

**Jamais v Morano**

2007 NY Slip Op 30832(U)

April 13, 2007

Supreme Court, New York County

Docket Number: 0113491/2006

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

BRUNO JAMAIS,  
Plaintiff,

Index No.: 113491/06

Motion Date: 01/23/07

- v -

Motion Seq. No.: 01

SAMUEL MORANO, NYP HOLDINGS, INC., d/b/a  
NEW YORK POST, NEWS CORP., and  
BRAD HAMILTON,

Motion Cal. No.: 15

Defendants.

The following papers, numbered 1 to 3 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits  
Answering Affidavits - Exhibits  
Replying Affidavits - Exhibits

PAPERS NUMBERED

1

2

3

**FILED**

APR 20 2007

NEW YORK  
COUNTY CLERK'S OFFICE

Cross-Motion:  Yes  No

Upon the foregoing papers,

The court shall grant the motion of defendant Samuel Morano to dismiss the complaint alleging libel for statements contained in the complaint of the separate personal injury action entitled Morano v Jamais, Index No.: 106541/2006 (Sup Ct, NY County).

With respect to the claims made against the movant in the complaint, the First Department has recently reiterated that

An absolute privilege affords a speaker or writer immunity from liability for an otherwise defamatory statement to which the privilege applies, regardless of the motive with which the statement was made. Thus, the protection of an absolute privilege, unlike a qualified privilege, is not conditioned upon the honest and

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

reasonable belief that the defamatory matter is true or upon the absence of ill will on the part of the actor. Absolute privilege has been recognized in a very few situations where there is an obvious policy in favor of permitting complete freedom of expression, without any inquiry as to the defendant's motives.

Judicial proceedings are among the settings in which an absolute privilege is recognized. The rule is that a statement made in the course of legal proceedings is absolutely privileged if it is at all pertinent to the litigation. The privilege extends to judge, jurors, counsel, witnesses, and, as relevant here, the parties to the proceeding. The principle underlying the absolute privilege for judicial proceedings is that the proper administration of justice depends upon freedom of conduct on the part of counsel and parties to the litigation, which freedom tends to promote an intelligent administration of justice. As a matter of public policy, the possible harm to individuals barred from recovering for defamatory statements made in connection with judicial proceedings is deemed to be far outweighed by the need to encourage parties to litigation, as well as counsel and witnesses, to speak freely in the course of judicial proceedings.

In view of the public policy to permit persons involved in a judicial proceeding to write and speak about it freely among themselves, pertinent statements made in the course of such proceedings are afforded the protection of privilege, irrespective of the motive with which the statements are made. Stated otherwise, the judicial proceedings privilege is extended to pertinent statements made in the course of litigation no matter how great the personal malice of the writer.

While it is true that the judicial proceedings privilege may be "abused," and, in that event, protection is withdrawn, the authorities make clear that the sole criterion of whether such abuse has occurred is the pertinence of the statement in question to the proceedings. It is only when the language used goes beyond the bounds of reason and is so clearly impertinent and needlessly defamatory as not to admit of discussion that the privilege is lost. Thus, in the case of a defamatory statement that was obviously impertinent to the judicial proceeding in which it was made, the privilege is withdrawn because the malice of the speaker or writer is inferred from the statement's impertinence. However, an offending statement pertinent to the proceeding in which it was made is absolutely privileged,

regardless of any malice, bad faith, recklessness or lack of due care with which it was spoken or written, and regardless of its truth or falsity.

Whether a statement is at all pertinent to the litigation is determined by an extremely liberal test. A statement made in the course of judicial proceedings is privileged if, by any view or under any circumstances, it may be considered pertinent to the litigation. Thus, the narrow and technical rules normally applied to determine the admissibility of evidence are not used to determine a statement's pertinence for purposes of the privilege analysis. To be actionable, a statement made in the course of judicial proceedings must be so outrageously out of context as to permit one to conclude, from the mere fact that the statement was uttered, that it was motivated by no other desire than to defame. Stated otherwise, the possibly pertinent for purposes of the judicial proceedings privilege need be neither relevant nor material to the threshold degree required in other areas of the law, and the barest rationality, divorced from any palpable or pragmatic degree of probability, suffices to establish the offending statement's pertinence to the litigation.

The pertinence of a statement made in the course of judicial proceedings is a question of law for the court. In answering that question, any doubts are to be resolved in favor of pertinence. Pertinence is properly determinable on a motion to dismiss addressed to the pleadings and documentary evidence alone.

Sexter & Warmflash, P.C. v Margrabe, \_\_ AD3d \_\_, 828 NYS2d 315, 322-325, 2007 NY Slip Op 00065 (1<sup>st</sup> Dept, Jan 4, 2007).

The statements complained of here are clearly privileged. The statements in the complaint in the prior action are factual allegations by the movant herein that if accepted by the jury could mitigate any finding of contributory negligence on the part of the defendant herein in the prior suit by suggesting possible motivations for the parties' actions. The court further notes

that the plaintiff here submits no affidavit in opposition to the motion alleging that the movant's statements are untrue.

Accordingly, it is

ORDERED that the motion is GRANTED and the complaint is DISMISSED against defendant SAMUEL MORANO and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the remaining parties are hereby directed to attend a preliminary conference on May 22, 2007, at 9:30 A.M., at the Courthouse, IAS Part 59, Room 1254, 111 Centre Street, New York.

This is the decision and order of the court.

Dated: April 13, 2007

ENTER:

*[Handwritten signature]*

J.S.C.

DEBRA A. JAMES  
J.S.C.

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