

**Arnstein v Stein Saks, PLLC**

2025 NY Slip Op 34984(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 157910/2025

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. JUDY H. KIM PART 04**

*Justice*

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MICHAEL ARNSTEIN,

Plaintiff,

- v -

STEIN SAKS, PLLC, JUDAH STEIN, ESQ., JOHN DOES,

Defendants.

INDEX NO. 157910/2025

06/26/2025,

07/17/2025,

07/25/2025

MOTION DATE

MOTION SEQ. NO. 002 003 004

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 39, 40, 41, 42, 43, 44, 45, 46, 57, 58, 59

were read on this motion to/for ORDER OF PROTECTION.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 21, 22, 23, 24, 25, 26, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 49, 50, 51, 52, 53, 54, 55, 56, 94

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendants’ motion to dismiss this action is granted, with prejudice, and plaintiff’s motions to enjoin defendants from defaming him and to retain independent legal counsel are denied.

Plaintiff alleges that defendants defamed him in their motion to dismiss an action filed against them in New York State Supreme Court, Bronx County, *Mark Goldberg v. Mark Rozenberg Esq. et al*, under Index Number 809970/2025E (the “Bronx Action”). The plaintiff in the Bronx Action, Mark Goldberg, sued defendants for defamation based on statements made in yet another lawsuit, filed against these defendants in New York County Civil Court, under Index

Number CV-019850-24/NY, entitled *The Natural Sapphire Company v Marz Rozenberg, Stein Saks, PLLC, Yaakov Saks, and Judah Stein* (NYSCEF Doc No. 76).

Plaintiff contends that, as part of defendants' motion to dismiss the Bronx Action, they "gratuitously referred to [p]laintiff by name and included salacious statements regarding his past conviction—accusing him of forgery and labeling him a 'convicted felon'—without any connection to the issues or parties in that case" (NYSCEF Doc No. 1, complaint at ¶14). Plaintiff asserts claims for defamation and abuse of process.

In motion sequence 002, plaintiff moves for a protective order enjoining defendants from making "defamatory, harassing, retaliatory, or irrelevant references" to him in "any public filing, judicial proceeding or communication." In motion sequence 003, plaintiff moves for an order directing defendant to retain independent legal counsel unaffiliated with the firm of Stein Saks, PLLC. In motion sequence 004, defendants move to dismiss this action. These motions are consolidated for disposition.

### DISCUSSION

As a threshold matter, the branch of defendants' motion to consolidate this case with the action in Civil Court is denied. While the claims here arise, in a sense, from the Civil Court Action (insofar as the defamation claim arises from defendants' filings in the Bronx Action, which itself is based on allegedly defamatory statements in the Civil Court Action), these two actions do not arise out of the same facts or involve the same legal issues and therefore consolidation is not appropriate under CPLR 602.

Defendants' motion to dismiss is granted. "[A] statement made in the course of legal proceedings is absolutely privileged if it is at all pertinent to the litigation" (*Pomerance v McTiernan*, 51 AD3d 526, 528 [1st Dept 2008] [internal citations and quotations omitted]). "[T]he

test to determine whether a statement is pertinent to litigation is ‘extremely liberal’ such that the offending statement, to be actionable, must have been ‘outrageously out of context’” (*Flomenhaft v Finkelstein*, 127 AD3d 634, 637 [1st Dept 2015] [internal citations omitted], *abrogated in part by Gottwald v Sebert*, 40 NY3d 240 [2023]). A statement is pertinent if it “may possibly bear on the issues in litigation now or at some future time ... the barest rationality, divorced from any palpable or pragmatic degree of probability, suffices” (*Seltzer v Fields*, 20 AD2d 60, 62 [1st Dept 1963], *affd*, 14 NY2d 624 [1964]). “Pertinency is a question of law for the court to decide” and “[a]ny doubt is to be resolved in favor of relevancy and pertinency” (*Mosesson v Jacob D. Fuchsberg Law Firm*, 257 AD2d 381, 382 [1st Dept 1999] [internal citations omitted]).

Here, defendants’ statements about plaintiff in the Bronx Action were pertinent to the motion to dismiss that action. While plaintiff was not a party in the Bronx Action, defendant asserted that he was the principal of the Natural Sapphire Company and, in that capacity, employed Goldberg, and was part of a coordinated campaign of meritless actions filed against defendants after defendants filed in Federal Court against The Natural Sapphire Company asserting violations of the Americans with Disabilities Act. This information is pertinent to, *inter alia*, defendants’ request for sanctions in the Bronx Action. Accordingly, they fall within the absolute litigation privilege, precluding the defamation claims asserted here. Even setting this aside, plaintiff does not dispute the truthfulness of defendants’ statements about his criminal conviction (NYSCEF Doc No. 1, complaint at ¶2). As such, no defamation claim based on this statement lies (*see e.g. Udell v NYP Holdings, Inc.*, 169 AD3d 954, 957 [2d Dept 2019] [“truth is an absolute defense to a defamation action”]).

Neither has plaintiff stated an abuse of process claim. To state such a claim, plaintiff must allege: “(1) regularly issued process, either civil or criminal, (2) an intent to do harm without

excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective” (*Curiano v Suozzi*, 63 NY2d 113, 116 [1984]). Process, in this context, “is a direction or demand that the person to whom it is directed shall perform or refrain from the doing of some described act” (*Williams v Williams*, 23 NY2d 592, 596 [1969] [internal citations and quotations omitted]). As defendants note, plaintiff does not allege that they issued “process” against him. Their motion to dismiss does not qualify. Accordingly, this claim is dismissed.

In light of the foregoing, the Court declines to sign plaintiff’s proposed order to show cause, filed under motion sequence 006 (while these motions were sub judice), seeking various relief based on plaintiff’s assertion that defendant Judah Stein, Esq. is not an attorney registered in New York. This order to show cause is mooted by the dismissal of this action and, in any event, it was established to the Court’s satisfaction at oral argument on these motions that Stein is, in fact, licensed to practice in New York State as Yehuda Stein.

Finally, defendants’ request for sanctions is granted to the extent that plaintiff is enjoined from commencing any new litigation in the New York State courts against any defendant herein without obtaining prior approval from the court. The record reflects that such relief is necessary “to prevent use of the judicial system as a vehicle for harassment, ill will and spite” (*Sud v Sud*, 227 AD2d 319 [1st Dept 1996]; see *Svatovic v Shabot*, 226 AD3d 608, 609 [1st Dept 2024], *appeal dismissed*, 42 NY3d 1070 [2025]).

Accordingly, it is

**ORDERED** that plaintiff’s motions for an order of protection and to require defendants to retain independent legal counsel are denied; and it is further

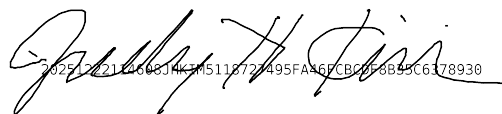
**ORDERED** that defendants’ motion to dismiss this action is granted and it is dismissed with prejudice; and it is further

**ORDERED** that defendants shall, within fifteen days of the date of this decision and order, serve a copy of same, with notice of entry, on plaintiff and the Clerk of the Court; and it is further

**ORDERED** that service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court's website); and it is further

**ORDERED** that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.



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12/22/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE