

Morris v Rochdale Vil., Inc.

2011 NY Slip Op 33315(U)

July 11, 2011

Supreme Court, Queens County

Docket Number: 30831/2010

Judge: David Elliot

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DAVID ELLIOT
Justice

IAS Part 14

PEGGY MORRIS,
Plaintiff,

Index
Number 30831 2010

-against-

Motion
Date May 17, 2011

ROCHDALE VILLAGE, INC., et al.,
Defendants.

Motion
Cal. Nos. 16 & 17

Motion Seq. Nos. 1 & 4

The following papers numbered 1 to 27 read on this motion by Sheldon J. Rosen, P.C., Sheldon J. Rosen, Esq., and Maribel Tejada a/k/a Maribel Tejada Bolivar (hereinafter referred to collectively as “the attorney defendants”), to dismiss the complaint pursuant to CPLR §§3211 (a) (1), (7) and (8); and on this motion by the defendants Judges Anne Katz, Gilbert O. Badillo, Michael K. Pinckney, and Clerk John Barry (hereinafter referred to collectively as “the State defendants”) to dismiss the complaint pursuant to CPLR 3211 (a) (2) and (7).

	<u>Papers Numbered</u>
Notices of Motion - Affidavits - Exhibits.....	1-8
Answering Affidavits - Exhibits.....	9 - 27

Upon the foregoing papers it is ordered that the respective motions are granted.

Self-represented plaintiff Peggy Morris brings this proceeding seeking an order vacating decisions and orders rendered by Judges Anne Katz and Michael J. Pinckney, as well as the annulment of a warrant of eviction and dismissal of the lower court proceeding

leading to plaintiff's eviction. Plaintiff brings suit against the above-mentioned judges, and Judge Gilbert O. Badillo and deputy clerk of the Queens County, John Barry, as well as the attorneys (and a member of their staff) who represented the landlord in the underlying holdover proceeding. Plaintiff also seeks compensatory and punitive damages and costs.

Defendants move to dismiss the complaint on various grounds under CPLR 3211, including, inter alia, plaintiff's lack of standing, plaintiff's failure to properly serve defendants and failure to state a cause of action, and the court's lack of jurisdiction to award damages against the state or employees thereof. The papers submitted by plaintiff were considered by the Court as opposition; however, those papers are largely illegible.

Facts

This case arises out of an underlying licensee holdover proceeding in the Civil Court of the State of New York, County of Queens, titled *Rochdale Village, Inc. v Eric Miller, Administrator of the Estate of Osborne Miller and Peggy Morris*, Index No. 057347/2010 (the underlying holdover proceeding). The underlying holdover proceeding relates to plaintiff's alleged illegal occupancy of the apartment at issue, located at 163-25 130th Avenue, Apartment 1F, Jamaica, New York 11434. Although plaintiff lived in the apartment, she was never listed on its lease or income affidavit, and merely occupied the apartment. On December 16, 2009, Osborne Miller, the sole person listed on the lease of the apartment, died. Osborne Miller's son, Eric Miller, was appointed as the administrator of Osborne Miller's estate.

The attorney defendants were retained as counsel for Rochdale Village, Inc. (a defendant named herein) in the underlying holdover proceeding. In January 2010, Rochdale first informed the attorney defendants of plaintiff's illegal occupancy in the apartment. As such, the attorney defendants submit that prior to January 2010, none of them had any involvement with or knowledge of Peggy Morris or the apartment. During the prosecution of the underlying holdover proceeding, legal secretary Tejada at all times merely served as the legal secretary to Attorney Rosen and the Rosen Law Firm, and assisted with clerical tasks under the supervision and direction of Attorney Rosen.

Prior to the commencement of the underlying holdover proceeding, plaintiff commenced a lock-out proceeding against Eric Miller in the Civil Court of the State of New York, County of Queens, titled *Peggy Morris v Eric Miller*, Index No. 23417/2009, in order to prevent Miller from entering the apartment and/or accessing the apartment's mailbox. Rochdale was not a party to the lock-out proceeding, and the attorney defendants did not serve as counsel to any party therein.

On December 18, 2009, the Court issued an Order in which Miller was given unrestricted access to the apartment, and plaintiff was ordered to make a copy of the mailbox key for Miller, in order for him to access any mail for his father's estate. Plaintiff refused to comply with the Civil Court's December 18, 2009 Order, and failed to give Miller a copy of the mailbox key. Thereafter, Miller requested that Rochdale make a new key for the mailbox and Rochdale changed the lock on the mailbox to allow Miller access.

On or about January 29, 2010, Rochdale served a 10-day Notice to Quit Premises Upon Revocation of License upon both Miller and plaintiff. The 10-day Notice was served via certified and regular mail as well as being affixed to the door of the apartment and Miller's residence. Plaintiff failed to quit the premises and, therefore, on March 20, 2010, the attorney defendants, on behalf of Rochdale, commenced the underlying holdover proceeding. Since the Notice of Petition contained a demand for plaintiff to pay \$7,167.50 in use and occupancy for her illegal occupancy, the Notice of Petition also included a Fair Debt Collection Notice. The Notice of Petition was served by the affix and mail method of service provided for in RPAPL § 735 (1).

On April 22, 2010, a hearing was held in the Civil Court of the City of New York, Queens County, relating to the underlying holdover proceeding, at which plaintiff failed to appear. During the hearing, Miller entered into a Stipulation of Settlement in which he agreed to surrender possession of the apartment on behalf of the Estate of Osborne Miller by May 22, 2010, and an inquest was conducted resulting in a judgment of possession and the issuance of a warrant as to plaintiff.

On May 17, 2010, a warrant was issued to evict plaintiff from the apartment. On May 25, 2010, plaintiff filed an Order to Show Cause to vacate her April 22, 2010 default and stay her eviction. Plaintiff's Order to Show Cause was returnable on June 1, 2010, and adjourned to June 7, 2010. On June 7, 2010, the Court held a hearing and thereafter issued an Order, dated June 7, 2010, which held that plaintiff was properly served with the Notice of Holdover Proceeding and all related papers, that plaintiff "had no rights to the apartment. She is not on [the] income affidavit, she has never paid rent, she has no family relationship to the deceased." The Court also affirmed Rochdale's action in changing the mailbox lock. It is alleged by the attorney defendants that, until the June 1, 2010 return date and June 7, 2010 hearing for plaintiff's Order to Show Cause, none of the moving defendants had any knowledge of the alleged changing or damaging of the locks of the apartment.

Plaintiff appealed the June 7th decision. On August 4, 2010, the Appellate Term issued an Order which stayed the underlying holdover proceeding and eviction and required plaintiff to pay Rochdale for the use and occupancy of the Apartment within ten (10) days of the Order. Plaintiff failed to provide any payment to Rochdale for her use of the

Apartment. Therefore, on October 19, 2010, the Appellate Term issued an Order which vacated the stay of plaintiff's eviction.

Plaintiff thereupon filed another Order to Show Cause to dismiss the April 22, 2010 stipulation and June 7, 2010 Order, and stay her eviction. On October 22, 2010, the Court issued an Order which reaffirmed the April 22, 2010 stipulation, June 7, 2010 Order and vacated the stay of plaintiff's eviction (Katz, J.). The Court specifically noted that plaintiff was at all times properly served pursuant to RPAPL § 735, that plaintiff failed to pay rent pursuant to the Appellate Term Order, that plaintiff had no right to occupy the subject apartment, and that "Ms. Morris has exhausted her remedies in this Court."

After the Civil Court determined that plaintiff had exhausted her remedies, plaintiff commenced a series of actions against any party who appears to have been tangentially connected to the underlying holdover proceeding. On or about September 1, 2010, plaintiff mailed the attorney defendants a Summons and Notice for an action against the moving defendants in the Supreme Court of the State of New York, Queens County, titled Peggy Morris v Sheldon J. Rosen, P.C., Sheldon J. Rosen, Esq., and Maribel Tejada, Index No. 22934/2010, alleging that the moving defendants violated Judiciary Law § 487, and committed abuse of process during the underlying holdover proceeding. It appears that said motion has been withdrawn.

On or about November 19, 2010, plaintiff commenced an Article 78 proceeding in this court against Attorney Rosen, the Honorable Judge Anne Katz, Justice Gilbert Badillo, Justice Michael Pinckney, Justice Jonathan Lippman, Justice Fern Fisher, and various court clerks and police officers who plaintiff perceived as being involved in the underlying holdover proceeding (Index No. 29202/2010). Like the instant action, the Article 78 proceeding alleges that these parties were involved in a complex conspiracy to defraud the residents of Rochdale, including plaintiff. A view of court records reveals that said petition has been dismissed.

On or about December 16, 2010, plaintiff filed the instant complaint, alleging once again, inter alia, that the moving defendants are a part of a conspiracy to defraud the residents of Rochdale. On or about December 17, 2010, the attorney defendants each received in the mail, a single copy of the complaint from plaintiff. The attorney defendants submit that this was the only attempt that plaintiff made to "serve" the complaint on them. Also, the complaint fails to include any affidavit of service indicating how else plaintiff had attempted to serve the complaint on the attorney defendants.

The instant complaint alleges six causes of action against the attorney defendants: violations of RPAPL § 853, by allegedly illegally evicting and constructively evicting

plaintiff from the apartment; violations of the Fair Debt Collection Practices Act; intentional infliction of emotional distress; negligent infliction of emotional distress; violations of Judiciary Law § 487; and allegations of fraud. The attorney defendants contend that plaintiff failed to properly raise a cause of action for any of these six (6) allegations.

Motion by the attorney defendants

The attorney defendants move to dismiss on the ground that: (1) a defense is founded upon documentary evidence; (2) the pleading fails to state a cause of action; and (3) the court has no jurisdiction of the person of the defendant.

Failure to properly serve the attorney defendants.

Pursuant to CPLR 311(a) (1), service upon a corporation shall be made by delivering the summons to an officer, director, managing agent, general agent, cashier, or assistant cashier, or to any other agent authorized by appointment or by law to receive service. In addition, service may be made upon someone whom the corporation cloaks with authority (*see Fashion Page v Zurich Ins. Co.*, 50 NY2d 265 [1980]; *Rokicki v 24 Hour Courier Serv.*, 282 AD2d 664 [2001]; *Eastman Kodak Co. v Miller & Miller Consulting Actuaries*, 195 AD2d 591 [1993]; *Seda v Armory Estates*, 138 AD2d 362 [1988]). Further, CPLR 308 governs the method of service upon a natural person.

Here, the record reveals that plaintiff merely mailed a single copy of the summons and complaint to the attorney defendants via regular mail, and that no affidavit of service was annexed to the summons and complaint. The CPLR does not sanction “mailing” as an effective manner of service sufficient to provide adequate notice to a corporate defendant (or an individual defendant) of the pendency of litigation. It is well-established that CPLR 308 requires strict compliance and that the plaintiff has the burden of proving, by a preponderance of the credible evidence, that service was properly made (*see e.g. Santiago v Honcrat*, 79 AD3d 847 [2010]; *Foster v Cranin*, 180 AD2d 712 [1992]). Since no affidavit of service was provided to this Court, nor has plaintiff demonstrated that proper service upon these defendants was effected, the Court does not personal jurisdiction over the attorney defendants.

Notwithstanding, the Court will address the attorney defendants’ remaining grounds for dismissal under CPLR 3211 (a) (1) and (7).

Generally

A motion to dismiss pursuant to CPLR 3211 (a) (1) on the ground that the action is barred by documentary evidence, is appropriately granted where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*see Goshen v Mutual Life Insurance Company of New York*, 98 NY2d 314, 326 [2002], citing *Leon v Martinez*, 84 NY2d 83, 88 [1994]).

On a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a) (7), "the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law[,] a motion for dismissal will fail" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see Leon v Martinez*, 84 NY2d 83, 87–88 [1994]; *Hense v Baxter*, 79 AD3d 814, 815 [2010]; *Sokol v Leader*, 74 AD3d 1180, 1180–1181 [2010]). "The complaint must be construed liberally, the factual allegations deemed to be true, and the nonmoving party granted the benefit of every possible favorable inference" (*Hense v Baxter*, 79 AD3d at 815; *see Leon v Martinez*, 84 NY2d at 87; *Sokol v Leader*, 74 AD3d at 1181; *Breytman v Olinville Realty, LLC*, 54 AD3d 703, 703–704 [2008]). "A court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint" (*Well v Yeshiva Rambam*, 300 AD2d 580 [2002]; *see Rovello v Orofino Realty Co.*, 40 NY2d 633 [1976]), and upon considering such an affidavit, the facts alleged therein must also be assumed to be true (*see Pike v New York Life Ins. Co.*, 72 AD3d 1043 [2010]). Where a party offers evidentiary proof on a motion pursuant to CPLR 3211(a) (7), the focus of the inquiry turns from whether the complaint states a cause of action to whether the plaintiff actually has one (*see Guggenheimer v Ginzburg*, 43 N.Y.2d at 275). Here, plaintiff's complaint is replete with conclusory allegations. The complaint fails to state legally cognizable causes of action for the reasons set forth below.

RPAPL § 853

Plaintiff alleges in her complaint that the attorney defendants conspired with Rochdale, Miller and other named defendants to change the locks to the apartment and otherwise damage the lock of the apartment in order to prevent plaintiff from accessing the apartment, resulting in a forceful eviction and causing the attorney defendants to be liable under RPAPL § 853. To bring a cause of action pursuant to RPAPL § 853, however, the plaintiff must have been a party to the lease, and a licensee or sublettor cannot be deemed to be an actual party to the lease (*Bozewicz v Nash Metalware Co., Inc.*, 284 AD2d 288 [2001]). Here, plaintiff was never a party to the lease of the apartment, and therefore has no standing to bring a claim under RPAPL § 853. At best, plaintiff had a license to occupy the apartment. Her license to occupy the apartment expired upon the death of the lease-holder Osborne Miller, on December 16, 2009. Since the complaint alleges that the unlawful

eviction occurred on December 16, 2009, when plaintiff no longer had a license to occupy the apartment, such claims are dismissed as to the attorney defendants.

In any event, the documentary evidence demonstrates that the attorney defendants had no role in changing or damaging the apartment locks. The record indicates that plaintiff conceded on the record in a December 18, 2009 court hearing before Judge Michael Pinckney that only Eric Miller, Ann Miller, Anisa Miller and Dave Miller were involved with changing the apartment locks. At the hearing, Eric Miller testified that Rochdale did not even know about the lock being changed. It appears further that the attorney defendants were not even aware that the locks had been interfered with until the issue was brought to their attention at the June 1, 2010 appearance for plaintiff's Order to Show Cause.

Moreover, plaintiff's claim that the attorney defendants conspired with Eric Miller to forcibly evict her is belied by the record. The allegation is implausible since the attorney defendants were seeking to evict Eric Miller at the same time they were seeking to evict plaintiff (the petition for the underlying holdover proceeding was against both plaintiff and Eric Miller). The rule that the facts alleged are presumed to be true and are to be accorded every favorable inference which can be drawn therefrom on a motion addressed to the sufficiency of the pleadings (*see Morone v Morone*, 50 NY2d 481 [1980]) does not apply to allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence (*see Velez v Captain Luna's Marina*, 74 AD3d 1191 [2010]; *Dinerman v Jewish Bd. of Family & Children's Servs., Inc.*, 55 AD3d 530 [2008]).

Fair Debt Collections Practices Act (FDCPA)

The attorney defendants' motion, insofar as it seeks to make a prima facie showing for the dismissal of plaintiff's Fair Debt Collections Practices Act (FDCPA) claim is granted as plaintiff fails to state a cause of action (CPLR 3211[a] [7]). As noted above, allegations which consist of bare legal conclusions, as well as factual claims either inherently incredible or flatly contradicted by documentary evidence are not entitled to such "favorable" consideration. Thus, plaintiff's bare legal conclusion that defendants' conduct violates the FDCPA, without more, is insufficient to establish a cause of action under the same.

Intentional Infliction of Emotional Distress (IIED)

Under New York law, to state a claim for IIED, a plaintiff must allege: (1) extreme and outrageous conduct, (2) intent to cause severe emotional distress, (3) a causal connection between the conduct and the injury, and (4) severe emotional distress (*see Howell v New York Post Co., Inc.*, 81 NY2d 115 [1993]; *Bernat v Williams*, 81 AD3d 679 [2011]). To

survive a motion to dismiss, plaintiff's allegations must satisfy the rule set out in Restatement of Torts, Second, which was adopted in *Fischer v Maloney* (43 NY2d 553, 557 [1978]): "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress" (§ 46, subd [1]). Comment *d* to that section notes that: "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Here, none of the allegations in the complaint can serve as the basis for this cause of action. Specifically, the acts alleged in the complaint, including the lawful eviction of plaintiff, are not so extreme, outrageous, utterly reprehensible, and intolerable in a civilized society so as to sustain a cause of action for intentional infliction of emotional distress (see *Howell v New York Post Co.*, 81 NY2d 115 [1993]; *Freihofer v Hearst Corp.*, 65 NY2d 135 [1985]). Nor can it be said that any acts alleged satisfy the scienter element of the tort (see *Howell v New York Post Co.*, *supra*). Therefore, the cause of action alleging intentional infliction of emotional distress is dismissed.

Negligent Infliction of Emotional Distress (NIED)

The elements of an action for NIED are a breach of a duty owed to plaintiff which exposes him or her to an unreasonable risk of bodily injury or death (*Bovsun v Sanperi*, 61 NY2d 219 [1984]). While physical injury is not a necessary element of a cause of action to recover for negligent infliction of emotional distress, such a cause of action must generally be premised upon conduct that unreasonably endangers a plaintiff's physical safety or causes the plaintiff to fear for her own safety (*Saava v Longo*, 8 AD3d 551 [2004]; *Johnson v New York City Board of Education*, 270 AD2d 310 [2000]). A cause of action for either intentional or negligent infliction of emotional distress must be supported by allegations of conduct by a defendant " 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community' " (*Murphy v American Home Prods. Corp.*, 58 NY2d 293, 303 [1983] [citation omitted]; see also *Howell v New York Post Co.*, 81 NY2d 115, 121-122 [1993]). The courts apply the same standard to both the intentional and negligence theories of emotional distress (*Young v GSL Enters.*, 237 AD2d 119 [1997]; *Naturman v Crain Communications*, 216 AD2d 150 [1995]). Such extreme and outrageous conduct must be clearly alleged for the pleadings to survive dismissal (*Trachtman v Empire Blue Cross & Blue Shield*, 251 AD2d 322 [1998]). To the extent that plaintiff merely alleges that she was legally evicted from an apartment, plaintiff can hardly claim sufficient distress; thus, dismissal of the cause of action for NIED is required in this case (see *Lauer v City of New York*, 240 AD2d 543 [1997]). Furthermore, plaintiff's allegations do not establish that she fell within any recognized orbit of duty upon which liability may be based (see *Rivera v Wyckoff Hgts. Hosp.*, 184 AD2d 558 [1992]; see also *Johnson v Jamaica Hosp.*, 62 NY2d

523 [1984]; *Johnson v State of New York*, 37 NY2d 378, 383 [1975]; *Hecht v Kaplan*, 221 AD2d 100 [1996]).

Judiciary Law § 487

Judiciary Law § 487 provides that treble damages may be sought against “[a]n attorney or counselor who . . . [i]s guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party” (Judiciary Law § 487 [1]). A plaintiff seeking recovery must establish that the attorney’s conduct rose to the level of deceit or collusion, both of which require a heightened pleading standard. The elements of a deceit claim are essentially the same elements that constitute a cause of action for fraud, namely representation, falsity, scienter, deception and injury (*see Henry v Brenner*, 271 AD2d 647 [2000]; *Gelmin v Quickie*, 224 AD2d 481 [1996]).

In support of her claim, plaintiff alleges that the attorney defendants violated Judiciary Law § 487 by “filing and prosecution frivolous and malicious action with the Court, violating among other things, both Federal and State Constitutional Rights accorded citizens of the State as well as those of United States of America.” The allegations do not specify what the frivolous and malicious action was. Plaintiff also failed to allege the requisite pecuniary damages required for a Judiciary Law § 487 claim (*see New York City Transit Authority v Morris J. Eisen, P. C.*, 276 AD2d 78 [2000]). Therefore, the cause of action for violating Judiciary Law § 487 is dismissed.

Plaintiff also alleges that the attorney defendants engaged in a conspiracy with other defendants to commence legal proceedings against her, and that fraud and or conspiracy was committed by commencing the underlying holdover proceeding. The record reveals that all the statements and conduct complained of were well within the bounds of the adversarial proceeding and were not outrageous or egregious in any way. Therefore, they do not support a cause of action sounding in intentional infliction of emotional distress (*see Freihofer v Hearst Corp.*, supra); or negligent infliction of emotional distress (*see Johnson v State of New York*, supra) or constitute a violation of Judiciary Law § 487 (*see Michalic v Klat*, 128 AD2d 505 [1987]; *Wiggin v Gordon*, 115 Misc 2d 1071 [1982]).

Motion by the State Defendants

The State defendants seek to dismiss the complaint pursuant to CPLR 3211(a) (2), *i.e.*, lack of subject matter jurisdiction; and CPLR 3211 (a) (7), *i.e.*, failure to state a cause of action.

Since the adoption of the Court of Claims Act (L 1929, ch 467) the State has been subject to suit for damages only in the Court of Claims (*see* Court of Claims Act § 8; NY Const, art VI, §9; *Goldstein v State of New York*, 281 NY 396 [1939]). The Court of Claims has limited jurisdiction to hear actions against the State itself, or actions naming State agencies or officials as defendants, where the action is, in reality, one against the State--i.e., where the State is the real party in interest. Generally, actions against State officers acting in their official capacity in the exercise of governmental functions are deemed to be, in essence, claims against the State and, therefore, suable only in the Court of Claims (*see Sinhogar v Parry*, 53 NY2d 424 [1981]; *Glassman v Glassman*, 309 NY 436 [1956]; *Psaty v Duryea*, 306 NY 413 [1954]; *Automated Ticket Sys. v Quinn*, 90 AD2d 738 [1982], *affd* 58 NY2d 949 [1983]; *Matter of Bock v Cooperman*, 89 AD2d 539 [1982], *affd* 59 NY2d 776 [1983]; *see also, Schaffer v Evans*, 57 NY2d 992 [1982]). Thus, the Supreme Court has no jurisdiction to hear the claims against the State defendants.

Furthermore, the claims against Judges Katz, Pinckney and Badillo are barred by the doctrine of judicial immunity. Under the doctrine of judicial immunity, a judge is not liable for acts done in the exercise of his or her judicial function. “Courts have recognized that it is imperative to the nature of the judicial function that Judges be free to make decisions without fear of retribution through accusations of malicious wrongdoing” (*Tarter v State of New York*, 68 NY2d 511, 518 [1986]; *see also Greer v Garito*, 47 AD3d 677 [2008]). Judicial immunity discourages inappropriate collateral attacks on court rulings and fosters judicial independence by protecting courts and judges from vexatious litigation. Indeed, “[m]ost judicial mistakes or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability” (*Forrester v White*, 484 US 219, 227 [1988]). Allowing members of the judiciary to exercise independent judgment, without the threat of legal reprisal, is “critical to our judicial system” (*Tarter*, 68 NY2d at 518). Recognizing the distinct nature of the judicial process, “judicial immunity . . . protects Judges only in the performance of their judicial functions” (*id.*).

A logical extension of this premise is that “*other neutrally positioned government officials, regardless of title, who are delegated judicial or quasi-judicial functions should also not be shackled with the fear of civil retribution for their acts*” (*id.*) “[T]he common law provide[s] absolute immunity from subsequent damages liability for all persons--governmental or otherwise--who [a]re integral parts of the judicial process” (*Briscoe v LaHue*, 460 US 325, 335 [1983]; *see also* Prosser and Keeton, Torts § 132, at 1058 [5th ed] [“judicial immunity has been extended to . . . adjuncts of the judicial process”]). Thus, court clerks are afforded absolute immunity because “[a] court’s inherent power to control its docket is part of the function of resolving disputes between the parties” (*Rodriquez v Weprin*, 116 F3d 62 [1997]). Actions such as the filing, docketing and managing of documents for

litigation before the courts are matters which constitute an “integral part of the judicial process,” and are therefore shielded from liability. Court personnel who perform these functions are therefore immune from suit (*Id; Pikulin v Gonzales*, 2007 WL 1063353 [E.D.N.Y. April 5, 2007]). Therefore, deputy clerk John Barry is also entitled to absolute immunity from suit by plaintiff and dismissal of the complaint insofar as asserted against him is granted.

Conclusion

Accordingly, the respective motions to dismiss are granted.

Dated: July 11, 2011

J.S.C.