did, a judge's decision to recuse or not to recuse himself is itself a judicial act protected by immunity. *See Bobrowsky v. Yonkers Courthouse*, 777 F. Supp. 2d 692, 714 (S.D.N.Y. 2011); *Sylvester v. Sorrell*, No. 08-CV-88, 2009 WL 819383, at *3 (D. Vt. Mar. 25, 2009) (deciding that judge's refusal to recuse himself was judicial act entitled to immunity); *Haynes v. Schimelman*, No. 99- CV-2553, 2000 WL 502623, at *1 (D. Conn. Mar. 8, 2000)

(concluding that judge's decision not to recuse was covered by judicial immunity).

Because Plaintiff seeks monetary damages from a defendant who is immune from such relief, and Plaintiff has not alleged that a declaratory decree was violated or that declaratory relief was unavailable, his claims against Justice Ostrager are dismissed on immunity grounds. *See* 28 U.S.C. § 1915(e)(2)(B)(i), (iii); *Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) (*quoting Neitzke v. Williams*, 490 U.S. 319, 327 (1989))). For these reasons, Plaintiff claim for damages against Justice Ostrager must be dismissed. *See* 28 U.S.C. § 1915(e)(2)(B)(iii).

2. "Court Administration"

Plaintiff also names Doe defendants, "including but not limited to the individuals who here constituted the 'Court Administration.'" Plaintiff does not assert specific facts against these individuals, and it is not clear to whom Plaintiff is referring. Absolute judicial immunity has been extended to those nonjudicial officers who perform acts that are "'functionally comparable' to that of a judge'" or "are integrally related to an ongoing judicial proceeding." *Mitchell v. Fishbein*, 377 F.3d 157, 172 (2d Cir. 2004) (citations omitted). Courts have held that this *quasi*-judicial immunity applies to New York State court clerks when they perform tasks that are an integral part of the judicial process. *See Stephens v. Sullivan & Cromwell LLP*, No. 15-CV-1251 (LGS), 2015 WL 1608427, at *3 (S.D.N.Y. Apr. 9, 2015) (County Clerk); *Garcia v. Hebert*, No. 08-CV-0095 (DFM), 2013 WL 1294412, at *12 (D. Conn. Mar. 28, 2013) (state-court clerk) (*quoting Rodriguez v. Weprin*, 116 F.3d 62, 66 (2d Cir. 1997)). If Plaintiff is asserting claims against

state court employees who perform such acts or "are integrally related to an ongoing judicial proceeding," they are also immune from suit. [Fn.]2.

3. Private Defendants

A claim for relief under § 1983 must allege facts showing that each defendant acted under the color of a state "statute, ordinance, regulation, custom or usage." 42 U.S.C. § 1983. Private parties are therefore not generally liable under the statute. *Sykes v. Bank of America*, 723 F.3d 399, 406 (2d Cir. 2013) (*citing Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001)); *see also Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) ("[T]he United States Constitution regulates only the Government, not private parties."). As Defendants Calvin Grigsby, Roger Bernstein, Schoeman Updike Kaufman & Berger, LLP, Beth Kaufman, and Silvia Larizza are private actors who do not work for any state or other government body, Plaintiff has not stated a claim against these defendants under § 1983.

4. Conspiracy Claim

Plaintiff asserts that the private defendants "aided and abetted" Justice Ostrager in violating his rights. The Court construes this assertion as a claim that Defendants conspired to deprive him of his federal constitutional rights. A plaintiff asserting a conspiracy claim under 42 U.S.C. § 1983 must show "(1) an agreement between two or more state actors or between a state actor and a private entity; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages." *Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999). To state a conspiracy claim under 42 U.S.C. § 1985(3), a plaintiff must allege facts that

plausibly show that there exists: (1) a conspiracy; (2) for the purpose of depriving the plaintiff of the equal protection of the laws, or the equal privileges or immunities under the laws; (3) an overt act in furtherance of the conspiracy; and (4) an injury to his person or property, or a deprivation of his right or privilege as a citizen of the United States. *Thomas v. Roach*, 165 F.3d 137, 146 (2d Cir. 1999). "[T]he [§ 1985(3)] conspiracy must also be motivated by some racial or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action." *Id.* (internal quotation marks and citation omitted). Vague and unsupported assertions of a conspiracy claim, either under § 1983 or § 1985(3), will not suffice. *See, e.g., Wang v. Miller*, 356 F. App'x 516, 517 (2d Cir. 2009) (summary order); *Webb v. Goord*, 340 F.3d 105, 110-11 (2d Cir. 2003); *Boddie v. Schnieder*, 105 F.3d 857, 862 (2d Cir. 1997). Plaintiff's conspiracy claims under §1983 and §1985(3) fail because they are vague and unsupported, and because he has not alleged facts suggesting that any defendant violated his constitutional rights or discriminated against him. The Court therefore dismisses those claims for failure to state a claim on which relief may be granted. [Fn.]3 *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

C. Alien Tort Statute

Under the Alien Tort Statute, "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350; *see Sikhs for Justice v. Nath*, 893 F.Supp.2d 598, 619 (S.D.N.Y. 2012). (noting that under the ATS, "federal subject matter jurisdiction

exists when (1) an alien, (2) claims a tort, (3) was committed in violation of a United States treaty or the 'law of nations' — the latter now synonymous with 'customary international law.'"). A plaintiff must plead a violation of a United States treaty or the law of nations to cross the jurisdictional threshold to bring a claim under the ATS. *See Filartiga v. Pena–Irala*, 630 F.2d 876, 880 (2d Cir. 1980). To state a claim under the law of nations, a complaint must "rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms" that the Supreme Court has previously recognized, such as violation of safe conducts, infringements of the rights of ambassadors, or piracy. *Sosa v Alvarez–Machain*, 542 U.S. 692, 724-25 (2004). The ATS "applies only to shockingly egregious violations of universally recognized principles of international law." *Beanal*, 197 F.3d at 167 (citation omitted). Plaintiff asserts a claim under Article 10 of the United Nations' Universal Declaration of Human Rights (Declaration), which provides that, "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." The state court matter giving rise to this complaint is a civil matter, not a criminal one, but in any event, the Declaration generally does not "impose obligations as a matter of international law" that is "enforceable in federal court." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 734 (2004); *see also United States v. Chapman*, 351 F.App'x 740, 741 (3d Cir. 2009) ("[T]he Universal Declaration of Human Rights is a nonbinding

declaration that provides no private right of action."); *Bey v. New York*, No. 11-CV-3296, 2012 WL 4370272, at * 7 (E.D.N.Y. Sept. 21, 2012) (no private right of action under international treaties, the United Nations' Universal Declaration of Human Rights, or provisions of the United Nations' Charter). Accordingly, the complaint fails to state a claim under either the ATS or the United Nations' Declaration of Human Rights.

D. Diversity Jurisdiction

To establish jurisdiction under 28 U.S.C. § 1332, a plaintiff must first allege that the plaintiff and the defendant are citizens of different states. *Wis. Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998). In addition, the plaintiff must allege to a "reasonable probability" that the claim is in excess of the sum or value of $75,000.00, the statutory jurisdictional amount. *See* 28 U.S.C. § 1332(a); *Colavito v. N.Y. Organ Donor Network, Inc.*, 438 F.3d 214, 221 (2d Cir. 2006) (citation and internal quotation marks omitted). Even assuming that Plaintiff has alleged that there is complete diversity and that the amount in controversy is met, it is not clear what tort claims remain in light of the Court's earlier discussion.

LEAVE TO AMEND

Plaintiff proceeds in this matter without the benefit of an attorney. District courts generally should grant a self-represented plaintiff an opportunity to amend a complaint to cure its defects, unless amendment would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Indeed, the Second Circuit has cautioned that district courts "should not dismiss [a *pro se* complaint] without granting leave to amend at

least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (*quoting Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999)). In light of Plaintiff's *pro se* status, the Court grants Plaintiff leave to amend his complaint to address the issues discussed in this order.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. Plaintiff is granted leave to file an amended complaint that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's *Pro Se* Intake Unit within sixty days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 20-CV-10537 (LLS). An Amended Complaint form is attached to this order. No answer is required at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the complaint will be dismissed for failure to state a claim upon which relief may be granted. SO ORDERED. (brackets added).

Footnotes

1 *See, e.g., In re East 51st Street Crane Collapse Litigation*, 966 N.Y.S.2d 373, 374 (1st Dep't May 9, 2013) (rejecting defense argument that court records should remain sealed under 22 N.Y.C.R.R. 216.1(a), which provides that state courts shall not seal court records except upon a finding of good cause, because "the presumption of the benefit of public access to court proceedings takes precedence," and the sealing of court papers is permitted "only to serve compelling objectives, such as when the need for secrecy outweighs the public's right" to access.) (*citing Applehead Pictures LLC v. Perelman*, 913 N.Y.S.2d 165, 191-92 (1st Dep't 2010)).

2 If Plaintiff intends to sue the New York State Court Administration (OCA), a state agency, the Eleventh Amendment would bar Plaintiff's § 1983 claims for damages against OCA. *See Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 40 (2d Cir. 1977); *see also Capogrosso v. The Supreme Court of New Jersey*, 588 F.3d 180, 185 (3d Cir. 2009).

3 Plaintiff cites to 42 U.S.C. § 1988, which does not create an independent cause of action. *See North Carolina Dep't of Transp. v. Crest Street Comm. Council, Inc.*, 479 U.S. 6, 14 (1986); *Vecchia v. Town of North Hempstead*, 927 F. Supp. 579, 581 (E.D.N.Y. 1996). Moreover, *pro se* plaintiffs are not entitled to attorney's fees under 42 U.S.C. § 1988(b). *See Kay v. Ehrler*, 499 U.S. 432, 437-38 (1991).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
June 2, 2022, Decided
21-886

ALEXANDER MOSKOVITS,

Plaintiff-Appellant,

v.

BANK OF AMERICA, N.A., SCHOEMAN UPDIKE KAUFMAN & GERBER LLP, BETH L. KAUFMAN, SILVIA S. LARIZZA, CALVIN B. GRIGSBY, ROGER J. BERNSTEIN, BARRY R. OSTRAGER, SUED INDIVIDUALLY AND AS A JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, DOES 1 THROUGH 10,

Defendants-Appellees.

ORDER

Appellant, Alexander Moskovits, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has

considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*. IT IS HEREBY ORDERED that the petition is denied.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 20-CV-10537(LLS)

ALEXANDER MOSKOVITS,

Plaintiff,

vs.

BANK OF AMERICA N.A., SCHOEMAN UPDIKE KAUFMAN & GERBER LLP, BETH KAUFMAN, SILVIA LARIZZA, CALVIN GRIGSBY, ROGER BERNSTEIN,BARRY OSTRAGER (sued individually and as a Justice of the Supreme Court of the State of New York), and DOES 1 through 10, inclusive,

Defendants.

AMENDED COMPLAINT

Plaintiff Alexander Moskovits (Plaintiff), hereby files a Verified Amended Complaint against Bank of America, N.A. (BOA), Schoeman Updike Kaufman & Gerber, L.L.P., (Schoeman), Beth L. Kaufman (Kaufman), Silvia Larizza (Larizza), Calvin Grigsby (Grigsby), Roger Bernstein (Bernstein), Barry Ostrager (Ostrager), and DOES 1 through 10 (including but not limited to the individuals who constituted the "Court Administration" as entitled by Ostrager in an Order filed in the New York Supreme Court, New York County, on October 8, 2020).

I. NATURE OF THE ACTION

1. This action for damages involves *Star Chamber* proceedings ordered on September 2, 2020 by Justice Ostrager as directed by the "Court Administration" of the State Supreme Court, County of New York, which "fraud upon the court" sealed an entire commercial case without cause. *See* [App. 42-44] (Docs.141 & 169, *Moskovits v. Grigsby et al.*, Index No. 650617/2019). Plaintiff alleges that the private and state defendants aided and abetted the commission of a "fraud upon the court" that grossly violates the First Amendment to the U.S. Constitution and the Law of Nations. The sealing of the entire case also violates the remand order by U.S. District Judge Vernon S. Broderick, see 2020 WL 3057754 (6/9/20), whose order could not have contemplated a remand to a judge like Ostrager with a partner in Brazil related to the Brazilian Federal Senator who signed a critical document ignored by Ostrager to dismiss the case, after creating a *Star Chamber* sealed without "good cause." See [App. 42] (Doc. 141) (*sua sponte* order sealing without stating any cause and restricting access to Chambers as to Plaintiff's letter for disclosure of extrajudicial relationships) (9/2/20) (day after letter filed asking Ostrager to disclose all extrajudicial relationships between him or related entities, counsel, parties, and/or their related entities). *See infra* at [App. 32-33] (quoting letter of 9/1/20) (Doc. 135). Ostrager committed another "fraud upon the court," when he falsely represented in a *post hoc sua sponte* order, *see* [App. 43] (Doc. 169) (10/8/20), that the "Court Administration directed ... the entire file" sealed to the public due to non-existent "threatening ... filings by plaintiff." *Id.* [App. 43] (Doc. 169).

2. Plaintiff also states a cause of action for a conspiracy to deprive him of having and exercising a right or privilege of a United States citizen, by impeding, hindering, obstructing, or defeating the due course of justice in the state courts of New York through the sealing of the entire case with the intent to deny Plaintiff equal protection, motivated by a class-based, invidious discriminatory animus against the Plaintiff due to his status as a felon. Plaintiff's factual averments have evidentiary support and will likely obtain additional evidentiary support after a reasonable opportunity for further discovery is provided. The Plaintiff also states additional causes of action under the Alien Tort Statute, 28 U.S.C. §1350, given the flagrant violation of customary international law embodied in *Star Chamber* proceedings sealed to the public, and for the continuing "fraud upon the court."

II. JURISDICTION AND VENUE

3. This action is filed under 42 U.S.C. §§ 1983, 1985, 1988(b), seeking monetary damages which exceed $75,000.00, exclusive of interests and costs. Jurisdiction and supplemental jurisdiction are based on 28 U.S.C. §§ 1331, 1332, 1343, 1350, and 1367. There is a complete diversity of citizenship, and the case raises important federal questions. Venue is appropriate in this forum as all of the alleged acts occurred in the Southern District of New York. *See* 28 U.S.C. § 1391.

III. DAMAGES AND EXEMPLARY DAMAGES

4. In *Moskovits v. Grigsby, et al.,* Supreme Court Index No. 650617/2019, filed on December 26, 2018 (indexed in early 2019), the Plaintiff claims no less than $7 Million in damages based upon the

compensation formula promised to Plaintiff by BOA's *de facto* agent Grigsby. *See Moskovits v. Grigsby*, 2020 WL 3057754, *2 (6/9/20) ("Moskovits provided Grigsby with a loan structure which would allow Grigsby and BOA to secure credit for sub-sovereign state transactions guaranteed by the Brazilian Government, and provided Grigsby with potential clients for such transactions. ...For Moskovits's work, Grigsby promised compensation, valued at 35% of 1% of the transaction value for a transaction value over $500 million, or 35% of 2% for a transaction value under $500 million. ...Moskovits further alleges that three deals totaling $1.9 billion were consummated by Grigsby and BOA, using his financial structure. To date, Moskovits has not received any compensation in relation to these deals.") (*citing* Complaint) (remanding case to state court after its removal by Republic of Brazil). Post-remand, and over two months after the sealing, Ostrager ignored a document signed by the Brazilian Senator related to his Law Partner, other material facts, and the law to fraudulently dismiss the case. * * *

5. The institution of *Star Chamber* proceedings sealed to public and press without cause hides allegations of foreign corrupt practices to close $1.9+Billion in unprecedented transactions in New York between Brazilian states and BOA, and it constitutes a violation of fundamental constitutional rights and universally recognized human rights. *See Levy v. Weksel*, 143 F.R.D. 54, 56 (S.D.N.Y. 1992) ("Without such routine exposure to the sunshine of public scrutiny, what is sometimes called the 'least dangerous branch' might tend to acquire or to appear to acquire unfortunate aspects of the *Star Chamber*

courts of old, contrary to the spirit of the First Amendment, Article III, and the public trial concept specifically vouchsafed in criminal cases by the Sixth Amendment ***but relevant in civil cases as well.*** Indeed, Article 10 of the United Nations Universal Declaration of Human Rights, the development of which was led by the United States and which was adopted by the General Assembly on December 10, 1948, states: 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations'") (emphasis added; footnote omitted). To achieve specific and general deterrence, exemplary damages must be set at a very high value, as a nominal sum would not have any deterrent effect on defendants with a net worth of very high value.

6. Plaintiff suggests a very high value for each day to which he has been subjected to a *Star Chamber* sealed to the public in a matter involving two close home-state cronies of former President Bill Clinton (Grigsby and Jude Kearney), approximately ***$2 Billion*** in guaranteed credit agreements signed between BOA and corrupt Brazilian public officials, all of whom have either been imprisoned or criminally charged in Brazil, and the attempted murder of Plaintiff for having protested the misappropriation of his novel work product to close ***unprecedented*** private credit agreements in the New York headquarters of BOA via ***kickbacks***.

IV. THE PARTIES

7. Plaintiff ALEXANDER EUGENIO MOSKOVITS is a human being, *júris sui*, domiciled in Brazil, and bestowed with certain inviolable human rights. Plaintiff was born in Brazil in 1964. Plaintiff is a

native Brazilian alien who was certified as a U.S. citizen at birth while inside of a Mexican prison in 1983 at the age of 19 to become eligible for a Treaty on the Execution of Penal Sentences.

8. Defendant BANK OF AMERICA, N.A., a citizen of North Carolina, operates as a Bank, having done business as "Bank of America Merrill Lynch," which association-in-fact operated as a division of Bank of America Corporation dedicated to multinational investment banking headquartered in New York City.

9. Defendant SCHOEMAN UPDIKE KAUFMAN & GERBER LLP is a law firm with offices located at 551 Fifth Ave., 12th Floor, New York, NY 10176, which partnership has represented the Defendant BANK OF AMERICA, N.A., during the relevant time period.

* * * [other individual private parties] * * *

14. Defendant BARRY R. OSTRAGER, J.D., ESQ. is an appointed Justice of the Supreme Court of the State of New York, County of New York, and an individual lawyer who practiced in New York as a Partner and Chief of Litigation for Simpson Thacher & Bartlett LLP, where he worked for over forty (40) years. His partnership published that it "regularly" advised named BOA defendant in www.stblaw.com. His partnership is headed in São Paulo, Brazil by a relative of the former Brazilian Senate President (2013), who signed a document ignored by the Defendant Ostrager to lawlessly dismiss the sealed lawsuit in its entirety. After U.S. District Judge Vernon Broderick remanded the case to state court, *see Moskovits v. Grigsby*, *supra*, 2020 WL 832468 (S.D.N.Y. February 20, 2020), Justice Ostrager was assigned to *Moskovits v. Grigsby, et al.*, Supreme Court Index No. 650617/2019, upon BOA counsel,

Kaufman, filing for a referral of the case to the "Commercial Division" of the Supreme Court. Ostrager is sued both individually and as a Justice of the Supreme Court of the State of New York.

15. The names and capacities of the Defendants DOES 1-10 are presently unknown to Plaintiff, who sues them by such fictitious names. The DOES include but are not limited to the individuals constituting the "Court Administration," as they have been entitled by Defendant BARRY R. OSTRAGER, J.D., ESQ. [App. 43] (10/8/20) ("Court Administration directed ... entire file be sealed" to the public due to non-existent "threatening ... filings by plaintiff.").

V. RELEVANT BACKGROUND AND FACTUAL ALLEGATIONS

16. Plaintiff adopts as correct the summaries of the "procedural history" and the case "background" provided by the Honorable U.S. District Court Judge Vernon S. Broderick. *See Moskovits v. Grigsby*, 2020 WL 832468 (S.D.N.Y. February 20, 2020). * * *

17. Ostrager's sua sponte Order sealed the case on September 2, 2020 – the day after Plaintiff filed a letter demanding disclosure of extrajudicial relationships among Ostrager, his related entities, counsel, the parties, including BOA, which Bank has done business under the name "Bank of America Merrill Lynch," and/or their related entities. *See infra* * * * (quoting letter of 9/1/20) (Doc. 135); [App. 42] (Doc. 141) (order sealing entire case and restricting access to Doc. 135 to "Justice Ostrager's Chambers") (9/2/20). The *sua sponte* Order reads in full as follows: "The County Clerk is directed to seal this case (all past and future entries) to everyone **except** the Court and the parties to this action. The County Clerk is

also directed to seal NYSCEF Document No. 135 to the public, all parties to the action, and to the Court except for Justice Ostrager's Chambers." [App. 42] (Doc. No. 141) (9/2/20) (bold in the original).

18. Sealing the entire case and restricting access to a disclosure demand to Chambers created both a *Star Chamber* and a disqualifying impropriety, or the appearance of impropriety, causing the loss of jurisdiction under New York law. *See Wilcox v. Supreme Council of Royal Arcanum,* 210 N.Y. 370, 377-378 (1914) ("In this state, statutory disqualification of a judge deprives him of jurisdiction."). All state actors thus lost their immunity. Plaintiff timely moved to recuse Ostrager under ***mandatory disqualification statutes***, 22 NYCRR §§ 100.2, 100.3(E)(1). 19. Justice Ostrager issued another sealing order earlier that same date. * * * (Doc. 136) (9/2/20) ("The County Clerk is directed to seal NYSCEF Doc. No. 135 as it contains personal information relating to this Court that has no relevance to these proceedings."). The later Sealing Order of the same date, [App. 42] (Doc. 141) (9/2/20), sealed the entire case file and restricted access to "Chambers" as to Plaintiff's demand for the "full disclosure" of Justice Ostrager's extrajudicial transactions/relationships ... filed September 1, 2020 (9/1/20), which reads, in relevant part:

Plaintiff demands the full disclosure of the following transactions pursuant to NY law. See also 28 U.S.C. § 455(e) (full disclosure of potential grounds for recusal must be made on the case record). Disclosure required must include but not be limited to any present or prior mortgagor-mortgagee relationship, any present or prior lender-borrower relationship,

any present or prior buyer-seller relationship, or any present or prior relationship.

IN RE: BARRY R. OSTRAGER

* * * any and all transactions of any kind involving BARRY R. OSTRAGER and any Bank of America entity; * * * any and all transactions of any kind involving BARRY R. OSTRAGER and any counsel or any entity related to any counsel; * * *

IN RE: SIMPSON THACHER & BARTLETT LLP

* * * any and all transactions of any kind involving SIMPSON THACHER & BARTLETT LLP and any Bank of America entity;

* * * any and all transactions of any kind involving SIMPSON THACHER & BARTLETT LLP and any counsel or any entity related to any counsel; * * *

IN RE: ALL REAL ESTATE TRANSACTIONS

* * * any and all transactions at pp.10-20 ("Properties") of the 68-page report in re: "BARRY R. OSTRAGER", which involved any Bank of America entity, including but not limited to the low value transactions in Connecticut.

I respectfully advise Your Honor that I have initiated a full investigation of this trial court and all of its extrajudicial affairs." * * *

20. Ostrager disregarded 22 NYCRR § 216.1(a) * * *by sealing the entire case without any cause.* * *

21. Plaintiff filed timely notice of appeal from the sealing order on or about September 21, 2020, and subsequently moved in the First Department for a stay of the proceedings pending appellate review of the Order sealing the entire case and the concomitant judicial disqualification issue.

22. On October 6, 2020, the Plaintiff filed a letter advising Ostrager of his motion for a stay and noting

that "the hubris of 'cancel culture' ...contaminated even this Court, for it to even dare to resurrect 'Star Chamber' proceedings secret to the public and press." Plaintiff noted it is an actionable fraud on the court.

23. The letter did not deter any of the defendants, as all willfully continued to perpetuate the violation of rights consistent with the alleged aiding and abetting or conspiracy among the private and public actors acting under color of State law (Justice Ostrager and the "Court Administration") and consistent with the stated cause of action for conspiracy to deprive Plaintiff of having and exercising a right or privilege protected by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, acting with a class-based, invidious discriminatory animus against Plaintiff due to his status as a felon.

24. On October 7, 2020, First Department Judge Dianne Renwick referred Plaintiff's motion for a stay to a full panel, setting October 16, 2020 as the filing due date for any opposition, and October 23, 2020 as the due date for any reply. 25. On October 8, 2020, Justice Ostrager issued a *post hoc* order *sua sponte* to fraudulently aid the opposition, falsely stating that the "Court Administration directed that the entire file be sealed except to the parties to the action and the Court because of the inflammatory and threatening nature of some of the filings by plaintiff." [App. 43] (Doc. 169) (10/8/20) (emphasis added).

26. On October 16, 2020, Kaufman, Larizza, Schoeman, Bernstein, BOA, and Grigsby, relied on the false claims in the order [App. 43] (Doc. 169) in their oppositions, knowing that "threatening ...filings by plaintiff" did not exist, and thus aided the

continuation of the *Star Chamber*. All Defendants have aided the continuation of the unprecedented sealing in violation of the Constitution and the Law of Nations. Bernstein, for Grigsby, falsely submitted the "decision to seal the case file is well-grounded in the scurrilous and highly personal attacks being filed by Plaintiff" (emphasis added). Neither Ostrager in his fraudulent *post hoc* order [App. 43] (Doc. 169), nor any Defendant identified any "inflammatory and threatening ... filings by plaintiff" as no such "filings by plaintiff" exist. The "fraud upon the court" is established with the "filings by plaintiff" themselves, even filed in federal court without any redactions by the Republic of Brazil when it removed the case.

27. On October 23, 2020, Plaintiff filed his reply submitting that the Order dated October 8, 2020 was "*post hoc* rationalization for the sealing provided for the first time since the September 2, 2020 sealing [App. 42] (Doc. No. 141) appealed from, but without citing any 'inflammatory and threatening ... filings by plaintiff' because none exist." Plaintiff submitted that the adjectives used were "dictated" by Kaufman in qualifying Plaintiff's off-the-record e-mails. * * * ("plaintiff's emails contain baseless inflammatory accusations and threats, which should not be made part of the public docket. We will provide those to the Court if it wishes to review them *in camera*") (emphasis added). 28. The stay requested by Plaintiff *pro se* was denied. * * *

29. Ostrager failed to disclose that his multinational partnership published in www.stblaw.com that it "regularly" advised the defendant named in the case, "Bank of America Merrill Lynch," perhaps earning millions in fees, and that, through his partner Grenfel

Calheiros, his partnership operates in Brazil. Ostrager ignored a key document signed by his partner's relative, Senator Renan Calheiros, to fraudulently and lawlessly dismiss Plaintiff's meritorious $7Million lawsuit. 30. Defendants Kaufman, Larizza, and Schoeman, with reckless disregard for the documentary evidence, falsely denied that the official document signed by Senator Calheiros to authorize one of the BOA contracts at issue referenced BOA or any of the BOA contracts. * * * 31. On November 12, 2020, Ostrager dismissed Plaintiff's meritorious suit ignoring the official Federal Senate document signed by his law partner's relative, Senator Renan Calheiros, which particularized the novel guarantee structure contributed by Plaintiff, and also ignoring the press release by "Special Counsel" for BOA (Milbank), who worked on all of the credit agreements at issue, which described the private credit agreements with Brazilian states as unprecedented.

32. Defendant Grigsby, in *pro se* court filings of 2020, accused Plaintiff of "devilment" and cited *United States v. Moskovits*, 86 F.3d 1303 (3d Cir. 1996), clearly demonstrating his class-based, invidious discriminatory animus against Plaintiff due to his status as a felon in flagrant violation of constitutional rights. 33. All defendants learned of Plaintiff's felon status and joined in the class-based discrimination as evidenced by the flagrant violation of his rights to expose foreign corrupt practices to close contracts with BOA, including but not limited to attempted murder, to the public and the press. The claimed discrimination has evidentiary support and will likely

obtain additional evidentiary support after a reasonable opportunity for further discovery[.]

FIRST CAUSE OF ACTION CIVIL ACTION FOR DEPRIVATION OF RIGHTS

(42 U.S.C. § 1983) (Conspiracy or Aiding & Abetting)

* * *

35. From as early as September 2, 2020, but no later than October 8, 2020, and continuing through the date of this filing, all the private and state defendants agreed to act in concert to violate the Plaintiff's basic constitutional rights under the First Amendment, as well as the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution.

36. By agreeing to act in concert to inflict an unconstitutional injury against the Plaintiff, the private and state defendants acted "under color of state law" in furtherance of their goal to violate Plaintiff's rights under the First Amendment, as well as the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution. The overt acts in furtherance of the objective to deprive Plaintiff of said rights, which caused him damages, include but are not limited to: (a) the order sealing the case without stating any cause, one day after the Plaintiff requested full disclosure of extrajudicial relationships of the court or his related entities with the parties and counsel. [App. 42] (Doc. 141) (9/2/20); (b) the *post hoc* order falsely claiming that the "Court Administration directed" sealing the "entire file" due to non-existent "threatening... filings by plaintiff" was an overt act from which an agreement among all of the defendants to cause constitutional injury can be inferred. *See* [App. 43] (Doc. 169) (10/8/20);

(c) the oppositions filed by Schoeman, Kaufman, Larizza, and Bernstein, on behalf of BOA and Grigsby knowingly and willfully relying on the falsehood in the *post hoc* order [App. 43] (Doc. 169) ("threatening ... filings") were overt acts from which an agreement among all of the defendants to cause constitutional injury against the Plaintiff can be inferred. (10/16/20); (d) all orders by Ostrager after instituting *Star Chamber* proceedings were overt acts, including but not limited to the dismissal of Plaintiff's suit by ignoring a document by his own law partner's relative, Senator Renan Calheiros, which particularized the guarantee structure contributed by Plaintiff, and by ignoring the press release of Special Counsel for BOA (Milbank), hired on all of the deals at issue, which described the private credit agreements with Brazilian states as unprecedented; (e) all filings by Schoeman, Kaufman, Larizza, and Bernstein, on behalf of BOA and Grigsby, after the order sealing the entire case, which deliberately failed to prevent the continuation of *Star Chamber* proceedings. 37. The conspiracy among the private and state defendants also diminished public confidence in the state judiciary with wanton disregard for public rights. 38. To achieve specific and general deterrence, exemplary damages must be set at a very high value, as a nominal sum would not have any deterrent effect on defendants with a net worth of a very high value, such as BOA, Schoeman, Kaufman, Larizza, Grigsby, Bernstein, and Ostrager. 39. If an attorney is hired, Plaintiff may be allowed attorney's fees as part of the costs. * * * 40. Based on the flagrant violation of rights embodied in the unprecedented institution of *Star Chamber*

proceedings sealing an entire commercial case, and Grigsby underscoring Plaintiff's status as a felon, a trier of fact can reasonably infer that all defendants have acted with class-based, invidious discriminatory animus against Plaintiff due to his status as a felon.

SECOND CAUSE OF ACTION CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(42 U.S.C. §§ 1985(2), 1985(3)) * * *

42. From as early as September 2, 2020, but no later than October 8, 2020, and continuing through the date of this filing, all the private and state defendants agreed to act in concert to deprive the Plaintiff's of basic constitutional rights under the First Amendment, the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution. 43. All defendants conspired to impede, hinder, obstruct, or defeat the due course of justice in the State Courts, by instituting and continuing *Star Chamber* proceedings entirely sealed to the public with the intent to deny Plaintiff the equal protection of the law, or equal privileges under the laws, acting with a class-based, invidious discriminatory animus against Plaintiff due to his status as a felon. 44. All defendants conspired for the purpose of depriving Plaintiff of the equal protection of the laws, or equal privileges under the laws. The overt acts in furtherance of the objective to deprive Plaintiff of his rights, which deprivation caused him damages, include but are not limited to: [*See* ¶36(a)-(e) (same)]. 45. Plaintiff has been deprived of having and exercising a right or privilege of a United States citizen, and therefore he is entitled to the recovery of damages. 46-49. [*See* ¶¶37-40 (same)].

THIRD CAUSE OF ACTION
ALIEN'S ACTION FOR TORT
(28 U.S.C. § 1350) (Conspiracy or Aiding & Abetting)

* * *

51. To the extent that Plaintiff's Brazilian birth qualifies him as an "alien," the "fraud on the court" embodied in Officers of the Court sealing an entire case deprived an alien of "fair and public" process in violation of the Law of Nations, *see* Article 10 of the "United Nations Universal Declaration of Human Rights" ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations...."), which reflects that a *Star Chamber* seal violates a universal right. 52. The institution and continuation of *Star Chamber* proceedings violate "a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms." 53. The alleged "fraud upon the court," *see* Fourth Cause of Action, *infra*, embodied in the institution and continuation of *Star Chamber* proceedings sealed to the public constitutes a tort committed in violation of the Law of Nations.

54. The alleged "fraud upon the court," *see* Fourth Cause of Action, *infra*, in which private and state defendants conspired or aided and abetted each other to violate Plaintiff's rights also diminished public confidence in the state judiciary with wanton disregard for public rights. 55. To achieve specific and general deterrence, exemplary damages must be set at a very high value, as a nominal sum would not have any deterrent effect on defendants with a net worth of a very high value. 56. The calloused and malicious

conduct of these sophisticated defendants has damaged Plaintiff by causing intense emotional pain and suffering, leaving Plaintiff feeling anger and depression as a victim of flagrant dehumanization.

FOURTH CAUSE OF ACTION
FRAUD ON THE COURT

* * *

58. The fraudulent acts "defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *See Kupferman v. Consolidated Research and Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (formulation of "fraud on the court" accepted by this Circuit).

59. The overt acts of fraud by Officers of the Court in furtherance of the objective to deprive Plaintiff of his rights, which deprivation caused damages, include but are not limited to: (a) the order sealing the case without stating any cause, one day after the Plaintiff requested full disclosure of extrajudicial relationships of the court or his related entities with the parties and counsel. [App. 42] (Doc. 141) (9/2/20); (b) the *post hoc* order falsely claiming that the "Court Administration" directed sealing the entire "file" due to non-existent "threatening... filings" to aid the defendants in the Appellate Division. [App. 43] (Doc. 169) (10/8/20); (c) the oppositions filed by Schoeman, Kaufman, Larizza, and Bernstein, on behalf of BOA and Grigsby, knowingly and willfully relying on the falsehood in the *post hoc* order [App. 43] (Doc. 169) ("threatening ... filings") (10/16/20); (d) all orders by Ostrager after instituting *Star Chamber* proceedings were overt acts of fraud,

including but not limited to the dismissal of Plaintiff's suit by ignoring a document by his own law partner's relative, Senator Renan Calheiros, which particularized the guarantee structure contributed by Plaintiff, and by also ignoring the press release of Special Counsel for BOA (Milbank), hired on all of the deals at issue, which described the credit agreements with Brazilian states as unprecedented; (e) all filings by Schoeman, Kaufman, Larizza, and Bernstein, on behalf of BOA and Grigsby, after the order sealing the entire case, which deliberately failed to prevent the continuation of *Star Chamber* proceedings.

60. *Star Chamber* proceedings sealed to the public based upon a falsehood established by the documentary evidence is a flagrant "fraud on the court" which damaged Plaintiff in an amount of no less than $7Million. Even if [an] appeal overturns the *Star Chamber* sealing order, it will not compensate Plaintiff for the damages suffered from the deprivation of his constitutional and human rights. (brackets and asterisks added; irrelevant omitted)

NYSCEF DOC. NO. 141

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER

PART 61 Justice INDEX NO. 650617/2019

---------- X

ALEXANDER MOSKOVITS,

Plaintiff,

-v-

CALVIN B. GRIGSBY, BANK OF AMERICA MERRILL LYNCH, FEDERAL REPUBLIC OF BRAZIL, STATE OF SANTA CATARINA BRAZIL,

STATE OF MARANHAO BRAZIL, STATE OF MATO GROSSO BRAZIL, RAIMUNDO COLOMBO, JORGE SIEGA, and DOES 1 THROUGH 100, INCLUSIVE,

Defendants.

---------- X

ORDER DIRECTING SEALING

HON. BARRY R. OSTRAGER

The County Clerk is directed to seal this case (all past and future entries) to everyone **except** the Court and the parties to this action.

The County Clerk is also directed to seal NYSCEF Document No. 135 to the public, all parties to the action, and to the Court except for Justice Ostrager's Chambers.

Dated: September 2, 2020 (emphasis in original)

NYSCEF DOC. NO. 169
SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY
PRESENT: HON. BARRY R. OSTRAGER
PART 61 Justice INDEX NO. 650617/2019

---------- X

ALEXANDER MOSKOVITS,

Plaintiff,

-v-

CALVIN B. GRIGSBY, BANK OF AMERICA MERRILL LYNCH, FEDERAL REPUBLIC OF BRAZIL, STATE OF SANTA CATARINA BRAZIL,

STATE OF MARANHAO BRAZIL, STATE OF MATO GROSSO BRAZIL, RAIMUNDO COLOMBO, JORGE SIEGA, and DOES 1 THROUGH 100, INCLUSIVE,

Defendants.

---------- X

ORDER DIRECTING UNSEALING

HON. BARRY R. OSTRAGER

The County Clerk is directed to unseal NYSCEF document no. 141 for access by the parties to this action and the Court only. As reflected in the text of NYSCEF document no. 141, the document was mistakenly sealed. The Court Administration directed that the entire file be sealed except to the parties to the action and the Court because of the inflammatory and threatening nature of some of the filings by plaintiff.

Dated: October 8, 2020

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY
PRESENT: HON. BARRY R. OSTRAGER
PART IAS MOTION 61EFM Justice
INDEX NO. 152397/2020

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THE STUYVESANT TOWN-PETER COOPER VILLAGE TENANTS' ASSOCIATION, SUSAN STEINBERG as President and Tenant Representative and BETH ROSNER, STEVEN NEWMARK, RORY O'CONNOR and JODI STRAUSS individually and as ASSOCIATION members,

Plaintiffs,

-v-

BPP ST OWNER LLC and BPP PCV OWNER LLC, THE CITY OF NEW YORK and THE NEW YORK CITY HOUSING DEVELOPMENT CORPORATION and THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Defendants.

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RECUSAL ORDER

I recuse myself from this case and the related case *Roberts v. BPP PCV Owner* (100956/2007). On March 25, 2021 I made a disclosure to the parties concerning defendant BPP St Owner LLC, which I learned is a Blackstone affiliate. Specifically, prior to my appointment to the bench, I was a partner at Simpson Thacher & Bartlett LLP. Blackstone was and is one of Simpson Thacher & Bartlett LLP's largest clients. I currently receive a pension from Simpson Thacher & Bartlett LLP which is derived at least in part from the substantial revenue the firm receives from Blackstone.On April 1, 2021, plaintiffs' counsel requested that I recuse myself from these cases which I hereby do. This case is referred to the General Clerks' Office for reassignment to another Commercial Division Justice.

HON. BARRY R. OSTRAGER [signature]

Dated: April 1, 2021

State of New York
ETHICS COMMISSION FOR THE UNIFIED COURT SYSTEM

* * *

ANNUAL STATEMENT OF FINANCIAL DISCLOSURE FOR 2020 CALENDAR YEAR

* * *

(1) (a) FIRST NAME
Barry

(b) LAST NAME
Ostrager

THIS STATEMENT HAS BEEN PREPARED FOR PUBLIC INSPECTION

* * *

(2) (a) CURRENT JOB TITLE
Judge, N.Y. Supreme Court Justice-Civil, First Judicial District

(b) CURRENT WORK ADDRESS
60 Centre Street, New York, NY 10007

* * *

(12) (b) Describe the parties to and the terms of any agreement providing for continuation of payments or benefits to the REPORTING INDIVIDUAL in EXCESS of $1,000 from a prior employer OTHER THAN the State. (This includes interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance; buyout agreements; severance payments; etc.).
Do you have any information to enter for this question?

Yes

As a retired Partner of the law Firm Simpson Thacher Bartlett LLP I am entitled to receive a pension after my 12/31/14 retirement as an active partner of the Firm.

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(13) List below the nature and amount of any income in EXCESS of $1,000 from EACH SOURCE for the reporting individual and such individual's spouse for the taxable year last occurring prior to the date of filing. Nature of income includes, but is not limited to, all income EARNED BY YOU AND YOUR SPOUSE (other than that received by you from the employment listed under item 2 above) from compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony, and child support payments shall not be listed.

Do you have any information to enter for this question?

Yes

Self **SOURCE** Simpson Thacher & Bartlett LLP **NATURE** Pension **CATEGORY OF AMOUNT** H: $1,000,000 to under $3,000,000

* * *

Self **SOURCE** Merrill Lynch Brokerage Account **NATURE** Dividends **CATEGORY OF AMOUNT** Category C-$20,000 to under $60,000

* * *

The requirements of law relating to the reporting of financial interests are in the public interest and no adverse inference of unethical or illegal conduct or behavior will be drawn merely from compliance with these requirements.

* * *

SIMPSON THACHER BARTLETT LLP
PUBLICATION (STBLAW.COM)(2020)

"...The versatility of our practice areas greatly benefits clients – banks, companies, private equity firms, public utilities, nonprofits and individuals. We regularly advise clients such as Alibaba Group, Apax Partners, **Bank of America Merrill Lynch**, Blackstone, Carlyle, Dell, EQT, First Reserve, Goldman Sachs, HCA, Hellman & Friedman, Hilton, JPMorgan, KKR, Microsoft, the Republic of Peru, Seagate Technology, Silverlake Partners, SiriusXM, Travelers, and scores of others. ..."

(Emphasis added).