

11-4934-cv

UNITED STATES COURT OF APPEALS
for the
Second Circuit

YOEL WEISSHAUS,
Plaintiff-Appellant,

DECLARATION

-v-

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
Defendant-Appellee

Megan Lee declares pursuant to 28 USC § 1746 as follows:

1. I am an attorney with the Office of James M. Begley, attorney for Defendant-Appellee The Port Authority of New York and New Jersey (the "Port Authority") in the above-referenced matter. I make this declaration in support of the Port Authority's Motion to Strike Exhibits "J" through "R" and "U" through "Y" and "AA" through "CC" of the Appellant's Appendix , and the portions of Appellant's Brief referring to those Exhibits.
2. The underlying Complaint was dismissed *sua sponte* by the United States District Court for the Southern District of New York for failure to state a claim upon which relief may be granted and immunity grounds.
3. The Port Authority was never served with the Complaint and never made an appearance before the District Court.

4. As such, the only substantive documents that were before the District Court, and therefore a part of the record on appeal, are the Order of Dismissal, the Order Denying Reconsideration, the Complaint, and the letters written to the District Court by the plaintiff.

5. On appeal, Plaintiff-Appellant Yoel Weisshaus filed an appendix with his brief that includes several exhibits that were never before the District Court and are not a part of the record on appeal.

6. On June 22, 2012, the Port Authority filed a motion for permission to file an appellee's appendix. *See* Docket Entry 65.

7. On June 25, 2012, Weisshaus filed opposition to the Port Authority's motion and the Port Authority filed a reply on June 26, 2012. *See* Docket Entries 68 and 73.

8. On June 27, 2012, the Court issued an Order providing that the Port Authority's motion for permission to file an appellee's appendix was granted to the extent that the Port Authority could include in an appellee's appendix only relevant materials that were before the District Court but were omitted from Weisshaus's appendix. The Order also advised that the appropriate response to the materials included in Weisshaus's appendix outside of the record on appeal was to move to strike those extraneous materials. *See* Docket Entry 78.

9. The only materials in Weisshaus's appendix that were before the District Court and are in the record on appeal are Exhibits "A" through "I."

10. Exhibits “J” through “CC” in Weisshaus’s appendix were not before the District Court. However, Exhibits “S” and “T” are news articles of which the Court may take judicial notice. Additionally, Exhibit “Z” is an Opinion and Order of the Honorable Richard J. Howell of the Southern District of New York in *Auto. Club of New York, Inc. v. Port Auth. of New York & New Jersey*, 11 CIV. 6746 RJH, 2012 WL 362010 (S.D.N.Y. Feb. 6, 2012), of which the Court also may take judicial notice. Therefore, the Port Authority does not object to the consideration of Exhibits “S,” “T,” and “Z.”

11. Pursuant to the Court’s June 27, 2012 Order, the Port Authority is unable to include with its brief any documents that were not before the District Court. The Port Authority’s brief is due on June 27, 2012.

12. As such, the Port Authority would be prejudiced if Weisshaus’s appendix included documents that were not considered by the District Court.

13. Therefore, the Port Authority respectfully submits that the Court should issue an order providing that Exhibits “J” through “R,” “U” through “Y” and “AA” through “CC” be stricken from Weisshaus’s appendix, and that the portions of Appellant’s Brief referring to those Exhibits be stricken from the Brief.

Dated: June 27, 2012


Megan Lee, Esq.