

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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MIRIAM E. ROCAH, as District Attorney of
Westchester County,

Petitioner,

DECISION & ORDER

Index No. 1356/22

- against -

MATTHEW J. COSTA, Judge of the New
Rochelle City Court, MICHAEL MOLINA, Defendant,
and GUSTAVO VILLAMARES SERRANO, Defendant,

Respondents.

-----X
CACACE, J.

The following papers, numbered one (1) through seven (7), were read on this petition for relief pursuant to article 78 of the Civil Practice Law and Rules (CPLR).

Order to Show Cause - Affirmation in Support	1
Verified Petition - Affirmation - Exhibits - Memorandum of Law	2
Notice of Motion - Affirmation - Exhibit	3
Memorandum of Law in Support	4
Affirmation in Opposition to Motion to Dismiss	5
Reply Affirmation	6
Memorandum of Law in Further Support	7

Upon the foregoing papers, it is decided and ordered and that the instant petition is addressed as follows:

The petitioner bring this proceeding by verified petition submitted pursuant to article 78 of the CPLR, seeking an order of the Court (1) issuing a writ of prohibition to prevent respondent Matthew J. Costa, Judge of the City Court of the City of New Rochelle (hereinafter, Judge

Costa), from enforcing the determination he made to preclude the petitioner from introducing specified testimonial and documentary evidence during proceedings conducted in connection with the criminal prosecution of respondent Michael Molina in the City Court of the City of New Rochelle in the matter of *People v Michael Molina* under Docket No. CR-3495-21 (hereinafter, the Molina matter), and (2) issuing a writ of prohibition to prevent respondent Judge Costa from enforcing the determination he made to preclude the petitioner from introducing specified testimonial and documentary evidence during proceedings conducted in connection with the criminal prosecution of respondent Gustavo Villamares Serrano in the City Court of the City of New Rochelle in the matter of *People v Gustavo Villamares Serrano* under Docket No. CR-5661-21 (hereinafter, the Serrano matter).

In support of the instant petition for relief, the petitioner alleges that respondent Judge Costa resolved a counseled pre-trial motion made on behalf of respondent Molina in connection with the *Molina* matter by making a written determination through the filing of a Decision and Order, dated January 14, 2022, that served to preclude the petitioner from offering the “testimony of Trooper [Angelo] Fortune [of the New York State Police (NYSP)] and . . . the use of any evidence procured by Trooper Fortune in this matter,” ostensibly referring to any prospective trial of the *Molina* matter (hereinafter, challenged determination #1). Notably, the order of preclusion entered through challenged determination #1 was predicated upon respondent Judge Costa’s determination to impose a sanction against the petitioner as a consequence of her conceded failure to timely disclose impeachment material, characterized within challenged determination #1 as “Trooper Fortune’s disciplinary records,” to respondent Molina in connection with her prosecution of the *Molina* matter. In this regard, challenged determination #1 reflected

respondent Judge Costa's recognition that respondent Molina was arraigned in connection with the *Molina* matter on July 2, 2021, and that the petitioner had failed to disclose Trooper Fortune's disciplinary records to respondent Molina until November 10, 2021, which lead him to make the initial determination that the petitioner had thereby failed to satisfy her obligation to expeditiously make such a disclosure upon her receipt of such records pursuant to the express terms of Criminal Procedure Law (CPL) 245.20(1)(k), and to ultimately make the final determination to consequently impose the sanction of preclusion against the petitioner through his exclusive reliance upon the authority he drew from CPL 245.80(2).

In further support of the instant petition for relief, the petitioner also alleges that respondent Judge Costa resolved a counseled pre-trial motion made on behalf of respondent Serrano in connection with the *Serrano* matter by making a written determination through the filing of a Decision and Order, dated April 4, 2022, that served to preclude the petitioner from offering "any testimony regarding the Datamaster chemical test and the Standard Field Sobriety Test," ostensibly referring to any prospective trial of the Serrano matter (hereinafter, challenged determination #2). Notably, the order of preclusion entered through challenged determination #2 was predicated upon respondent Judge Costa's determination to impose a sanction against the petitioner as a consequence of her unilateral refusal to disclose the NYSP Standardized Field Sobriety Test (SFST) Training Manual and Datamaster Operating Manual, material that was characterized within challenged determination #2 as "automatic discovery required by CPL 245.20(1)(s)," to respondent Serrano in connection with her prosecution of the *Serrano* matter. In this regard, challenged determination #2 reflected respondent Judge Costa's recognition that respondent Serrano was arraigned in connection with the *Serrano* matter on November 22, 2021,

and that the petitioner had knowingly declined to disclose the SFST and Datamaster manuals to respondent Serrano without first being excused from making such disclosures pursuant to the procedure outlined through CPL 245.20(5) and CPL 245.70, which lead him to make the initial determination that the petitioner had thereby failed to satisfy her obligation to make such a disclosure as soon as practicable pursuant to the express terms of CPL 245.20(1)(s), and to ultimately make the final determination to consequently impose the sanction of preclusion against the petitioner through his exclusive reliance upon the authority he drew from CPL 245.80(2).

Although the instant petition for relief raises challenges to each of these two distinct and separate determinations made by respondent Judge Costa, the petitioner supports her respective challenges to each of them through application of the very same legal argument that provides for the interpretation of subdivisions (1) and (2) of CPL 245.80 to limit the authority of a motion court to impose the sanction of preclusion to only those occasions where there is a showing of prejudice made by the party entitled to disclosure. Thereupon, the petitioner submits that each of the challenged determinations made by respondent Judge Costa reflect his exclusive reliance for same upon his erroneous interpretation of the terms of CPL 245.80(1) and (2) as having given him the authority to impose the sanction of preclusion without the need for a specific showing of prejudice having been made by the party entitled to disclosure. Consequently, the petitioner submits that respondent Judge Costa's imposition of the sanction of preclusion upon her through challenged determination #1 and challenged determination #2, respectively, reflected action that he had taken in excess of his legal authority under CPL 245.80(1) and (2), and therefore, constituted action taken in the absence of lawful jurisdiction.

Upon consideration of the petitioner's argument, the Court's review of challenged determination #1 reveals that respondent Judge Costa issued same to address and resolve respondent Molina's counseled pre-trial motion filed in the *Molina* matter which had sought to persuade him to reject the petitioner's previously filed certificate of compliance and declaration of readiness in response to the petitioner's conceded failure to timely disclose discoverable material as required by CPL 245.20, and thereupon, specifically sought an order dismissing the *Molina* matter upon statutory speedy trial grounds defined by CPL 30.30(1)(b) pursuant to CPL 170.30(e). In the alternative, respondent Molina sought to persuade respondent Judge Costa to sanction the petitioner by determining that the period of the petitioner's delayed disclosure of Trooper Fortune's disciplinary records to respondent Molina be considered chargeable to the petitioner within the meaning of speedy trial excludable time calculations made through application of CPL 30.30(4)(a). Notably, the Court's scrutinizing examination of all counseled motion papers submitted by respondent Molina in connection with challenged determination #1, revealed the absence from such papers of any showing of prejudice experienced by respondent Molina as a consequence of the petitioner's delayed disclosure of the discoverable material complained of, nor do such papers raise an argument that any such prejudice might have existed.

Similarly, the Court's review of challenged determination #2 reveals that respondent Judge Costa issued same to address and resolve respondent Serrano's counseled pre-trial motion filed in the *Serrano* matter, which had sought to persuade him to strike the certificate of compliance filed by the petitioner in connection therewith, as a proposed sanction for her unilateral decision to withhold the SFST and Datamaster manuals from the discovery she provided to respondent Serrano, without first seeking a ruling from the motion court regarding

the discoverability of such materials pursuant to the procedure outlined in CPL 245.70. In the alternative, respondent Serrano sought to persuade respondent Judge Costa to sanction the petitioner by precluding the testimony of all police and civilian witnesses, and further excluding all breath test results and information. Notably, the Court's scrutinizing examination of all counseled motion papers submitted by respondent Serrano in connection with challenged determination #2 revealed the absence from such motion papers of any showing of prejudice experienced by respondent Molina as a consequence of the petitioner's non-disclosure of the discoverable material complained of, nor do such papers raise an argument that any such prejudice might have existed.

Subsequent to respondent Judge Costa's filing of challenged determination #1 on or about January 14, 2022, the petitioner filed a motion to reargue same pursuant to CPLR 2221, which remains pending in the City Court of the City of New Rochelle without resolution as of the date of the filing of the instant Decision and Order, despite the apparent full submission of all moving papers in connection therewith as of March 18, 2022. Following respondent Judge Costa's filing of challenged determination #2 on or about April 4, 2022, the petitioner disclosed the outstanding SFST and Datamaster manuals to respondent Serrano on April 29, 2022, but refrained from filing of a motion to reargue same with respondent Judge Costa.

By order to show cause filed on May 13, 2022, the petitioner commenced the instant article 78 proceeding to challenge respondent Judge Costa's impositions of the sanction of preclusion against the petitioner pursuant to challenged determination #1 and challenged determination #2, respectively, alleging that each of said determinations reflect an improper arrogation of power exercised without lawful authority for which the remedy of prohibition lies.

In opposition to the instant petition, respondent Judge Costa interposed a motion to dismiss the instant petition pursuant to CPLR 3211(a)(7) and 7804(f), alleging that the instant petition fails to state a cause of action for the entry of writ of prohibition against him. Specifically, respondent Judge Costa argues that the petitioner has failed to allege that he acted, or had threatened to act, in excess of his authorized powers and without jurisdiction when he imposed the sanction of preclusion against the petitioner through challenged determinations #1 and #2, as he derived jurisdiction over the underlying discovery disputes that arose in the *Molina* and *Serrano* matters from article 245 of the CPL, and was authorized to exercise his discretion to impose the sanction of preclusion for the petitioner's discovery violations committed in connection with same by CPL 245.80.

Discussion/Legal Analysis

At the outset, the Court notes that CPLR 7804(f) permits a respondent in an article 78 proceeding to either answer the petition or to make a motion to dismiss, and upon consideration of a motion to dismiss for a failure to state a cause of action brought pursuant to CPLR 3211(a)(7), it is well-settled that the pleadings are to be liberally construed by the reviewing court, that the alleged facts are to be accepted as true, and that every favorable inference possible must be afforded to the petitioner (*see Nonnon v City of New York*, 9 NY3d 825; *see also Lawrence v Miller*, 11 NY3d 588; *Miglino v Bally Total Fitness of Greater N.Y., Inc.*, 92 AD3d 148, 158, *aff'd* 20 NY3d 342; *Marcantonio v Picozzi III*, 70 AD3d 655). Furthermore, in connection with its examination of the pleadings upon consideration of such a motion, the

reviewing court's sole inquiry shall concern whether the facts alleged fit within any cognizable legal theory, irrespective of the level of evidentiary support proffered (*see People v Coventry First LLC*, 13 NY3d 758; *see also Leon v Martinez*, 84 NY2d 83, 87; *Silverman v Nicholson*, 110 AD3d 1054, 1055; *Ray v Ray*, 108 AD3d 449, 451), as the sole criterion on a motion to dismiss is "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cognizable action at law" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *see Leon v Martinez*, 84 NY2d at 87-88; *see also Miglino v Bally Total Fitness of Greater N.Y., Inc.*, 92 AD3d at 158; *Sokol v Leader*, 74 AD3d 1180, 1180-1181; *Gershon v Goldberg*, 30 AD3d 372, 373). In this regard, the Court also recognizes that "[w]hether [the] plaintiff can ultimately establish [her] allegations is not part of the calculus in determining a motion to dismiss [made pursuant to CPLR 3211(a)(7)]" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19; *see Ginsberg Dev. Cos., LLC v Carbone*, 85 AD3d 1110; *see also Miglino v Bally Total Fitness of Greater N.Y., Inc.*, 92 AD3d at 158).

Insofar as the challenges raised through this proceeding are concerned, the Court notes that the petitioner seeks relief in the nature of prohibition pursuant to CPLR 7803(2), which provides that a petitioner may commence a proceeding to determine "whether [a] body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction" (CPLR 7803[2]; *see Siegel*, N.Y. Prac. § 559 [5th ed.]). Consequently, in order to sustain the two causes of action for prohibition against respondent Judge Costa, the petitioner is obligated to establish that respondent Judge Costa's imposition of the sanction of preclusion against her as a consequence of her failure to comply with the discovery disclosure obligations placed upon her by CPL 245.20(1)(a)-(u), constitutes action that he took without or in excess of his jurisdiction

due to his failure to recognize the unavailability of a sanction under the authority of CPL 245.80 in the absence of any showing by respondents Molina and Serrano - as the parties entitled to the disclosure of discovery in the respective *Molina* and *Serrano* matters - that they suffered any resultant prejudice.

Critical to the Court's required analysis of whether the petitioner's pleading contains allegations which are sufficient to satisfy the standard of prohibition is an examination of the statutory language of CPL 245.80(1) and (2), as that is the sole authority upon which respondent Judge Costa relied when he imposed the sanction of preclusion against the petitioner in each of the challenged determinations. Specifically, CPL 245.80(1)(a), entitled "[n]eed for remedy or sanction," provides that "[w]hen material or information is discoverable under this article but is disclosed belatedly, the court shall impose an appropriate remedy or sanction if the party entitled to disclosure shows that it was prejudiced. Regardless of a showing of prejudice the party entitled to disclosure shall be given reasonable time to prepare and respond to the new material." As CPL 245.80(1)(b) applies only where a discovery disclosure failure results from lost or destroyed material, which was not averred by any of the parties nor determined by respondent Judge Costa in either of the challenged determinations at issue here, and as CPL 245.80(2) pertains only to the scope of permissible sanctions that are authorized subsequent to a preliminary finding of prejudice under the terms of CPL 245.80(1)(a) or (b), this Court's CPLR 3211(a)(7) analysis must focus solely upon the authority conferred by CPL 245.80(1)(a) due to the petitioner's specific challenge through this proceeding to respondent Judge Costa's threshold finding in each of the challenged determinations to impose the sanction of preclusion against her under such authority in spite of the alleged absence of demonstrated prejudice. Furthermore, the Court notes

with significance that the petitioner has further alleged that the consequences of respondent Judge Costa's sanctioning of the petitioner through challenged determination #1 by precluding her from offering the "testimony of Trooper Fortune and . . . the use of any evidence procured by Trooper Fortune in this matter," and through challenged determination #2 by precluding the petitioner from offering "any testimony regarding the Datamaster chemical test and the Standard Field Sobriety Test," have fatally undermined her ability to maintain and continue her prosecution of the *Molina* and *Serrano* matters through a prospective trial.

Furthermore, as a preliminary determination, this Court finds that *prohibition* would lie as a matter of its exercise of discretion under the petitioner's factual averments that respondent Judge Costa's challenged imposition of sanctions in challenged determinations #1 and #2 constitutes more than mere legal error accounting for the alleged impact that such action would have, as respondent Judge Costa's challenged imposition of sanctions would affect the underlying *Molina* and *Serrano* matters in an effectively conclusive manner which would evade appellate review (*see Johnson v Sackett*, 109 AD3d 427; *see also Matter of Clark v Newbauer*, 148 AD3d 260; *Matter of Cosgrove v Ward*, 48 AD3d 1150).


Based upon the foregoing, as the plain language of CPL 245.80(1)(a) authorizes a motion court to impose a sanction under only those circumstances where the party entitled to the disclosure of discoverable material shows that it was prejudiced (*see CPL 245.80[1][a]*; *see also People v Jateen*, 74 Misc.3d 134[A]), as the petitioner has alleged here that respondent Judge Costa lacked the authority he claimed to derive from CPL 245.80(1) when he sanctioned the petitioner for the delayed disclosure of discovery by his issuance of challenged determinations #1 and #2 in spite of the absence of a showing of resultant prejudice by either respondent Molina or

respondent Serrano, and as the petitioner has alleged that respondent Judge Costa was divested of the jurisdiction to impose such sanctions by undertaking such action in excess of the authority afforded to him by CPL 245.80(1), this Court finds that the petitioner has satisfied her burden to raise factual allegations in support of the two causes of action for *prohibition* raised through the instant proceeding against respondent Judge Costa to overcome his present CPLR 3211(a)(7) challenge.

Based upon the foregoing, as this Court finds that the petitioner's pleadings assert claims which successfully raise cognizable causes of action for *prohibition* through her pleadings against respondent Judge Costa pursuant to CPLR 7803(2), and therefore, respondent Judge Costa's motion to dismiss this proceeding pursuant to CPLR 3211(a)(7) must be denied and this proceeding must be permitted to proceed, and therefore, respondent Judge Costa's motion to dismiss the instant proceeding is hereby denied, and he is hereby directed to serve any answer to the instant verified petition within thirty (30) days from the date of the filing of this Decision and Order. It is further ordered that any reply to the answer submitted by such respondent shall be served within fourteen (14) days from the date of service of the respondent's verified answer.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
September 30, 2022



Honorable Susan Cacace
Acting Justice of the Supreme Court

HON. SUSAN CACACE
WESTCHESTER COUNTY
COURT JUDGE

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