

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

607

CA 08-01542

PRESENT: HURLBUTT, J.P., CENTRA, PERADOTTO, GREEN, AND GORSKI, JJ.

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IN THE MATTER OF JOHN D. JUSTICE,  
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

MICHAEL E. HUDSON, JUDGE OF THE NEW YORK  
STATE COURT OF CLAIMS, AND THE STATE OF NEW  
YORK, RESPONDENTS-RESPONDENTS.

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JOHN D. JUSTICE, PETITIONER-APPELLANT PRO SE.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (KATHLEEN M. TREASURE OF  
COUNSEL), FOR RESPONDENTS-RESPONDENTS.

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Appeal from a judgment (denominated order) of the Supreme Court, Erie County (Christopher J. Burns, J.), entered May 23, 2008 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this proceeding pursuant to CPLR article 78 seeking to prohibit respondent, a Court of Claims judge, from adjourning his motions and the State of New York's cross motions pending in petitioner's action in the Court of Claims. Supreme Court properly dismissed the petition. "[T]he petition alleges merely an . . . abuse of discretion that does not constitute the kind of abuse or perversion of a court's jurisdiction as would warrant the issuance of a writ of prohibition" (*Matter of Tyler v Forma*, 231 AD2d 891, 892; see *People ex rel. Patrick v Fitzgerald*, 73 App Div 339, 345).

Entered: April 24, 2009

Patricia L. Morgan  
Deputy Clerk of the Court