

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

JOHN DELLAPORTAS,
Plaintiff,

Index No.: 159341/2015

- v -

Motion Date: 02/17/2017

ANDREW S. BERKMAN, DAVID B. PECKERMAN,
DARRYL P. RANKIN, MILFORD MANAGEMENT CORP.,
MARINERS COVE SITE J ASSOCIATES, MILSTEIN
PROPERTIES CORP., MILSTEIN PROPERTIES, LLC,
RECTOR PARK ASSOCIATES, LLC and JOHN DOES
NOS. 1-10,

Motion Seq. No.: 001

Defendants.

The following papers, numbered 1 to 5_were read on this motion and cross motion to dismiss

Notice of Motion-Affidavits -Exhibits _____
Notice of Cross Motion-Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

| PAPERS NUMBERED |
|-----------------|
| 1, 2 |
| 3, 4 |
| 5 |

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion and cross motion are granted (by stipulation dated May 10, 2016, action as against Mariner’s Cove discontinued), and the complaint is dismissed in its entirety with costs and disbursements to defendants (except Mariner’s Cove) as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further, ordered that the Clerk is directed to enter judgment accordingly.

As a matter of law, none of the allegations of the underlying complaint may be said “not to admit of discussion”, and therefore are subject to an absolute privilege and thus, non-actionable as defamatory. See People ex rel. Bensky v Warden of City Prison, 258 NY 55, 59 (1932). Likewise insufficient are herein plaintiff’s allegations of conspiracy and prima facie tort.

Dated: April 27, 2017

ENTER:


DEBRA A. JAMES J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SETTLE/SUBMIT ORDER/JUDG.