NEW YORK STATE SUPREME COURT
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

M-1824
Index No. 100151/16

ANNA PEZHMAN,

Plaintiff-Appellant,

—v.—

CHANEL, et al.,

Defendants-Respondents.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on June 26, 2018.

PRESENT: Hon. Sallie Manzanet-Daniels,
Justice Presiding,
Angela M. Mazzarelli
Richard T. Andrias
Ellen Gesmer
Jeffrey K. Oing, Justices.

Plaintiff-appellant, pro se, having moved to vacate the decision and order of this Court, entered on January 2, 2018 (Appeal No. 5328),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED:

/s/

CLERK
Susanna Molina Rojas

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

2018 NY Slip Op 00015 [157 AD3d 417]
January 2, 2018

ANNA PEZHMAN,
Appellant,

—v.—

CHANEL, et al.,
Respondents.

Anna Pezhman, appellant pro se.

Proskauer Rose LLP, New York (Edna D. Guerrasio of counsel), for respondents.

Order, Supreme Court, New York County (Shlomo Hagler, J.), entered November 22, 2016, which, insofar as appealed from as limited by the briefs, granted defendants' motion to dismiss the complaint, unanimously affirmed, with costs.

The allegedly defamatory statements of defendant law firm and its attorneys were made in the course of the firm's representation of defendant Chanel in a

prior action and are therefore protected by the absolute privilege attaching to statements made in the course of, and relating to, judicial proceedings (*see Sexter & Warmflash, P.C. v Margrabe*, 38 AD3d 163, 171 [1st Dept 2007], *abrogated on other grounds Front, Inc. v Khalil*, 24 NY3d 713 [2015]). Because the challenged statements were "pertinent" to the proceeding in which they were made (*see Sexter*, 38 AD3d at 173), they are absolutely privileged. Nor is this a case like *Halperin v Salvan* (117 AD2d 544, 548 [1st Dept 1986]), in which "the underlying lawsuit was a sham action brought solely to defame the defendant" (*Flomenhaft v Finkelstein*, 127 AD3d 634, 638 [1st Dept 2015], citing *e.g. Casa de Meadows Inc. [Cayman Is.] v Zaman*, 76 AD3d 917, 920 [1st Dept 2010]; *Sexter*, 38 AD3d at 172 and n 5).

We have considered plaintiff's remaining arguments and find them unavailing. Concur—Manzanet-Daniels, J.P., Mazzarelli, Andrias, Gesmer and Oing, JJ.

SUPREME COURT OF
THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT:
Hon. SHLOMO HAGLER Part 17
J.S.C.

ANNA PEZHMAN,	Index No. 100151/16
—v.—	MOTION DATE _____
CHANEL, et al.,	MOTION SEQ. NO: 02

The following papers, numbered 1 to ____, were read on this motion to/for Dismiss.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ___ | No(s). 1

Answering Affidavits — Exhibits ___ | No(s). 7

Replying Affidavits _____ | No(s). 7

Upon the foregoing papers, it is ordered that this motion is granted to the extent set forth on the record today. The clerk shall enter a judgment dismissing this action in its entirety.

[STAMP]

RECEIVED

NOV 22 2016

NYS SUPREME COURT –
CIVIL GENERAL
CLERK'S OFFICE

[STAMP]

FILED

NOV 22 2016

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 11/21/16 /s/_____, J.S.C.
SHLOMO HAGLER

1. CHECK ONE: _____
   ☒ CASE DISPOSED
   ☐ NON-FINAL DISPOSITION
2. CHECK IF APPROPRIATE: _____ MOTION IS:
   ☐ GRANTED ☐ DENIED
   ☒ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: _____
   ☐ SETTLE ORDER ☐ SUBMIT ORDER
   ☐ DO NOT POST ☐ REFERENCE
   ☐ FIDUCIARY APPOINTMENT

SUPREME COURT OF
THE STATE OF NEW YORK
COUNTY OF NEW YORK – CIVIL TERM – PART: 17

Index No. 100151-2016
MOTION

ANNA PEZHMAN,

Plaintiff,

—v.—

CHANEL, PROSKAUER ROSE, DAN SAPERSTEIN, ROBERT S. SCHWARTZ and KATHLEEN M. MCKENNA, Individually and as employees of Proskauer Rose,

Defendants.

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60 Centre Street
New York, New York
November 21, 2016

BEFORE: HONORABLE SHLOMO HAGLER,
JUSTICE OF THE SUPREME COURT

APPEARANCES:

ANNA PEZHMAN, PRO SE
235 East 87th Street
New York, New York 10128

PROSKAUER ROSE
Attorneys for the Defendants
One Newark Center
Newark, New Jersey 07102-5211
BY: EDNA D. GUERRASIO, ESQ.

Proceedings Page 10, Line 3

At that hearing the Court admonished Ms. Pezhman but gave her one last opportunity to avoid sanction, and told Ms. Pezhman that she must learn from this experience. The instant complaint and its frivolous nature, Exhibit A, that despite the Court's admonishment and warning, Ms. Pezhman has not learned anything.

THE COURT: Thank you. I need to give Ms. Pezhman an opportunity. Thank you.

Ms. Pezhman, you can respond.

MS. PEZHMAN: Yes, your Honor. I want to just go back to the facts, because the opponent here has distorted the facts and there's something here that wasn't before you at the lower court.

Now I'm going to quote verbatim Daniel Saperstein's affidavit under oath. "Ms. Pezhman has left dozens of voicemails in which she made racially and religiously charged statements."

Now, on a motion to compel — oh, I'm sorry, excuse me. We're missing one very important point.

Okay. He states under oath, "For the sake of brevity, Counsel has not annexed to this affirma-

tion all of plaintiff's e-mails or transcription of voicemail," which was the bedrock of their motion.

Proceedings Page 11

Now, at the Appellate Division I made a motion to compel those transcripts. And under oath Proskauer's associates said they don't exist.

Now, anyone with a smattering of knowledge and evidence knows that absence of evidence gives inference to a male motive, which indicates that if you are making an allegation so egregious, knowing that I'm up for — for a bar, for a character fitness examination before the bar, not only here but in other states where they have different regulations, to state and use as a bedrock of your motion that you have transcripts, transcripts of racially charged voicemails and then renege on that and say, which I've included as an exhibit, that they don't exist, my goodness. If you're making an allegation that egregious and you're confirming that you have substantial evidence and you use as a bedrock of your motion an assertion under oath that you have transcripts, anyone who is — who has just, you know, a smattering of any sort of legal education would know that the absence of such evidence is an indication that they fabricated that allegation.

Secondly, this isn't a frivolous lawsuit. I can give you the D.C.'s — the District — the Washington D.C.'s website and their link and

demonstrate to you what I have to disclose for their character and fitness test, which is vastly different than New York.

Not only did they use the bedrock as a blatant fabrication, unabashedly; secondly, as you will well remember, they attributed and said here racial comments to me by redacting an e-mail so it looked like I was stating the racially derogatory comments, when, in fact, I was recounting what I found offensive.

Now, there is a statement here, and it's quite similar in the law, and it says that the motive, the motive in a proceeding has to be malicious. The statements must be so outrageous in character that it shows that there was no other motive. I cannot see how anyone, you know, a reasonable person would not think that they are so out of context as to have motive to defame. Your Honor yourself, I quoted you. Your Honor, with all due respect, said, "This is a very vast distinction," okay?

So this is — this is a very vast distinction. It's basically black and white. You're saying that she didn't make these comments; that I was not the mouthpiece of all these racially

derogatory comments; that I was actually voicing my disgust and, you know, anger at some of these racial statements, okay?

The second point, and this is a very seminal point and the opponent failed to, you know, give

you a whole-minded view, a very accurate view of the case law.

The absolute privilege is — can be dismantled; it can be pierced. I give you the case of *Halperin versus Salvan,* where the Appellate Division found that the absolute privilege, in terms vis-a-vis defamatory comments, it can be pierced if you can show the motive was malice.

So the assertion that statements made in a court proceeding or related to a court proceeding are absolutely privileged, irrespective of the motive, is a fallacy. Because if you look, even a cursory view of all the case law reviews that there is a nexus, a nexus crystalized between motive, privilege, and defamation.

You have to look at all these factors in conjunction. There's no blanket rule that anything made under an absolute privilege or part of litigation has, you know, the full protection of absolute privilege. It can indeed be pierced and I'm

going to provide to you Court of Appeals cases right here with their citation. *White versus Carroll,* 42 N.Y. 161, N.Y. 1870, where somebody called the witness a quack on the witness stand and the Court of Appeals found that to be defamatory, because it was so out of context. There's *Wiser versus Koval,* 50 A.D.2d 523 (1975), a Court of Appeals case where the absolute privilege can be pierced.

I'm going to end in one final note. This isn't a frivolous lawsuit because it's going to affect my license and they knew, and that's the malice involved, is that they knew that I was taking the

bar. They knew that I would be up for character fitness. And each state has different regulations vis-a-vis the character and fitness test.

Now, since they brought in the Board of Ed, and I'm sure you're quite familiar with that case and the revocation of my license in conjunction with this, it's going to require me —

THE COURT: I need you to wrap up.

MS. GUERRASIO: I don't think it's going — I don't know, okay? But in D.C. they ask you if you've ever been disciplined under a professional license. In New York it's a completely different story. They don't ask you that. So they knew, they knew that

this would affect my license.

THE COURT: Okay. Thank you very much.

I don't want any reply. I don't have any time. I gave you 20, 25 minutes already. I don't have more. We're actually past 1 o'clock. Everyone sit down, please.

This case is very different from the related case that Ms. Pezhman brought against Lord & Taylor and Chanel. There, that involved a certain privilege. Here, it is quite apparent that we're talking about absolute privilege. And counsel for the defendants is correct, that the *Mosesson case versus Jacob D. Fuchsberg Law Firm,* at 257 A.D.2d 381, provides for the longstanding rule, and I'll read from the *Mosesson* case on page 382.

"The Court of Appeals long established that a statement made in the course of legal proceedings is absolutely privileged if it is at all pertinent to litigation." And they cite to *Youmans versus*

Smith, 153 N.Y. 214 at page 219. The Court of Appeals — strike that.

The Appellate Division First Department continues: "Nothing that is said in the courtroom may be the subject of an action for defamation unless the Court has declared that it is so obviously

impertinent as not to admit of discussion, and so needlessly defamatory as to warrant the inference of express malice."

I'm omitting the citation. And the court continues. "As this Court has noted, all that is required for a statement to be privileged is a minimal possibility of pertinence or the simplest rationality — omitting citations. Any doubt is to be resolved in favor of relevancy and pertinency.

"The absolute privilege rule is broad and liberal in order to protect counsel, witnesses, and the parties from judicial action — omitting citation. The rule rests on the policy that counsel should be able to, quote, speak with that free and open mind which the administration of justice demands without the constant fear of libel suits. I'm omitting the citation again to the Court of Appeals.

"The privilege is broad enough to extend all matters which would be libelous if not their introduction into an action and which might become pertinent at any time during the proceedings. Pertinency is a question of law for the Court to decide."

And the last statement by the Appellate Division is on page 383. "The absolute privilege

conferred upon statements made in the course of litigation is, quote, complete, irrespective of the motives with which the statements are used," citing to *Marsh versus Ellsworth,* 50 N.Y 309 at page 311, and see also *Park Knoll Associates versus Schmidt,* 59 N.Y.2d 205 at page 209.

This is a summary of stated law and I read it and actually underlined the statements while I was reading it.

This is a very unfortunate situation, where one case has spawned another case. It is quite unique and irregular to find where the attorneys become the defendants for defending their clients vigorously in a related matter. This is the case here. There is certain relevance to the statements that are brought before the Court. This Court on a number of occasions had to set ground rules as to the proper communication among counsel and plaintiff.

This Court on numerous occasions specified that there could be specific communication only via written word, because there was so many allegations of inappropriate and improper conduct. The Court specifically stated that communications can only be had during certain hours and certain modes of communication. That was the specter of hours and

hours of discussion that we had on the record, and I always have my discussions on the record with the parties, so that there should be no doubt as to what my rulings are.

The absolute privilege attached is here, because it is relevant and pertinent. There were communications that were made throughout the entire litigation that defense counsel believed were inappropriate. This Court addressed it, quite frankly was subject to an appeal by the Appellate Division, First Department, and it's attached where the Appellate Division confirmed my ruling with regard to my discovery rulings and the mode of communication.

It is simply the defendants' right to vigorously defend and to bring to the Court's attention various circumstances that may have violated my prior rules. It is pertinent: It is relevant. The complaint completely surrounds the specter of litigation that occurred in the related case and it seeks to make counsel liable for regular enforcement of rulings by defense counsel. The absolute privilege attaches to those communications as it meets the standards set forth in *Mosesson* and through the Appellate Division citation of *Nunez*

versus Smith. However, I can see how plaintiff, who is not a practicing attorney, has taken up *Halperin versus Salvan* and other cases where they, quote, dismantle the common-law privilege or the absolute privilege.

In this case there is no proper application of that rule situation as I described previously. Therefore, this Court grants the defendants' motion to dismiss the complaint; however, it will not sanction plaintiff, as there was some basis in law, namely *Halperin versus Salvan,* that possibly

justifies the complaint; but now plaintiff knows better, and that will not occur. And there is no necessity to label plaintiff a vexatious litigant required to receive permission to file complaints.

Again, this Court will caution plaintiff to be careful in her litigation strategy; not to make it personal, even though you are the plaintiff and are self-representing. At this juncture you have become very knowledgeable of the law, being that you went to law school. You've commenced several actions now.This Court will not tolerate any further litigation that will boarder on sanctionable conduct.

You've escaped the sanction once again but nonetheless it is close coming if such litigation

continues. Therefore, this Court denies the remaining branches of motions for sanctions and to enjoin plaintiff for filing or serving further papers, as specified in the last branch of the motion.

The foregoing constitutes the order of the Court. You may order the transcript. Thank you. Have a good day.

MS. GUERRASIO: Thank you, your Honor.

MS. PEZHMAN: Can we just —

THE COURT: I can't do anymore.

(Adjourned.)

* * * * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPTION OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING. THE COPYING OF THIS TRANSCRIPT IS PROHIBITED.

******SIGNATURE IS WRITTEN IN BLUE INK.******

/s/ Charisse Kitt

CHARISSE KITT, CSR, CRI, RMR, FCRR
REALTIME SYSTEMS ADMINISTRATOR
SENIOR COURT REPORTER

NEW YORK STATE
COURT OF APPEALS

Motion No: 2018-698
Slip Opinion No: 2018 NY Slip Op 83726
Decided on September 18, 2018

ANNA PEZHMAN,

Appellant,

—v.—

CHANEL, et al.,

Respondents.

Court of Appeals Motion Decision

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

Judge Feinman took no part.

NEW YORK STATE
COURT OF APPEALS

Motion No: 2018-89
Slip Opinion No: 2018 NY Slip Op 68212
Decided on March 29, 2018

ANNA PEZHMAN,
Appellant,

—v.—

CHANEL, et al.,
Respondents.

Court of Appeals Motion Decision

Motion for leave to appeal denied.

Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (see NY Const, art VI, § 3).

Judge Feinman took no part.

NEW YORK STATE SUPREME COURT
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

NYDSC47703 AUDIO TRANSCRIPTION

ANNA PEZHMAN

—v.—

CHANEL, PROSKAUER ROSE, DAN SAPERSTEIN, ROBERT S. SCHWARTZ and KATHLEEN M. MCKENNA, Individually and as employees of Proskauer Rose

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TRANSCRIBED FROM 626830–NYDSC47888.mp3

MP3 FILE

DATED NOVEMBER 29, 2017

REPORTED BY: ANNE EDELMAN

Transcript Page 16, Line 1

derogatory statements. When I made a motion to subpoena those tapes and transcripts, they said they don't exist.

JUSTICE MANZANET-DANIELS: She has answered that in her papers.

MS. PEZHMAN: —.

JUSTICE MANZANET-DANIELS: and in her argument, that they transcribed the messages, the many messages you left on the office voicemail.

MS. PEZHMAN: Okay, well my understanding was when I asked . . .

JUSTICE MANZANET-DANIELS: Time is up, in either case. That wasn't a question. Thank you.

[END 626830–NYDSC47886.mp3]