

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

_____ X
MICHAEL J. KATZ, M.D. and
MICHAEL J. KATZ, MD, PC,

Plaintiff,

-against-

LESTER SCHWAB KATZ & DWYER, LLP,
PAUL L. KASSIRER, THE TURKEWITZ LAW FIRM,
ERIC TURKEWITZ, SAMSON FREUNDLICH,
JOHN DOE No. 1 THROUGH JOHN DOE No. 10 and
ABC CORP. No. 1 through ABC CORP. No. 10,

Defendants.
_____ X

Index No. 153581/2014
IAS Part 55
Motion Sequence #2
Hon. Justice Cynthia Kern

**AFFIDAVIT OF
PAUL L. KASSIRER
IN SUPPORT OF
MOTION TO DISMISS**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Paul L. Kassirer, being duly sworn, deposes and says:

1. I am one of the defendants herein, and a partner of the defendant law firm, Lester Schwab Katz & Dwyer, LLP (collectively, the "LSKD Parties").
2. I submit this Affidavit in support of the LSKD Parties' motion to dismiss, with prejudice, pursuant to CPLR 3211(a)(1) and (7), all the causes of action asserted against them (the Second, Fourth, Sixth, Eighth, and Tenth Causes of Action) in the Verified Complaint of Plaintiffs Michael J. Katz, M.D. and Michael J. Katz MD, PC (the "Plaintiffs" or "Dr. Katz") dated April 14, 2014 (the "Complaint"). A copy of the Complaint is annexed as Exhibit A to the Affirmation of Arthur J. Ciampi dated July 30, 2014 (the "Ciampi Affirmation").
3. The Complaint, as its sole basis for its claims against the LSKD Parties, attaches, as Exhibit 6, a copy of a single redacted email (whose redaction is unexplained),

which excludes the name of the sender, the recipient, the subject matter, and the date.¹ (Ciampi Aff., Exh. A at Exhibit 6). Nonetheless, the Complaint alleges with only the barest conclusory allegations -- made only “upon information and belief” -- that I sent my email “to hundreds” of my “contacts in the insurance defense industry.” (Ciampi Aff., Exh. A ¶206).

4. At the end of the email, I attached a link to a July 8, 2013 blog post from the New York Personal Injury Law Blog entitled “Judge Rips Doc for ‘Huge Lie’; Perjury Prosecution Possible; Victims May Number in Thousands” which discussed the testimony of an expert defense witness in the field of orthopedic medicine, Dr. Michael Katz, and the statements and findings by a trial judge that Dr. Katz had lied under oath about the length of and the tests he performed during an independent medical examination (“IME”) in a personal injury matter entitled *Bermejo v. Amsterdam & 76th Associates*, Queens Co. Index No. 23985/09. (Ciampi Aff., Exh. A at Exhibit 1).
5. As evident from the face of my email, I only attached the link to the July 8, 2013 blog post and not to any other articles. (Ciampi Aff., Exh. A at Exhibit 6). The Complaint states this fact. (Ciampi Aff., Exh. A ¶¶33, 205). The Complaint’s reference to other blog posts on other days, (Ciampi Aff., Exh. A ¶214), in light of this, cannot be used against the LSKD Parties. In addition, the attached blog post attached the July 1, 2013 transcript of the court proceedings in the *Bermejo* matter. A copy of the July 1, 2013 court transcript is annexed as Exhibit B to the Ciampi Affirmation.

¹ The Complaint alleges various different dates of my email: July 9, 2013 (Ciampi Aff., Exh. A ¶¶35, 211); “on or about” July 12, 2013 (Ciampi Aff., Exh. A ¶206); July 12, 2013 (Ciampi Aff., Exh. A ¶¶232, 233, 234, 236); and July 12, 2014 (Ciampi Aff., Exh. A ¶224).

6. My actual email, dated July 10, 2013, in fact was sent by me from my law firm email account to seven (7) of my clients, all of whom are in the insurance defense industry. Copies of these emails with my clients' names redacted are annexed hereto as Exhibit A.² I sent five of these emails to executives/officers of insurers; one was to the principals of a third party administrator; and one to the general counsel of a self-insured company.



Paul L. Kassirer

Sworn to before me
this 30 th day of July, 2014



NOTARY PUBLIC

SUSAN A. VIZZOTTI
Commissioner of Deeds
City of New York-No. 5-1385
Certificate Filed in New York County
Commission Expires December 2, 2014

² Unredacted copies of my emails to my clients will be provided to the Court for *in camera* review.