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TLSS Attorneys Stephen Straus and Andrew Adler Obtain Dismissal of Action Against Attorney

TLSS lawyers **Stephen Straus** and **Andrew Adler** recently won a pre-answer motion to dismiss a lawsuit filed by an attorney against the firm's client, also an attorney, alleging defamation and intentional infliction of emotional distress. The case stemmed from an underlying Family Court proceeding wherein the attorneys represented different parties in a child custody dispute. The firm's client had filed a motion in Family Court to disqualify plaintiff based on alleged ethical violations in the custody proceeding.

After the underlying matter concluded, plaintiff filed an action entitled Gantt v. Smith, Index No. 1851/2013, against TLS&S's client in New York Supreme Court. Plaintiff claimed that by filing, serving, and arguing the disqualification motion in open court in the Family Court proceeding, the firm's client had libeled and slandered plaintiff and inflicted emotional distress.

The motion to dismiss the complaint in Supreme Court was principally based on the "litigation privilege," which immunizes attorneys from defamation claims arising out of statements made in litigation. The privilege applies to any statement by an attorney made during the course of an underlying judicial proceeding when the statement is pertinent to the proceeding.

Regarding plaintiff's cause of action for "intentional/reckless infliction of emotional distress," TLS&S advanced four arguments for dismissal. Firstly, the claim was impermissibly redundant of the defamation cause of action. Secondly, refashioning an unsustainable defamation claim as one for emotional distress improperly interfered with defendant's free speech right. Thirdly, New York does not recognize a cause of action for "reckless" or even "grossly reckless" emotional distress, and the complaint did not allege actual malice. Finally, to sustain a claim for emotional distress, the conduct must be considered "intolerable in a civilized society."

In dismissing plaintiff's complaint in its entirety, the Supreme Court held that the defendant attorney's statements were manifestly permissible under the litigation privilege as they were made in the context and in furtherance of the underlying suit. The court emphasized that the judge in the underlying Family Court matter considered the statements and did not attempt to quash them. As for the infliction of emotional distress claim, the court held that the statements at issue were not outrageous or extreme; but were made as an integral part of the lawyer's function as an advocate in the Family Court proceeding.

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