

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

D25670
C/prt

_____AD3d_____

Submitted - December 4, 2009

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2009-01828

DECISION & ORDER

Jeffrey Rabiea, appellant, v
Alan C. Stein, et al., respondents.

(Index No. 17432/08)

Edward Weissman, New York, N.Y., for appellant.

Babchik & Young, LLP, White Plains, N.Y. (Jack Babchik and Marisa C. DeVito of counsel), for respondents Alan C. Stein and Alan C. Stein, P.C.

Marshall, Dennehey, Warner, Coleman & Goggin, New York, N.Y. (Michael Gallagher and Steven Christman of counsel), for respondent Valley Forge Flag Company.

In an action, inter alia, to recover damages for defamation, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (Palmieri, J.), entered January 2, 2009, as granted those branches of the motion of the defendants Alan C. Stein and Alan C. Stein, P.C., and the separate motion of the defendant Valley Forge Flag Company, which were pursuant to CPLR 3211(a)(7) to dismiss the first cause of action to recover damages for defamation insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

A statement made by counsel during a judicial proceeding, even if made with malice or bad faith, is protected by absolute privilege as long as the statement may, in some way, be

January 12, 2010

Page 1.

RABIEA v STEIN

considered pertinent to the litigation (*see Sexter & Warmflash, P.C. v Margrave*, 38 AD3d 163, 171; *see also Martirano v Frost*, 25 NY2d 505, 507; *Impallomeni v Meiselman, Farber, Packman & Eberz*, 272 AD2d 579). Here, accepting the allegations in the complaint as true and resolving all inferences in favor of the plaintiff (*see Leon v Martinez*, 84 NY2d 83, 87-88), the complaint fails to state a cause of action against the defendants to recover damages for defamation, as the statements in issue were made between counsel in a judicial proceeding as a pertinent part of settlement negotiations and therefore are protected by an absolute privilege (*see Papa v Regan*, 256 AD2d 452; *Vodopia v Ziff-Davis Publ. Co.*, 243 AD2d 368; *Sexter & Warmflash, P.C. v Margrave*, 38 AD3d at 176-178; *Grasso v Mathew*, 164 AD2d 476).

In light of our determination, we need not address the parties' remaining contentions.

MASTRO, J.P., FISHER, BELEN and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court