

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D25664  
G/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - December 8, 2009

MARK C. DILLON, J.P.  
ANITA R. FLORIO  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

---

2008-08876

DECISION & ORDER

Delta Financial Corporation, etc., plaintiff,  
v James E. Morrison, et al., defendants;  
Christopher A. Byrne, nonparty-appellant.  
(Action No. 1)

Delta Funding Residual Exchange Company,  
LLC, et al., plaintiffs, v Delta Financial  
Corporation, et al., defendants; Christopher A.  
Byrne, nonparty-appellant.  
(Action No. 2)

(Index Nos. 11118/03, 3084/04)

---

Christopher A. Byrne, Washington, D.C., nonparty-appellant pro se.

In related actions, inter alia, to recover damages for breach of contract, Christopher A. Byrne, an attorney for the defendants in Action No. 1 and for the plaintiffs in Action No. 2, appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Warshawsky, J.), dated August 12, 2008, as, after a hearing, directed him to pay the sum of \$5,000 to the Lawyers' Fund for Client Protection as a sanction pursuant to 22 NYCRR § 130.1-1.

ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

During discovery, Christopher A. Byrne, who was an attorney for the defendants in Action No. 1 and for the plaintiffs in Action No. 2, asserted that 55 e-mails were protected from

January 12, 2010

Page 1.

DELTA FINANCIAL CORPORATION v MORRISON  
DELTA FUNDING RESIDUAL EXCHANGE COMPANY, LLC v  
DELTA FINANCIAL CORPORATION

disclosure by the attorney-client privilege, a litigation committee privilege, and/or a common interest privilege. After an exhaustive in camera review of those 55 e-mails, the Supreme Court determined that Byrne failed to satisfy his burden of establishing that the documents contained confidential communications between an attorney and a client during the course of professional employment for the purpose of obtaining legal advice or services and that they were primarily or predominantly of a legal, rather than a business, nature (*see Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371; *Rossi v Blue Cross & Blue Shield of Greater N.Y.*, 73 NY2d 588; *Matter of Priest v Hennessy*, 51 NY2d 62).

The Supreme Court providently exercised its discretion in imposing a sanction upon Byrne, because his claim that the 55 e-mails were privileged was completely without merit in law and could not be supported by any reasonable argument for the extension, modification, or reversal of existing law (*see* 22 NYCRR 130-1.1[c][1]; *Lightron Corp. v J.S.M. Holdings*, 188 AD2d 641).

DILLON, J.P., FLORIO, HALL and SGROI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court