

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JACOB TEITELBAUM,	:	Docket No. 12-CV-2858(B)
	:	ECF Case
Plaintiff,	:	
	:	
-against-	:	
JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM :	:	
BLUMA TENNENBAUM; DAVID RUBENSTEIN; :	:	
KIRYAS JOEL COMM AMBULANCE CRP; :	:	
DISTRICT FAMILY COURT OF ORANGE COUNTY :	:	
9 TH 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, :	:	
Defendants.	:	

**MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS
ON BEHALF OF DEFENDANT
JOHN F. X. BURKE, ESQ.**

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Dated: February 25, 2013

STATEMENT OF FACTS

A detailed statement of the relevant facts may be found in this Court's Memorandum Decision of February 11, 2013 at 2-8, under the heading "Background". In the interests of expediency, reference to the Court's discussion is respectfully made here.

Missing from the Court's Memorandum Decision is an analysis of the plaintiff's claims against John Burke because, at the time of the Court's Memorandum Decision, John Burke "ha(d) not answered or otherwise responded to the (plaintiff's) amended complaint and (was) not a party to any of the pending motions to dismiss." Memo Dec. at 3, fn.1. On February 20, 2013, this Court declined the plaintiff's application for a default judgment against John Burke and directed that any motion he desired to file comply with a briefing schedule. John Burke's current motion to dismiss is in compliance with the Court's February 20th briefing schedule.

This Court's February 11th Memorandum Decision states:

On May 5, 2010, the family court assigned defendant attorney John Burke to represent plaintiff. Although plaintiff asked Burke to deny the charges against him and prove to the Court they were without merit, Burke insisted plaintiff plead guilty to the charges and accept a "deal" offered by DSS (Orange County Department of Social Services). *id.*, at 3. (See, also, plaintiff's complaint at para. 60-64).

All of the plaintiff's allegations against John Burke relate to his actions before the family court on the plaintiff's behalf, with which actions the plaintiff either disagreed or which he now seeks to disavow.

After the plaintiff entered a plea of guilty to the first neglect petition against him in the original family court proceeding, DSS brought a subsequent petition alleging that the plaintiff had, once again, neglected his children, this time, in violation of the terms of the Family Court's first Order of Disposition. (Compl. para. 73). John Burke's representation of the plaintiff continued. The plaintiff has made allegations against John Burke arising out of this second

family court proceeding, as well as the original proceeding referred to in this Court's Memorandum Decision. The plaintiff alleges with respect to the second family court proceeding:

-- On January 12, 2011, Burke claimed he "does not have a copy of the (Family Court) petition" (*id.*, para. 74).

-- Burke told plaintiff that, "in order to get his children back he would need to admit that he failed to secure his medication." (*id.*, para. 76)

-- On January 9, 2012, Burke did not object to his wife's attorney's proposal that their children be returned to her on the condition that the plaintiff be "evicted from his home", (a proposal with which the Family Court Judge agreed.) (*id.* para. 144-148).

The plaintiff's remaining allegations which mention John Burke refer more to the family court's refusal to discharge Burke and to allow the plaintiff to proceed *pro se*, than they do to Burke's actions. (*id.* paras. 176-184).

**THE PLAINTIFF'S CLAIMS AGAINST JOHN BURKE
ARE BARRED BY THE *ROOKER-FELDMAN* DOCTRINE**

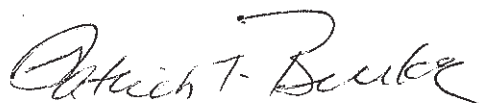
This Court's Memorandum Decision of February 11, 2013 ,at 10-11, found that the plaintiff's claims against the other defendant attorneys in this matter could not be reached under the *Rooker-Feldman* doctrine. The same rationale which the Court applied to dismiss the claims the plaintiff made against the other defendant attorneys applies to the claims he makes against John Burke. The plaintiff's federal claim against John Burke should be dismissed and this Court, we urge, should decline to exercise supplemental jurisdiction over the plaintiff's remaining state law claims pursuant to 28 U.S.C. §1367(c)(3).

CONCLUSION

For the reasons expressed in this Court's Memorandum Decision of February 11, 2013,
the Court should dismiss the plaintiff's complaint against John F. X. Burke, Esq.

Dated: Goshen, New York
February 25, 2013

Respectfully submitted,



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