

**Elrington v Vardi**

2025 NY Slip Op 33038(U)

August 4, 2025

Supreme Court, Kings County

Docket Number: Index No. 509062/2024

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 4<sup>th</sup> day of August 2025.

PRESENT: HON. ANNE J. SWERN, J.S.C.

KEITH D. ELRINGTON,

*Plaintiff(s),*

*-against-*

ETAI VARDI, ELLIOT AMBALO, QN 204 LLC,  
76 ROCKAWAY BLVD LLC ANTHONY R.  
JACKSON, ESQ., GINSBURG & MISK LLP,

*Defendant(s).*

**DECISION & ORDER**

Index No.: 509062/2024

Calendar No.: 20, 21, 22 & 56

Motion Seq.: 3, 4, 5 & 6

Return Date: 5/15/2025

*Recitation of the following papers as required by CPLR 2219(a):*

	<b>Papers Numbered</b>
003 Notice of Motion, Affirmation, and Exhibits (NYSCEF 67-75) .....	1, 2
Memorandum of Law in Opposition (NYSCEF 83).....	3
Reply Affirmation (NYSCEF 122) .....	4
004 Notice of Cross-Motion, Affirmation, and Exhibits (NYSCEF 77-82).....	5, 6
Affirmation in Opposition (NYSCEF 119).....	7
005 Notice of Motion, Affirmation, and Exhibits (NYSCEF 101-105) .....	8, 9
Memorandums of Law in Opposition (NYSCEF 116, 118) .....	10
Reply Affirmation (NYSCEF 121) .....	11
006 Notice of Cross-Motion, Affirmation, and Exhibits (NYSCEF 106-115) .....	12, 13
Affirmation in Opposition (NYSCEF 120).....	3

*Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:*

Plaintiff commenced this action seeking monetary damages for libel/defamation predicated on statements made within the course of prior litigation, intentional infliction of

emotional distress arising out of the alleged libel/defamation, conversion, fraudulent transfer, and conspiracy of the foregoing relating to the premises known as and located at 231 Macon Street, Brooklyn, New York, Block 1846, Lot 64 ("the premises"). This is the third action commenced by plaintiff concerning the premises.

Defendant QN 204 LLC acquired a 100% interest in the premises by deeds from non-parties David J. Robinson, Lauren Lawson Kutz and Charles Lawson, the heirs of John Lawson, deceased. Plaintiff's father, Keith Elrington, Sr., and Audrey Humes commenced an action against QN 204 LLC and Etai Vari claiming adverse possession of the premises. The parties executed a stipulation of settlement whereby defendants agreed to pay Elrington, Sr. and Humes in exchange for them vacating the premises and delivering it free of any other occupants or residents, including plaintiff herein, Elrington, Jr. The premises were never delivered vacant necessitating the removal of all occupants by the New York City Marshal.

Elrington, Jr. commenced two prior actions under Index Numbers 475/2022 and 512939/2023 seeking to regain possession of the premises, both of which were dismissed. Plaintiff then commenced this third action that also included as defendants Anthony R. Jackson, Esq. and Ginsburg & Minsk, LLP. The attorneys represented the defendants in the underlying action commenced by Humes and Elrington, Sr.

Defendants have moved for an order (1) dismissing the libel/defamation and intentional infliction of emotional distress causes of action per CPLR § 3211 [a] [7] as any such statements are protected by an absolute "litigation privilege" as to all defendants (*Gottwald v Sebert*, 40 NY3d 240, 253 [2023]) and the remaining causes of action per CPLR § 3211 [a] [4] and [5] as to defendants ETAI VARDI, ELLIOT AMBALO, QN 204 LLC, and 76 ROCKAWAY BLVD LLC; and (2) compensatory and punitive damages per Civil Rights Law § 70-a [1]. (MS 003).

Defendants argue that all three actions seek to avoid the enforcement of the settlement agreement executed by plaintiffs Humes and Elrington, Sr. in Index #523196/2021. The agreement was explicitly binding on the heirs and successors in interest of Hume and Elrington, Sr.

Plaintiff cross-moved for an order (1) declaring that defendants are liable in defamation, (2) declaring that John [Lawson] is the last undisputed owner of title and joining him as a necessary party, (3) joining David J. Robinson as a necessary party; (4) declaring defendants' deed "void ab initio," and (5) declaring that there is a "broken and invalid chain of title based on defendants' invalid deed. (MS 004).

Defendants then moved, *inter alia*, for (1) an order per CPLR §6514 [a] and [b] vacating and cancelling the plaintiff's Notice of Pendency dated 4/6/25 and filed on 4/9/25 against the property known as 231 Macon Street, Brooklyn, New York, Block 1846, Lot 64. (MS 005).

Plaintiff cross-moved for an order denying defendants' motion to vacate the Notice of Pendency and "vacating default judgment against plaintiff in the matter of 512939/2023 and restoring the matter to the calendar." (MS 006).

Defendant's motions to dismiss this action and vacate the Notice of Pendency are granted. Plaintiff cannot maintain a third action arising seeking to void defendants' deed and regain possession of the premises. Defendants' deeds were never vacated in the 2021 action commenced by Humes and Erlington, Sr. and defendants acquired possession of the premises through enforcement of the valid settlement agreement by the New York City Marshal.

As to the cause of action for libel, defamation and the intentional infliction of emotional distress, any statements made during litigation are non-actionable. (*Gottwald v Sebert*, 40 NY3d 240, 253 [2023]) and CPLR § 3211 [a] [4], [5] and [7]). Defendants' motions for an order pursuant to Civil Rights Law § 70-a [1] are denied. Therefore, plaintiff's cross-motions are

denied in their entirety (MS 004 and 006). That branch of plaintiff's cross-motion for an order vacating his default and restoring index number 512939/2023 is also denied based on the prior denial of plaintiff's motion for the same relief brought before the Judge assigned to index number 512939/2023 by an order dated 6/5/2024. (MS 006).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that defendants' motions to dismiss this action is granted (MS 003 and 005) and this action is dismissed in its entirety, and it is further

ORDERED that defendants' motions for an order pursuant to Civil Rights Law § 70-a [1] are denied (MS 003 and 005), and it is further

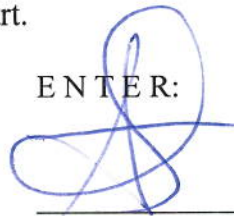
ORDERED that plaintiff's cross-motions are denied in their entirety (MS 004 and 006), and it is further

ORDERED that defendants' motion to vacate the Notice of Pendency dated 4/6/25 and filed on 4/9/25 is granted (MS 005), and it is further

ORDERED that the Kings County Clerk be and is hereby directed to cancel the notice of pendency of this action dated 4/6/25 and filed by plaintiff herein on or 4/9/25 (NYSCEF DOC. #100), against the real property known as 231 Macon Street, Brooklyn, New York, and by Block 1846, Lot 64, and to make a note to that effect on the margin of the records of the notice of pendency referring to this Order

This constitutes the decision and order of the Court.

ENTER:



**Hon. Anne J. Swern, J.S.C.**

**Dated: 8/4/2025**

For Clerks use only:

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MD \_\_\_\_\_

Motion seq. # \_\_\_\_\_