

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 1, 2017

523157

JOHNATHAN JOHNSON,

Appellant,

v

MEMORANDUM AND ORDER

STATE OF NEW YORK,

Respondent.

Calendar Date: May 2, 2017

Before: Peters, P.J., Garry, Lynch, Clark and Aarons, JJ.

Johnathan Johnson, Malone, appellant pro se.

Eric T. Schneiderman, Attorney General, Albany (Kathleen M. Treasure of counsel), for respondent.

Garry, J.

Appeal from an order of the Court of Claims (DeBow, J.), entered March 21, 2016, which granted defendant's motion to dismiss the claim.

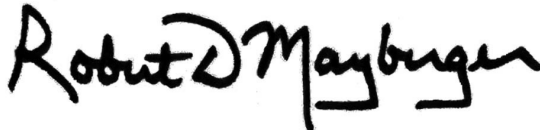
Claimant, an inmate at Upstate Correctional Facility, filed a claim alleging that, on occasion, prison officials refused to pick up and deliver his law library requests, refused to deliver requested legal supplies and legal mail, and refused to notify maintenance that his cell sink needed to be fixed. In addition to submitting an answer that set forth numerous affirmative defenses, defendant moved to dismiss the claim. After claimant failed to submit any opposition to defendant's motion, the Court of Claims granted the motion. Defendant appeals.

Having failed to respond in any manner to the motion to dismiss, claimant is precluded from appealing the order (see CPLR 5511). Claimant's "sole remedy is rather to move to vacate the default order and, if necessary, to appeal from the denial of that motion" (Johnson v State of New York, 140 AD3d 1558, 1558 [2016]; see CPLR 5015 [a] [1]; Johnson v State of New York, 140 AD3d 1560, 1560 [2016]; Matter of Susan UU. v Scott VV., 119 AD3d 1117, 1118 [2014]). As the record does not reflect that claimant availed himself of that procedure, the appeal is not properly before us.

Peters, P.J., Lynch, Clark and Aarons, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court