

**Elrington v Vardi**

2026 NY Slip Op 31561(U)

March 30, 2026

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 30<sup>th</sup> day of March 2026.

P R E S E N T: 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

Motion Seq.: 7, 8 & 9

Return Date: 1/15/2026

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

**NYSCEF  
Papers  
Numbered**

007	Plaintiff’s Notice of Motion and Supporting Documents .....	134-152
	Defendants’ Affirmation in Opposition to Motion and in Support of Cross-Motion and Supporting Documents.....	154-158
	Affirmation in Opposition to Cross-Motion and in Further Support of Motion and Supporting Documents (Reply).....	164-171
008	Defendants’ Notice of Cross-Motion and Supporting Documents .....	154-158
	Affirmation in Opposition to Cross-Motion and in Further Support of Motion and Supporting Documents (Reply).....	164-171
	Reply Affirmation .....	172
009	Plaintiff’s Notice of Motion and Supporting Papers.....	159-163

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

**Facts**

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 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 by the judges assigned to those actions. Plaintiff then commenced this third action that also included as defendants Anthony R. Jackson, Esq. and Ginsburg & Minsk, LLP, the attorneys who represented the defendants in the underlying matter commenced by Humes and Elrington, Sr.

### **Procedural History**

#### **a) Prior Motions in this action.**

Defendants previously 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]. 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. (MS 003).

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).

By an Order dated 8/4/2025, the Court granted defendant's motion to dismiss this action in its entirety and vacated the Notice of Pendency holding that,

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 Elrington, Sr. and defendants acquired possession of the premises through enforcement of the valid settlement agreement by the New York City Marshal. (MS 003).

Further, as to the cause of action for libel, defamation and the intentional infliction of emotional distress, the Court held that any statements made during litigation are non-actionable. (*Gottwald v Sebert*, 40 NY3d 240, 253 [2023]) and CPLR § 3211 [a] [4], [5] and [7]). However, the Court denied that branch defendants' motions for an order pursuant to Civil Rights Law § 70-a [1] (MS 003). The branch of plaintiff's cross-motion for an order vacating his default and restoring index number 512939/2023 was denied based on a previous order dated 6/5/2024 that denied plaintiff's motion for the same relief brought before the prior Judge assigned to Index Number 512939/2023. Therefore, plaintiff's cross-motions were denied in their entirety (MS 004 and 006).

**b) The motions for an order per CPLR § 2221**

Plaintiff has now moved for an order per CPLR § 2221 for leave to reargue this Court's decision and order dated 8/4/2025. Plaintiff's motion for leave to reargue the 8/4/2025 Order is granted, and upon reargument, the Court adheres to its initial determination. As to that branch of the motion for renewal, plaintiff has not demonstrated new facts or evidence that were previously unavailable or that there has been a change in the law since the underlying motions were heard and decided by this Court. (MS 007). While this motion was pending, plaintiff also moved the Court for a so-ordered subpoena for the New York City Department of Vital Statistics. This

motion is now moot as the subpoena was issued while motion sequences 7 and 8 were pending [see NYSCEF 173] (MS 009).

Defendants have also moved for an order per CPLR § 2221 for leave to reargue this Court's decision and order dated 8/4/2025 to the extent that the Court denied their request for order per N.Y. Civil Rights Law §70-a (1) (a)-(c) and did not award the requested filing injunction against plaintiff. Defendants' motion for leave to reargue the 8/4/2025 Order is granted, and upon reargument, the Court adheres to its initial determination concerning N.Y. Civil Rights Law §70-a (1) (a)-(c). Defendants did not provide an affirmation of attorneys' fees and proof of costs in support of the motion or a proposed calculation for punitive damages. However, the Court now addresses that branch of defendants' underlying motion for a filing injunction against plaintiff for future lawsuits against these defendants or others concerning the property that was not addressed in the 8/4/2025 Order. (MS 008). This branch of the underlying motion is granted to the limited extent that this Court is directing that plaintiff is enjoined from filing any future additional lawsuits, motions and orders to show cause concerning these matters that have been previously adjudicated without seeking prior approval from the Administrative Judge, Supreme Court, Civil Term, Kings County (*Breytman v Schechter*, 101 AD3d 783, 785 [2d Dept 2012]).

The Court must balance the public policy of free access to the courts and zealous advocacy against a litigious party repeatedly pressing a frivolous claim. Such litigation can be extremely costly to their adversary and "can waste an inordinate amount of court time." (*Sassower v Signorelli*, 99 AD2d 358, 359 [2d Dept 1984]). Further, when it becomes apparent that a party is "abusing the judicial process by hagridding individuals solely out of ill will or spite, equity may enjoin such vexatious litigation" (*id*), the litigant forfeits their right to have free

access to the courts absent prior court approval (*Duffy v Holt-Harris*, 260 AD2d 595, 596 [2d Dept 1999]; *Breytman v Schechter*, 101 AD3d 785).

Here, in addition to this current action before the Court, plaintiff has commenced two prior actions pertaining to the underlying settlement by his father with the defendants; all of which were dismissed.<sup>1</sup>

Plaintiff also intervened as a non-party in his father's action under Index Number 523196/2021. Appeals were taken from orders dated 1/3/2024, 3/12/2024, 5/9/2024 and 5/17/2024; the latter two decisions dismissed the 2021 action. Following the 5/17/2024 order, plaintiff sued the Judge assigned to the 2021 action in the United States District Court for the Eastern District of New York on 6/14/2024 (NYSCEF 55). On 6/18/2024, the Federal Court dismissed the complaint as frivolous (NYSCEF 72).

Next, by an order dated 12/13/2024, the Appellate Division dismissed plaintiff's appeals, as non-party in Index Number 523196/2021, because he was not aggrieved by the orders (NYSCEF 105). Despite the Appellate Division's decision, plaintiff then filed a request for an Order to Show Cause to vacate his default in the 2021 action on or about 2/27/2025. The Judge assigned to that action declined the application for the Order to Show Cause stating that, "*Application for OSC seeking to vacate default is denied as multiple prior applications for the same relief have already been denied...No further OSCs in this matter*" (NYSCEF 157). While the 2021 action was still pending, plaintiff filed this action on 3/26/2024.

Although there may be a basis to permanently enjoin plaintiff from filing any further lawsuits or motions or requests for orders to show cause against the defendants and any other person or entity arising out of any claims relating to the property known as 231 Macon Street,

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<sup>1</sup> See Index Numbers 475/2022 (NYSCEF 23) and 512939/2023 (NYSCEF 24).

Brooklyn, New York, Block 1846, Lot 64 (*Duffy v Holt-Harris*, 260 AD2d 596; *Liang v Wei Ji*, 155 AD3d 1018, 1019-1020 [2d Dept 2017]), the court is not prepared to do so at this time (*Salami v TD Bank*, 83 Misc.3d 1277[A], 2024 NY Slip Op 51115[U], [Maslow, J. 2024]). However, the Court grants defendants' motion for an injunction to the extent that the Kings County Clerk, Motion Support Office and Part 72 Ex-Parte Office of the Supreme Court, Kings County, Civil Term shall not accept for official filing any legal papers from plaintiff without a prior written order from the Administrative Judge of Supreme Court, Civil Term, Kings County approving the filing.

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

Accordingly, it is hereby

ORDERED that plaintiff's motion for an order per CPLR § 2221 for leave to reargue this Court's decision and order dated 8/4/2025 is GRANTED, and upon reargument, the Court adheres to its initial determination (MS 007), and it is further

ORDERED that plaintiff's motion for an order per CPLR § 2221 for leave to renew this Court's decision and order dated 8/4/2025 is DENIED (MS 007), and it is further

ORDERED that defendants' request for an order per CPLR § 2221 for leave to reargue this Court's decision and order dated 8/4/2025 to the extent that the Court denied their request for order N.Y. Civil Rights Law §70-a (1) (a)-(c), is GRANTED, and upon reargument, the Court adheres to its initial decision denying the requested relief (MS 008), and it is further

ORDERED that defendants' request for an order per CPLR § 2221 for leave to reargue this Court's decision and order dated 8/4/2025 to the extent that the Court overlooked

defendants' request for a filing injunction against plaintiff for future lawsuits and motions that was not addressed in the 8/4/2025 Order, is GRANTED (MS 008), and it is further

ORDERED that upon reargument, defendant's motion seeking an injunction is GRANTED only to the extent that plaintiff KEITH D. ERLINGTON must obtain prior approval from the Administrative Judge of the Supreme Court, Civil Term, Kings County before

- 1) commencing any future litigation arising out of this litigation and concerning the property known as 231 Macon Street, Brooklyn, New York, Block 1846, Lot 64, against defendants ETAI VARDI, ELLIOT AMBALO, QN 204 LLC, 76 ROCKAWAY BLVD LLC ANTHONY R. JACKSON, ESQ., GINSBURG & MISK LLP and any other person or entity and 2) serving any future motions or orders to show cause in this action, and it is further

ORDERED that the Kings County Clerk, Motion Support Office and Part 72 Ex-Parte Office of the Supreme Court, Kings County, Civil Term shall not accept for official filing any legal papers from plaintiff KEITH D. ERLINGTON without a prior written order from the Administrative Judge of Supreme Court, Civil Term, Kings County approving the filing, and it is further

ORDERED that any papers received from plaintiff KEITH D. ERLINGTON shall first be forwarded, together with a copy of this Order, to the Administrative Judge of Supreme Court, Civil Term, Kings County who will then conduct an *in camera* review and determine whether the papers shall be accepted for filing, and it is further

ORDERED that in the event this order is violated by plaintiff KEITH D. ERLINGTON by failing to obtain prior approval from Administrative Judge of Supreme Court, Civil Term, Kings County or plaintiff submits further papers for an *in camera* review that have no legal merit, this Court will consider costs, sanctions, and contempt proceedings, and it is further

ORDERED that defendants' motion for an injunction is DENIED in all other respects (MS 008), and it is further

ORDERED that plaintiff's motion for a so-ordered subpoena against the New York City Department of Vital Statistics is DENIED as moot (MS 009), and it is further

ORDERED that defendants ETAI VARDI, ELLIOT AMBALO, QN 204 LLC, 76 ROCKAWAY BLVD LLC ANTHONY R. JACKSON, ESQ., GINSBURG & MISK LLP shall submit a Clerk's judgment, together with a bill of costs, dismissing this action, and it is further

ORDERED, that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.

ENTER:



**Hon. Anne J. Swern, J.S.C.**  
**Dated: 3/30/2026**

KINGS COUNTY CLERK  
FILED  
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