

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JACOB TEITELBAUM,

Plaintiff,

-against-

Docket No. 12-CV-2858(VB)

**AFFIDAVIT IN OPPOSITION
TO APPLICATION FOR A
DEFAULT JUDGMENT**

JUDA KATZ; CHAYA KATA; JOEL TENNENBAUM;
BLUMA TENNENBAUM; DAVID RUBENSTEIN;
KIRYAS JOEL COMM AMBULANCE CRP; DISTRICT
FAMILY COURT OF ORANGE COUNTY 9TH JUDICIAL
DISTRICT; HON. ANDREW B. BIVONA; ATTY.
MARIA PETRIZIO; CHILDREN'S RIGHTS SOCIETY
OF ORANGE COUNTY; ATTY. KIM PAVLOVIC;
ATTY JOHN FRANCIS X. BURKE; CHILD
PROTECTIVE SERVICES OF ORANGE COUNTY;
CHRISTINE BRUNET; ATTY STEPHANIE BAZILEOR;
JOHN DOES 1 THROUGH 95; JANE DOES 1-20;

Defendant.

Patrick T. Burke, being duly sworn, deposes and says:

1. I am the attorney for John F. X. Burke, Esq., a defendant in the captioned action. John Burke is my brother. I make this affidavit in opposition to the application of the plaintiff Jacob Teitelbaum under Rule 55(b)(1), Federal Rules of Civil Procedure, for the entry of a judgment against John Burke because of his failure to respond to the plaintiff's complaint in a timely manner.

2. The plaintiff's statements concerning service of his pleading and John Burke's failure to respond are accurate. We seek, nonetheless, in the interests of justice, the opportunity to address the plaintiff's complaint under FCRP 12(b)(6) because of its failure to state a claim upon which relief can be granted or to submit an answer.

3. The failure to respond in a timely fashion to plaintiff's complaint was not the fault of John Burke. It was mine. John Burke had asked me to address the plaintiff's complaint. Because of reasons which do not excuse my lapse, I did not do so in a timely manner. But my failure, I respectfully suggest, should not be visited upon John Burke.

4. The plaintiff's complaint contains an amalgam of allegations which arise from proceedings brought against him and his wife (who is not a party to this suit) in the Orange County Family Court. These Family Court proceedings alleged that the Teitelbaums had neglected their children.

5. John Burke had been assigned by the Family Court to represent the plaintiff in the neglect proceedings before it. (Compl.para.60). All the other lawyers involved in the Family Court proceedings have also been sued by the plaintiff. They are: Marie Petrizio, the plaintiff's wife's attorney; Kim Pavlovic, the assigned law guardian from the Orange County Children's Rights Society and, Stephanie Bazileor of the Orange County Department of Social Services. Also, Christine Burnet, an agent from the Child Protective Services and David Rubinstein, a member of the Kiryas Joel Ambulance Service (Hatzolah EMS) and two of the plaintiff's brothers-in-law and sisters-in-law are named defendants.

6. Among the defendants in the plaintiff's original complaint was the Hon. John Bivona, Orange County Family Court Judge. On May 14, 2012, the plaintiff's complaint against Judge Bivona was dismissed by this Court, *sua sponte*.

7. Three theories of prosecution against John Burke are found in the plaintiff's complaint. To involve claims of a violation of the plaintiff's rights under 42 USC §1983 and §1985. The specific of the plaintiff's §1983 claim are that the defendants: 1.) deprived him of his freedom on April 14, 2010 by having him confined to the Bellevue Hospital Center (*id.* para

220), and 2.) deprived him of his right to raise his children in a manner that he deems proper, (id., para 221) and, 3.) deprived him, in cooperation with unspecified "religious interests, . . . of his (unspecified) Constitutional Rights for reasons that are based on the tenants (sic) of the religious community prevalent in the area and contrary to the interest of the plaintiff. " (id. para. 122). None of these contentions are, in any manner, related to John Burke's conduct.

8. The plaintiff's second theory of prosecution against John Burke is that he conspired with all the other named defendants to deprive him of unidentified Constitutional Rights. (Count Two, paras. 223 – 227). The specifics of this theory parallel those of Count One except that, in Count Two, the plaintiff alleges that the defendants deprived him of his "Constitutional Right to his freedom by acting to place him, on or about July 18, 2011, in Bellevue Hospital Center, a secure mental facility, thereby depriving the plaintiff of his personal freedom." (para. 225.) (Count One treats an April 14, 2010 hospitalization).

9. The plaintiff's third theory of prosecution against John Burke is that he and all the defendants have caused "Negligent Inflictions of Emotional Distress (on him) by Virtue of Their Tortuous Acts to (his) Detriment." The gravamen of this theory is found in paragraphs 230 and 231 in which the plaintiff alleges that all the defendant "negligently inflicted emotional distress on the plaintiff to further the goals of certain of the defendants to remove the children of the plaintiff from the custody and care of the plaintiff and his wife" and that they "acted in concert to force a separation and potential divorce on the plaintiff and his wife."

10. All of the attorney defendants have moved to dismiss the plaintiff's complaint. These motions are *sub judice*. John Burke would ask for relief from his default so that he can join in his fellow lawyers' motions. The same essential arguments which apply in their cases apply to John Burke's.

Dated: Goshen, New York
February 19, 2013

Respectfully submitted,

/s/ Patrick T. Burke

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