

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

D36776
N/kmb

_____AD3d_____

Argued - October 25, 2012

ANITA R. FLORIO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2011-05356
2011-06216

DECISION & ORDER

Patrick F. Bisogno, appellant, v Lilas Borsa, et al.,
respondents.

(Index No. 102110/10)

Saul Fellus, Brooklyn, N.Y., for appellant.

Kaufman Dolowich Voluck & Gonzo, LLP, Woodbury, N.Y. (Brett A. Scher and
Jonathan B. Isaacson of counsel), for respondents.

In an action, inter alia, to recover damages for defamation, the plaintiff appeals from (1) an order of the Supreme Court, Richmond County (McMahon, J.), dated March 28, 2011, which granted the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint, and (2) a judgment of the same court entered April 28, 2011, which, upon the order, is in favor of the defendants and against him dismissing the complaint.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

December 12, 2012

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“Statements made by parties, attorneys, and witnesses in the course of a judicial or quasi-judicial proceeding are absolutely privileged, notwithstanding the motive with which they are made, so long as they are material and pertinent to the issue to be resolved in the proceeding” (*Kilkenny v Law Off. of Cushner & Garvey, LLP*, 76 AD3d 512, 513; *see Wiener v Weintraub*, 22 NY2d 330; *Sinrod v Stone*, 20 AD3d 560, 561). Here, the allegedly defamatory statements were made in the course of either a judicial or quasi-judicial proceeding and, as a matter of law, were material and pertinent to the issue to be resolved therein (*see Kilkenny v Law Off. of Cushner & Garvey, LLP*, 76 AD3d at 513). Accordingly, the Supreme Court properly determined that those statements were absolutely privileged (*see Wiener v Weintraub*, 22 NY2d at 331-332; *Sinrod v Stone*, 20 AD3d at 561). Therefore, the Supreme Court properly granted that branch of defendants’ motion which was pursuant to CPLR 3211(a)(7) to dismiss the cause of action alleging defamation.

The plaintiff’s remaining contentions are without merit.

FLORIO, J.P., LEVENTHAL, AUSTIN and COHEN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court