

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

Hon. **G E O R G E R. P E C K**,
Justice

KEITH FRIEDMAN D/B/A FRIEDMAN RESEARCH
AND FRIEDMAN RESEARCH CORPORATION,

Plaintiff(s),

-against-

FINZ & FINZ, P.C.,

Defendant(s).

TRIAL/IAS, PART 46
NASSAU COUNTY

MOTION SEQ. No.

INDEX No. 18548/01

MOTION SUBMISSION
DATE: 7/31/02

The following papers read on this motion: 5

Notice of Motion.....X
Answering Affidavits.....X
Memorandums of Law.....XXX

The Court sets forth a brief factual analysis prior to deciding the plaintiff's present application:

The plaintiff in the within action was retained by the defendant to testify as an expert witness in a prior action.¹ The prior action (**Crespo v. Chrysler Corporation**) dealt with an alleged design defect pertaining to an air bag used in the vehicle manufactured and installed by the then Chrysler Corporation. At the conclusion of that trial, the jury returned a verdict in favor of the plaintiff Crespo and against the defendant Chrysler Corporation in the amount of \$750,000.00. The Judge

¹. The Court is in a quandary as to why either party has failed to annex a copy of the contract entered into by the parties prior to the plaintiff testifying as an expert for the defendant in the underlying action.

in that trial vacated the jury's award and entered a verdict in the defendant Chrysler's favor. The Trial Court entered a judgment notwithstanding the verdict solely on the ground that the plaintiff "failed to provide any evidence to meet the criteria of defective product design." (Defendants' affirmation in opposition ¶7)

The plaintiff commenced the present action seeking expert witness fee allegedly owed to him from the defendant law firm Finz & Finz in **Crespo v. Chrysler Corporation**. The defendants have averred that the plaintiff was paid approximately \$25,000.00 as per their agreement. The defendants plead two counterclaims in their answer against the plaintiff, alleging first, that the plaintiff as an expert witness breached a duty to testify in a certain manner which led to the trial Judge throwing out the jury verdict and second, that the plaintiff committed professional malpractice.

The plaintiff moves for an order granting dismissal of the two counterclaims, pursuant to CPLR 3211 (e). The plaintiff premises this application on the theory that the defendants' two counterclaims are barred pursuant to the doctrine of witness immunity.

It is well rooted in our legal history as well as English Common Law that witnesses are immune from subsequent liability for testimony given at judicial proceedings. **Cutler v. Dixon**, 76 Eng.Rep. 886 (K.B.1585). The Court is well aware that the basis of witness immunity was to guarantee that a witness would testify truthfully and not have to be concerned with subsequent liability for their testimony given in a judicial proceeding. However, in the instant action the plaintiff was hired to testify as an expert witness in the underlying action **Crespo v. Chrysler Corporation**. It is uncontroverted that plaintiff was paid \$25,000.00 for his fee to testify as an expert; to now seek another \$45,949.75 as demanded in his complaint, without providing the Court with some detail of the contract entered into by the parties is fatal to plaintiffs' application.

From the Court's reading of applicable case law regarding witness immunity from liability

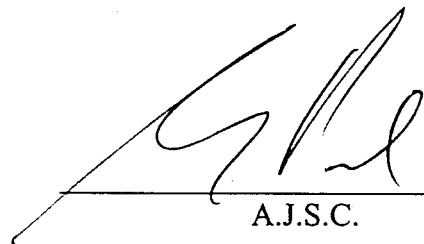
for statements given at trial it is quite obvious to this Court that the purpose behind the statute was to shield individuals from liability and not to have the privilege used as a sword.

The plaintiff has commenced this action alleging that the defendant breached a contract and to now attempt to use witness immunity as a shield from liability is in clear contravention of the underlying intent of the privilege.

Accordingly, the plaintiff's motion for an order dismissing the defendants' two counter claims is hereby denied. The plaintiff is directed to serve and file an answer within thirty days of this order.

It is, so ordered.

Dated: October 15, 2002


A.J.S.C.

ENTERED

OCT 22 2002

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**