

APPENDIX A

Second Circuit Court of Appeals, August 10th, 2023 Order

S.D.N.Y. – N.Y.C.
20-cv-2262
Stanton, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 10th day of August, two thousand twenty-three.

Present:

Myrna Pérez,
Alison J. Nathan,
Maria Araújo Kahn,
Circuit Judges.

Ileen Cain,

Plaintiff-Appellant,

v.

23-432

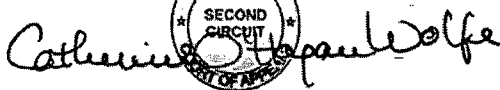

Mercy College, et al.,

Defendants-Appellees.

Appellant, pro se, moves for leave to proceed in forma pauperis (“IFP”) and relief from judgment. Upon due consideration, it is hereby ORDERED that the IFP motion is DENIED as unnecessary. Because Appellant was granted leave to proceed IFP in the district court, and her IFP status has not been revoked, she does not need permission from the Court to proceed IFP on appeal. *See* Fed. R. App. P. 24(a)(3). However, it is further ORDERED that the motion for relief from judgment is DENIED and the appeal is DISMISSED as frivolous because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court

APPENDIX B

Second Circuit Court of Appeals

Reconsideration/reconsideration, En banc Order October 27th

2023

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of October, two thousand twenty-three.

Ileen Cain,

Plaintiff - Appellant,

v.

ORDER

Docket No: 23-432

Mercy College, Reenan Zeineldin, Assoc. Provost,
Faculty Affairs, Nick Canzano, Assistant Dean, Student
Affairs, Thomas McDonald, Title IX Coordinator, Kristen
Bowes, General Counsel,

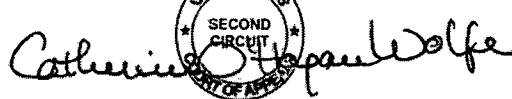
Defendants- Appellees.

Appellant, Ileen Cain, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

A circular seal of the United States Court of Appeals for the Second Circuit is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS".

APPENDIX C

Motion Letter, submitted Southern District March 8th 2023
Pursuant to Federal Rule 60(b) (1-5) & 6 & 8(a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ILEEN CAIN

LETTER MOTION
Relief from Judgment

PLAINTIFF

Southern District
1: 20-cv-2262 (LLS)

-against-

Second Circuit
21-824

MERCY COLLEGE et. al.

March 6th, 2023

Re:

Defendant Mercy College, Department of Campus Safety 2021 Annual Security & Fire Safety Report, adopted Policy and Procedure that prohibit race, gender, and disability discrimination and student on student cyberstalking/stalking victimization on Defendant's campuses;

Defendant Mercy College, Department of Campus Safety 2021 Annual Security & Fire Safety Report identified One instance of cyberstalking/stalking reported in 2019;

Defendant Mercy College President Tim Hall letter, Defendant student body participated in posting racially derogatory comments and images via the internet platform ZOOM 2020 aimed at Plaintiff.

Dear Judge Stanton:

Plaintiff, Ileen Cain letter motion respectfully, confers, Relief from Judgment Pursuant to Fed. R. Civ. P. 60 b (1)(2)(3). Your Honors Order of Dismissal issued on February 25th 2021 Pursuant to 28 U.S.C. § 1915 (e)(2)(B)(ii). The Second Circuit affirmed MANDATE issued on July 17th 2022.

Plaintiff's contention is to move this Court at a term thereof and the papers attached hereto for a pre-motion conference to argue why Plaintiff's motion for Relief from Judgment should be granted. Plaintiff is aware, Your Honor's docket is heavy, therefore, Plaintiff letter motion is limited to highlighting documentation and evidence, manifested post Your Honors Order of Dismissal, and minimal rehash one paragraph of Plaintiffs claims brought before this Court in March of 2020.

Plaintiff acquired Post Your Honors Order of Dismissal Defendant Mercy College Department of Campus Safety 2021 Annual Security & Fire Safety Report; attached here to "[The Report]" established Defendant Mercy College Adopted Policy and Procedure Pursuant to Federal, City, and State law that prohibit conduct that discriminate against students based on race, gender, disability and cyberstalking/stalking on campuses of higher education, private and public. ["The Report"] identified one case of cyberstalking/stalking in 2019. And identified Defendant appointed Title IX coordinator. Plaintiff, brought claims alleging Defendant conspired to conceal Plaintiff is a victim of cyberstalking/stalking, on Defendant Mercy College Harlem campus, after Plaintiff complained of cyberstalking/stalking in October 2019

In October 2019 Defendant created a list of derogatory questions telephoned, Plaintiff's fellow classmates and students with the intentions that Plaintiff's fellow classmates and students would confirm Plaintiff's conduct and character could not

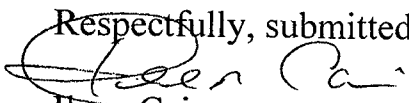
benefit from the services Defendant provide. The series of phone calls lasted four months.

Plaintiff acquired post Your Honor Order of Dismissal attached here to a letter from Defendant Mercy College President, Tim Hall citing Defendant Mercy College, student body participated in posting derogatory racial comments and images aimed at Plaintiff during a school sanctioned Zoom session. Zoom is an internet-based platform that allows users to connect via video, audio, phone, and chat. Zoom requires an internet connection and a supported device. Defendants provided the internet connection and supportive device.

Plaintiff humbly requests a pre-motion conference to argue the reasons Plaintiff's letter construed as a motion should be granted.

Plaintiff is available at the Courts convenience should Your Honor have any questions.

Respectfully, submitted.



Ileen Cain

41 Schermerhorn Street, Ste. 114

Brooklyn, NY 11201

Coycain1@hotmail.com

347 881-5922

ATTM:

1. Mercy College Department of Campus Safety 2021 Annual Security & Fire Safety Report
2. President, Tim Hall Letter, racially derogatory comments and images

Posted via Zoom, internet platform

3. Application, for the court to Request Pro Bono Counsel
4. Notice of Change of Mailing Address, Pro Se

Sworn to before me this

7TH day of MARCH 20 23



SUNDIATA ACREE
Notary Public - State of New York
No. 01AC6443596
Qualified in New York County
My Commission Expires 11/07/2026

SUNDIATA ACREE
Notary Public - State of New York
No. 01AC6443596
Qualified in New York County
My Commission Expires 11/07/2026

APPENDIX D

Southern District March 17th 2023 Order

ILEENE CAIN, Plaintiff,
v.
MERCY COLLEGE, et al., Defendants.

No. 20-CV-2262 (LLS).

United States District Court, S.D. New York.

March 17, 2023.

ORDER

LOUIS L. STANTON, District Judge.

Plaintiff filed this action *pro se*. On February 25, 2021, the Court dismissed the complaint, under 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim upon which relief may be granted. Plaintiff appealed the judgment, and on July 13, 2022, the United States Court of Appeals for the Second Circuit issued its mandate affirming the dismissal. (ECF 15.)

On March 8, 2023, Plaintiff filed a letter requesting that this action be reopened (ECF 18), a motion requesting that a letter be filed under seal (ECF 19), and a motion seeking the appointment of *pro bono* counsel (ECF 17).^[1] For the reasons set forth below, the Court denies the motions.

DISCUSSION

A. Motion for Reconsideration under Fed. R. Civ. P. 60(b)

The Court liberally construes Plaintiff's motion to reopen as a motion for relief from a judgment or order under Rule 60(b) of the Federal Rules of Civil Procedure. See *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); see also *Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010) (The solicitude afforded to *pro se* litigants takes a variety of forms, including liberal construction of papers, "relaxation of the limitations on the amendment of pleadings," leniency in the enforcement of other procedural rules, and "deliberate, continuing efforts to ensure that a *pro se* litigant understands what is required of him") (citations omitted).

Under Fed. R. Civ. P. 60(b), a party may seek relief from a district court's order or judgment for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief.

Fed. R. Civ. P. 60(b). A motion based on reasons (1), (2), or (3) must be filed "no more than one year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1).

The Court has considered Plaintiff's arguments under Rule 60(b). With respect to the reasons set forth in clauses (1)-(3), because she filed this motion more than one year after entry of judgment, these reasons cannot apply. As for reasons set forth in clauses (4) and (5), even under a liberal interpretation of her motion, Plaintiff has failed to demonstrate that these grounds apply. Therefore, the motion under any of these clauses is denied.

To the extent that Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), the motion is also denied. "[A] Rule 60(b)(6) motion must be based upon some reason other than those stated in clauses (1)-(5)." United Airlines, Inc. v. Brien, 588 F.3d 158, 175 (2d Cir. 2009) (quoting Smith v. Sec'y of HHS, 776 F.2d 1330, 1333 (6th Cir. 1985)). A party moving under Rule 60(b)(6) cannot circumvent the one-year limitation applicable to claims under clauses (1)-(3) by invoking the residual clause (6) of Rule 60(b). *Id.* A Rule 60(b)(6) motion must show both that the motion was filed within a "reasonable time" and that "'extraordinary circumstances' [exist] to warrant relief." Old Republic Ins. Co. v. Pac. Fin. Servs. of America, Inc., 301 F.3d 54, 59 (2d Cir. 2002) (per curiam) (citation omitted).

Plaintiff has failed to demonstrate that extraordinary circumstances exist to warrant relief under Fed. R. Civ. P. 60(b)(6). See Ackermann v. United States, 340 U.S. 193, 199-202 (1950).

B. Motion to Seal

Plaintiff has submitted to the court a December 17, 2020 letter from the President of Mercy College, addressed to the college community. The letter describes an incident that occurred on the Zoom platform, presumably during a Mercy College class or event, that involved "racist remarks and disturbing imagery." (ECF 19, at 2.) Plaintiff requests that this letter be sealed because she "firmly believes the sensitive information contained in the attached letter can have a rippling effect if it were viewed by sources unfamiliar with the claims yet to be litigated." (ECF 19, at 1.) She argues that the "letter poses sensitive information related to the claims Plaintiff brought before this Court against Defendants named in the above action." (*Id.*) Plaintiff's motion is denied.

Both the common law and the First Amendment protect the public's right of access to court documents. See Nixon v. Warner Comms., Inc., 435 U.S. 589, 597-99 (1978); Hartford Courant Co. v. Pellegrino, 380 F.3d 83, 91-92 (2d Cir. 2004). This right of access is not absolute, and "the decision as to access [to judicial records] is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." Nixon, 435 U.S. at 599 (footnote omitted).

Ordinarily, when a party asks for the sealing of a document, district courts rely on a three-part analysis to determine whether a document relating to a lawsuit should be made available to the public. See Lugosch v. Pyramid Co., 435 F.3d 110, 119-20 (2d Cir. 2006). First, the court must determine whether the document is indeed a "judicial document," to which the public has a presumptive right of access. *Id.* at 119. Judicial documents are those that are "relevant to the performance of the judicial function and useful in the judicial process." *Id.* (internal quotation marks and citation omitted).

Second, if the court determines that the materials to be sealed are judicial documents, then the court must determine the weight of the presumption of access. *Id.* "[T]he weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the

Here, Plaintiff seeks to seal a document that is not part of the record and played no role in this Court's exercise of its Article III judicial power, as the letter was filed after this case was closed. Indeed, this letter should not be part of the court record because the case is closed and Plaintiff's motion to reopen the action has been denied. Moreover, the Court finds that an open letter, addressed to an entire college community, filed in a closed case, should not be placed under seal. Accordingly, the Court denies Plaintiff's motion to seal the letter.

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