ADMITTED TO PRACTICE IN:
NEW YORK; NEW JERSEY;
UNITED STATES SUPREME COURT;
U.S. COURTS OF APPEALS FOR THE SECOND AND THIRD CIRCUITS;
U.S. DISTRICT COURTS FOR THE EASTERN DISTRICT OF TEXAS, DISTRICT OF NEW JERSEY, NORTHERN DISTRICT OF FLORIDA, NORTHERN DISTRICT OF ILLINOIS, DISTRICT OF CONNECTICUT, AND NORTHERN, SOUTHERN & EASTERN DISTRICTS OF NEW YORK; U.S. COURT OF INTERNATIONAL TRADE; U.S. COURT OF FEDERAL CLAIMS.

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August 24, 2015

The Honorable Pamela K. Chen
United States District Judge
United States District Court, E.D.N.Y.
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Maloney v. Singas*, CV-03-0786
Filed via ECF

Dear Judge Chen:

I am the *pro se* plaintiff in this matter, and write to answer the question posed to me at the conference of July 23, 2015, i.e., whether I will: (a) agree to be deposed by the Nassau County Attorney's Office; or (b) be foreclosed from giving any testimony at the upcoming trial.

Having carefully read and analyzed Your Honor's text order of August 3, 2015 (the "Order") (copy attached hereto as Appendix), I have concluded that my proposed motion for an injunction, even if I were permitted to make it (which the Order seems to indicate that I am not), would be denied. **Accordingly, I hereby choose (a), and will make myself available for a deposition by the Nassau County Attorney's Office.**

However, I am compelled to note for the record that:

- The irreparable harms that I would risk if I were to assert the privilege against self-incrimination in the deposition would not be the deprivation of my Second Amendment rights, but would derive from the inferences that could be drawn against me, leading to the harms detailed at pages 3-6 of my July 31, 2015, letter to the Court (Document 148).

- At the conference of October 24, 2013, the only possibility of a deposition that was discussed was that of District Attorney Rice (see Document 144-1 at 5). It is respectfully submitted that I therefore could not reasonably have foreseen any need to move for such injunctive relief at the time I made my motion for summary judgment.

Respectfully,
/s
James M. Maloney

cc: all counsel via ECF

NYU

James Michael Maloney <jmm257@nyu.edu>

Activity in Case 2:03-cv-00786-PKC-AYS Maloney v. Rice Order on Motion for Extension of Time to File Response/Reply

1 message

ecf_bounces@nyed.uscourts.gov <ecf_bounces@nyed.uscourts.gov> Mon, Aug 3, 2015 at 5:12 PM
To: nobody@nyed.uscourts.gov

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 8/3/2015 at 6:12 PM EDT and filed on 8/3/2015
Case Name: Maloney v. Rice
Case Number: 2:03-cv-00786-PKC-AYS
Filer:
Document Number: No document attached

Docket Text:
ORDER denying [148] Plaintiff's motion for pre-motion conference and finding as moot [149] Defendant's motion for extension of time:

The Court DENIES Plaintiff's motion for a pre-motion conference [148] regarding his proposed motion for a permanent injunction as procedurally improper; indeed, the time to have made this argument would have been on summary judgment, which Plaintiff did not seek. In any event, Plaintiff cannot prevail on a motion for a permanent injunction because he has not established the irreparable injury necessary for the issuance of a permanent injunction. *See Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010) (citing *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006) (plaintiff seeking permanent injunction must establish four factors: "(1) that [he] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.) Indeed, whether Plaintiff will suffer irreparable injury, i.e., the deprivation of his Second Amendment right to bear arms, from the County's enforcement of the nunchaku ban is the issue to be decided at trial. In reality what Plaintiff is seeking is a grant of immunity for any testimony he might give implicating himself in the illegal possession of nunchaku. That grant, however, must come from the County's prosecutors, not the Court. *Andover Data Servs., a Div. of Players Computer, Inc. v. Statistical Tabulating Corp.*, 876 F.2d 1080, 1084 (2d Cir. 1989) ("a trial court generally has no authority to grant immunity to a witness[;]... the power to grant such immunity lies solely within the discretion of the Executive branch."); *In re Corrugated Container Antitrust Litigation*, 644 F.2d 70, 78 n.13 (2d Cir. 1981) ("courts cannot confer immunity upon a witness on their own initiative"). The Court notes that even if Plaintiff chooses to testify about his experiences with nunchaku, he could selectively invoke his Fifth Amendment privilege as to questions that might expose him to arrest or criminal prosecution, e.g., where the statute of limitations has not yet run, and the Court, as the fact finder, would be permitted, for what it is worth, to infer that Plaintiff possessed nunchaku in violation of the State law ban. *See Bank of America, N.A. v. Fischer*, 927 F. Supp. 2d 15, 27 (E.D.N.Y. 2013) ("a party in a civil proceeding has the right to assert the privilege against self-incrimination" but "[a] court may drawn an adverse inference against a party who asserts his Fifth Amendment privilege in a civil matter, because the invocation of the privilege results in a disadvantage to opposing parties by keeping them from obtaining information they could otherwise get.") (case citations omitted).

Having denied the Plaintiff's motion, the Court denies, as moot, the Defendant's request for an extension of time to respond to Plaintiff's motion.

Ordered by Judge Pamela K. Chen on 8/3/2015. (Chiang, May)

2:03-cv-00786-PKC-AYS Notice has been electronically mailed to:

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