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Counsel's Libel Suit Against Hiring Attorney Is Dismissed

BY TOM FERROTTA

A FEDERAL JUDGE has tossed out a libel suit brought by a local counsel in New York City against a Pennsylvania attorney who hired and fired him.

Southern District Judge Shira A. Scheindlin, writing in *Cassuto v. Shullick*, 06-CV-15314, found that the judicial proceedings privilege barred the libel claim, which centered on an e-mail sent to parties regarding a civil suit that was settled.

The e-mail in question was sent by David T. Shullick, a Pennsylvania lawyer, after a former local counsel he had fired, Jeffrey M. Cassuto of New York City, had sought a share of fees for his work on a civil case.

"He is still, apparently, as... previously suspected, under the influence of substances that caused him to act so irrationally [sic] previously [sic]—the reason for his termination," Mr. Shullick wrote.

Judge Scheindlin said the correspondence concerned a judicial proceeding and was immune from a libel claim. She rejected arguments that the remarks could be the basis of a claim because they concerned the fee dispute, not the underlying case, and because Mr. Cassuto was the former local counsel, not the current one.

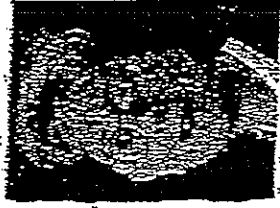
"The privilege is not destroyed simply because a participant to the judicial proceedings no longer represents a party," Judge Scheindlin wrote. "The privilege is only inapplicable where the statement is

made by someone who has no involvement whatsoever in the pending litigation or was never involved in the proceedings."

Mr. Shullick retained Mr. Cassuto to act as local counsel in a New York state court case involving Stone Commercial Brokerage.

In March 2005, after a number of missteps, according to Judge Scheindlin, Mr. Shullick relieved Mr. Cassuto. "The two attorneys agreed to stay payment of Mr. Cassuto's fees until the Stone Commercial Brokerage suit was resolved."

A year later, Mr. Cassuto contacted another attorney on the case and learned that the matter had been settled. Mr. Cassuto then e-mailed Mr. Shullick about his fees;



Judge Scheindlin

The decision appears on page 2B.

Lawyer Libel Suit Rejected

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Mr. Shullick said he would contest the amount of fees Mr. Cassuto intended to seek (\$67,000).

Mr. Cassuto notified the parties of his charging lien the next day. Included on the e-mail were Mr. Shullick, named plaintiff in the suit, the CEO of the brokerage, and the attorney who represented the defendant, Organic Inc.

Mr. Shullick replied to everyone on the e-mail, sending the comment in question.

The fee dispute was resolved in June 2006. Judge Scheindlin said the resolution of that dispute showed why the libel claim could not proceed.

"While Cassuto contends the fee dispute was not pertinent to the Stone litigation, his decision to file a lien against the settlement proceeds and to alert all parties and counsel of that

decision proves the contrary," Judge Scheindlin wrote. "Shullick's allegedly libelous e-mail addressed the Stone litigation generally, as well as Cassuto's fee claim."

The judge also rejected arguments that immunity under the judicial proceedings privilege did not apply because Mr. Shullick copied his e-mail, including the string that contained the allegedly defamatory remark.

"The privilege is not extinguished simply because third parties have been exposed to the allegedly defamatory statements," Judge Scheindlin wrote.

John H. Bomoza of Melillo & Adolfsen represented Mr. Shullick. Albert Khafif of Friedman Khafif & Sanchez represented Mr. Cassuto.

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