

STATE OF NEW YORK
COURT OF CLAIMS

-----X		
ANTHONY ZAPPIN,	:	
Claimant,	:	Claim No. _____
- against -	:	
STATE OF NEW YORK,	:	CLAIM
Defendant.	:	
-----X		

- Claimant Anthony Zappin ("Claimant") resides at 194 W. 10th Street Apt. D1, New York, NY 10014.
- Claimant asserts the following claims:
 - Assault & Battery;
 - False Arrest/Imprisonment; and
 - Civil Conspiracy to Commit Assault & Battery and False Arrest/Imprisonment.
- The claims accrued on April 24, 2015 on or about 4:45 p.m. in and around Courtroom 540 at the Courthouse at 60 Centre Street, New York, NY 10007.
- The claims arise out of the matters *Anthony Zappin v. Claire Comfort*, Index No. 301568/14 and *People of the State of New York Ex. Rel. Anthony Zappin on Behalf of Reid Zappin, an Infant, v. Claire Comfort*, Index No. 350075/14 pending in New York County Supreme Court before the Honorable Deborah A. Kaplan, J.S.C. ("Justice Kaplan").

FACTUAL ALLEGATIONS

Background

5. On April 24, 2015, Justice Kaplan held a status conference in Courtroom 540 to discuss the matters referenced above.

6. These matters have been before Justice Kaplan since at least on or about February 11, 2014. Other than with respect to Justice Kaplan herself (see below), for these past 15 months Claimant has always had extremely pleasant interactions with all court personnel, including, and most especially, Officer Jeffrey Katz (“Officer Katz”), Justice Kaplan’s court officer. During numerous prior proceedings and appearances in Justice Kaplan’s courtroom, Claimant and Officer Katz have engaged in casual and sometimes lengthy conversations. Indeed, Claimant and Officer Katz have often went out of their way to chat with each other. Claimant has also had lengthy and friendly conversations with Justice Kaplan’s Attorney Advisor Andrew Coyle and Justice Kaplan’s Part Clerk Ira Liffman.

7. At no time in the past 15 months has Claimant ever been accused of causing a disturbance of any kind in the courtroom or surrounding areas, raising his voice, being agitated in any manner or constituting a threat in any form whatsoever to anyone while in the courtroom or the courthouse generally.

8. In contrast to her court personnel, Justice Kaplan has exhibited an extreme personal antipathy towards Claimant.

9. On information and belief, this antipathy first arose in earnest when Claimant filed an Article 78 proceeding against Justice Kaplan in order to force Justice Kaplan to hold a *pendente lite* custody and access hearing for Claimant’s infant son. The

Article 78 proceeding was settled out of court pursuant to a stipulation between Claimant and the Attorney General's office. However, the First Department's dismissal of the Article 78 proceeding pursuant to that stipulation was published in the New York Law Journal. Justice Kaplan's animus towards Claimant appeared to intensify after the publication.

10. Justice Kaplan retaliated against Claimant by, *inter alia*, issuing an Order dated February 27, 2015 in which she repeatedly referenced a recent conviction of Claimant's mother for embezzlement in West Virginia. There was no issue of any kind pending before Justice Kaplan that involved Claimant's mother, either directly or indirectly.

11. At a hearing on March 3, 2015, Claimant informed Justice Kaplan that he was deeply hurt by these attacks on his mother and noted that the attacks were particularly inexplicable and insensitive given the criminal history of her own father.

12. Upon information and belief, Justice Kaplan retaliated against Claimant for his remarks about her father by contacting the West Virginia State Parole Board to recommend that Claimant's mother (who is currently incarcerated in West Virginia) be denied early parole. Upon information and belief, Officer Katz's actions referenced herein were the result of further retaliation by Justice Kaplan for Claimant's remarks about her father, as well as for the Article 78 proceeding.

The April 24, 2015 Conference

13. The following individuals attended the April 24, 2015 conference: Defendant/Respondent Claire Comfort, Justice Kaplan, Attorney Advisor Andrew Coyle, Attorney Advisor Joan Levenson, Officer Katz, Harriet Cohen, Robert Wallack, Brittney

Hershkowitz, Lara Ott, a court reporter and Claimant. Part Clerk Liffman was also in the courtroom.

14. During the conference, Justice Kaplan prohibited the parties (myself and Ms. Comfort) from sitting at counsels' table despite the conference taking place on the record. Prior to this time, Justice Kaplan had always permitted, and indeed required, the parties to sit at counsels' table. As a result, Claimant's counsel was forced to go "off-the-record" repeatedly in order to confer with Claimant who was forced to sit in the gallery approximately 20 feet away from counsel.

15. At all times until Claimant exited the courtroom (discussed below), Officer Katz stood at his customary location at the jury box near Justice Kaplan approximately 25 feet from Claimant and Ms. Comfort.

16. At no time did Claimant cause any disturbance in the courtroom, raise his voice in any manner, have any communication, verbal or otherwise, with anyone in the courtroom during the hearing other than his counsel, or act discourteously in any way to anyone in the courtroom.

17. During the course of the conference, Justice Kaplan disparaged Claimant and his counsel, Ms. Ott, repeatedly. In the face of these repeated disparagements and his inability to confer effectively with his counsel, Claimant left the courtroom and sat outside in the hallway intending to stay there for the remainder of the conference.

18. While exiting the courtroom, Claimant attempted to exit out of the wrong double door in the courtroom that was static and locked. He then pressed hard on the other opened door, which purportedly "made a loud noise" when he exited the courtroom.

19. Approximately five minutes later, Officer Katz exited the courtroom and approached Claimant. Officer Katz inquired as to whether Claimant intended to stay in the hallway or to leave the courthouse. Claimant responded that he intended to remain in the hallway until the proceeding concluded. He requested that Officer Katz inform his counsel to meet him in the hallway after the proceeding so Claimant and his counsel could leave the courthouse together. Officer Katz stated that he would so inform counsel.

20. Approximately 10 minutes after this first encounter, Officer Katz approached Claimant again with Claimant's bag, which Claimant had left in the courtroom. Claimant thanked Officer Katz for bringing it to him. Officer Katz informed Claimant that Justice Kaplan was ending the proceeding shortly. No further conversation took place.

21. Approximately 10 minutes later, Claimant's counsel approached him in the hallway to discuss the proceeding. Claimant was then approached by Officer Katz and informed that Justice Kaplan had directed that he be returned to the courtroom. In compliance with Justice Kaplan's directive, Claimant then returned to the courtroom shortly after conferring with his counsel in the hallway.

22. Upon returning to the courtroom, Claimant once again sat in the gallery as directed by Justice Kaplan. Officer Katz stood near the jury box and the parties' counsel were seated at counsels' table. Justice Kaplan and her Attorney Advisors were not present in the courtroom at this time.

23. At this point, Justice Kaplan opened the door to her robing room and motioned for Officer Katz to come to her. Upon entering the robing room, Officer Katz closed the door behind him. Upon information and belief, Justice Kaplan and Officer

Katz engaged in a discussion behind closed doors in the robing room. Justice Kaplan and Officer Katz exited the robing room together, whereafter Justice Kaplan pointed her finger at Claimant while speaking with Officer Katz.

24. Officer Katz then positioned himself in the gallery less than five feet from Claimant who was sitting in the gallery approximately 20 feet from counsels' table. Thereafter, Justice Kaplan resumed the proceedings on the record.

25. After resuming the proceeding, Justice Kaplan forced Claimant's counsel to go off-the-record several times in order to confer with Claimant about factual issues. Claimant's only interaction with Officer Katz was handing him handwritten folded notes to pass to counsel.

26. At the conclusion of the proceeding, Claimant stood up from his position in the first row of the gallery and took approximately one step forward next to the bar to wait for counsel while she gathered her papers. Ms. Comfort and her counsel were on the other side of the courtroom approximately 30 feet away.

27. Justice Kaplan looked at Officer Katz and nodded at him before leaving counsels' table, where she had been sitting, to go to the Part Clerk's desk.

28. Immediately thereafter, Officer Katz shoved Claimant in Claimant's back causing him to stumble forward. Officer Katz stated: "Move to the front." He then grabbed and twisted Claimant's left arm with extreme force and pulled Claimant to the front of the courtroom near the judge's podium and door to the jury room/hallway (the "side hallway"). At no time did Claimant resist or say anything to Officer Katz.

29. Officer Katz stopped at the door near the jury box. He opened the door and pushed Claimant through it into the side hallway, which is a small contained area.

After the door shut, Officer Katz locked the door behind him. Officer Katz grabbed Claimant and slammed Claimant against the wall.

30. As a result of the above-referenced actions by Officer Katz, Claimant suffered bruising and swelling to his hip, ribs and arm as well as large cuts to his elbow. These injuries are depicted in the photographs attached hereto as **EXHIBIT A**.

31. Officer Katz then proceeded to press his hand against Claimant's chest restraining Claimant against the wall. At no time did Claimant resist. During this time, Officer Katz refused to permit Claimant to leave the side hallway and kept his hand continuously pressed against Claimant's chest. While Officer Katz detained Claimant in this side hallway against Claimant's will, Officer Katz refused Claimant's repeated requests that Officer Katz remove his hand from Claimant's chest and that Claimant be permitted to leave the side hallway. Officer Katz also refused Claimant's multiple requests to permit Claimant to use Claimant's cell phone or to speak with his counsel.

32. Officer Katz detained Claimant in the side hallway for approximately 20 minutes keeping Claimant pinned against the wall and pressing his hand against Claimant's chest for the entire period of time. Other than making the requests referenced above, which Claimant made in a calm and polite manner, Claimant did not react in any other way.

33. After approximately 20 minutes, Officer Katz unlocked the door and allowed Claimant's counsel into the side hallway. Upon Officer Katz opening the door, Justice Kaplan was still in the courtroom and was observed staring in the direction of Claimant. Officer Katz refused to allow Claimant and his counsel to leave through the

normal hallway and elevators and instead escorted Claimant and his counsel down several flights of stairs and out the back of the courthouse.

CLAIM I – ASSAULT & BATTERY

34. Claimant re-alleges and incorporates by reference paragraphs 1-33 of this Claim as though fully set forth herein.

35. On April 24, 2015, Officer Katz intentionally caused and attempted to cause, or otherwise recklessly caused, an unwanted touching of Claimant with the intent to harm Claimant, causing injury to Claimant.

36. Claimant did not consent to the touching.

37. Upon information and belief, Officer Katz acted at the behest and direction of Justice Kaplan.

38. Officer Katz is not entitled to any immunity, qualified or otherwise. Similarly, Justice Kaplan is not entitled to any immunity, qualified or otherwise.¹

39. As a proximate result of Officer Katz's actions, Claimant suffered physical and emotional harm entitling him to damages in an amount to be determined at trial.

CLAIM II – FALSE ARREST/IMPRISONMENT

40. Claimant re-alleges and incorporates by reference paragraphs 1 – 39 of this Claim as though fully set forth herein.

¹ Justice Kaplan does not have absolute judicial immunity under *Stump v. Starkman*, 435 U.S. 349 (1978). Ordering and orchestrating an assault and false arrest/imprisonment has been held not to be a “judicial act” by courts throughout this country. *See, e.g., Gregory v. Thompson*, 500 F.2d 59, 65 (9th Cir. 1984) (judge’s assault held not to be judicial act); *Ammons v. Baldwin*, 705 F.2d 1445, 1448 (5th Cir. 1983) (“[T]he threat of physical abuse is clearly not a normal judicial function”); *McCray v. Maryland*, 456 F.2d 1, 3-4 (4th Cir. 1972) (officials not exercising judicial discretion do not require protection of absolute judicial immunity for fear of “burdensome and vexatious litigation”).

41. Officer Katz intended to unlawfully confine and did unlawfully confine Claimant.

42. Claimant was at all times conscious of the confinement and did not consent to the confinement.

43. The confinement was not otherwise privileged.

44. Upon information and belief, Officer Katz acted at the behest and direction of Justice Kaplan.

45. As a proximate result of the confinement, Claimant suffered harm entitling him to damages in an amount to be determined at trial.

CLAIM III – CIVIL CONSPIRACY

46. Claimant re-alleges and incorporates by reference paragraphs 1 – 45 of this Claim as though fully set forth herein.

47. Justice Kaplan directed Officer Katz to harm Claimant and to falsely arrest/imprison him constituting an ongoing conspiracy, express or implied, that was conceived no later than April 24, 2015.

48. Based on Justice Kaplan's actions in the courtroom, Officer Katz began his assault on, and unlawful confinement of, Claimant only upon an apparent direction and signal from Justice Kaplan. At all times Justice Kaplan and Officer Katz acted in concert in carrying out the assault and unlawful confinement. Both Justice Kaplan and Officer Katz have, to varying degrees, participated in planning and carrying out the objectives of the conspiracy, but both are nevertheless liable for the concerted action of their fellow co-conspirator.

49. The objective of the conspiracy was to commit assault and battery and to falsely arrest/imprison Claimant.

50. In furtherance of this conspiracy, Justice Kaplan and Officer Katz undertook actions constituting civil conspiracy to commit the common law torts of assault and battery and false arrest/imprisonment by physically attacking and unlawfully confining Claimant as described in the preceding paragraphs.

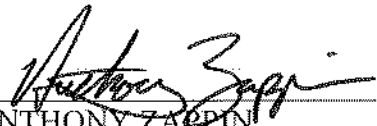
51. As a proximate result of this conspiracy, Claimant suffered the physical and emotional harm set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Claimant Anthony Zappin respectfully prays that this Court:

- (a) Enter judgment in favor of Claimant against Defendant;
- (b) Enter judgment awarding Claimant compensatory damages on all counts herein to compensate Claimant for Defendant's activity complained of herein and for any injury complained of herein, inclusive of interest and cost, in an amount to be determined at trial;
- (c) Enter judgment awarding Claimant his fees and costs reasonably incurred in this action as allowed by applicable state law; and
- (d) Order such other relief that the Court deems just and reasonable.

Dated: New York, New York
April 30, 2015

By: 
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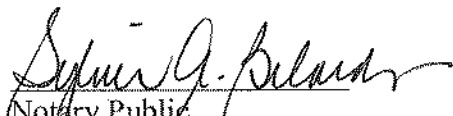
VERIFICATION

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

Anthony Zappin, being duly sworn, deposes and says that deponent is the Claimant in the within action; that deponent has read the foregoing Claim and knows the contents thereof; that the same is true to deponent’s own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters, deponent believes it to be true.


 ANTHONY ZAPPIN

Sworn to before me this
 30th day of April, 2015


 Notary Public

SYLVIA A. BELARDO
 Notary Public, State of New York
 No. 01BE6015783
 Qualified in New York County
 Commission Expires November 9, 2018

EXHIBIT A







