

Memorandum of Law in Support of Plaintiff's Motion for Reconsideration of Judge Castel's September 28, 2004 Memorandum and Order in Den Hollander v. Flash Dancers Topless Club, et al, 03 CV 2717 (PKC)

In Judge Castel's Memorandum and Order ("Order"), which dismissed the Complaint with prejudice, the Judge, or one of his clerks, wrote, "I find it unnecessary to consider any materials outside the Complaint in deciding the motions to dismiss and I grant the plaintiff's Motion to Strike." Order at 2 n.1. The plaintiff's Motion to Strike requested Judge Castel to ignore external documents, including 39 documents submitted by defendants, that the plaintiff did not rely on in drafting the Complaint in accordance with Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002). The Motion to Strike did not request the Judge to strike the plaintiff's memoranda of law submitted in opposition to the defendants' memoranda of law, but the Judge, apparently on his own motion, did. As pointed out in the plaintiff's accompanying Memorandum for the Disqualification of Judge Castel at 1 & 2, the Judge's apparent rationale for ignoring the plaintiff's memoranda, but apparently not the defendants' memoranda, was the Court's misconception that the plaintiff had violated Judge Castel's Individual Practice Rules when the plaintiff had not. Judge Castel made a point of rebuking the plaintiff, despite his innocence. Order at 2 n.1. In addition, Judge Castel's partiality or personal prejudice against the plaintiff, as presented in the Memorandum for Disqualification, likely contributed to the Court overlooking the plaintiff's memoranda but not the defendants'.

By not considering the plaintiff's memoranda of law, the Judge overlooked controlling decisions cited in the Memorandum In Opposition to Certain Defendants' Motions to Dismiss at pp 104-112 and the Memorandum in Opposition to Defendant Bank of Cyprus at pp 23-25 that might reasonably have altered the result, Adams v. U.S., 686 F.Supp. 417, 418 (S.D.N.Y. 1994).

In addition, by overlooking the plaintiff's memoranda of law the issues on the motion to dismiss were, in effect, not fully briefed, since the Court did not consider the plaintiff's arguments, Jacovitz v. Regency Maritime Corp., 1994 U.S. Dist Lexis 13632 *3 (S.D.N.Y. 1994). And by fundamentally misconstruing and ignoring allegations in the Complaint, which were reinforced by the Court's failure to consider the plaintiff's memoranda of law, the Court overlooked fact allegations, *See* Morin v. Trupin, 823 F.Supp. 201, 205 (S.D.N.Y. 1993).

WHEREFORE, the plaintiff requests reconsideration of the Order for the above reasons providing the motion to disqualify Judge Castel is granted. If the disqualification motion is denied, the plaintiff withdraws this Motion for Reconsideration.

Dated: New York, New York
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Respectfully submitted
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