[*1] SCANNED ON 12/5/2012

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MARTIN SHULMAN J.S.C. PART 1
Justice

Index Number : 100053/2008
MARTIN, LARRY D.
vs
DAILY NEWS L.P.
Sequence Number : 010
SUMMARY JUDGMENT

INDEX NO. 100053/08
MOTION DATE
MOTION SEQ. NO. 010

The following papers, numbered 1 to 5, were read on this motion to/for summary judgment

Notice of Motion/~~Order to Show Cause~~ — Affidavits — Exhibits A, A-EE | No(s). 1, 2
Answering Affidavits — Exhibits 1-22 | No(s). 3
Replying Affidavits | No(s). 4, 5

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

FILED
DEC 05 2012
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: Dec. 3, 2012

MARTIN SHULMAN J.S.C.

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

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LARRY D. MARTIN,

Plaintiff,

-against-

DAILY NEWS LP, ERROL LOUIS and RAVI BATRA,

Defendants.

----------X

Index No. 100053/08

Decision & Order

MARTIN SHULMAN, J.:

In this action for libel, defendants Daily News LP and Errol Louis (collectively, "defendants") move, under motion sequence number 010, for an order pursuant to CPLR 3212 granting summary judgment in their favor and dismissing the complaint as against them in its entirety. Under motion sequence number 012, defendants move for an order excluding the testimony of plaintiff's journalism expert Glenn Guzzo and plaintiff cross-moves for an order precluding defendants' expert Bruce A. Green. Motion sequence numbers 010 and 012 are consolidated for disposition.

Plaintiff Larry D. Martin ("Justice Martin" or "plaintiff") is a Justice of the Supreme Court of the State of New York, Kings County. Defendant Daily News LP ("DNLP") is the owner of *The Daily News*, a widely circulated daily newspaper in the New York metropolitan area, which is also available on-line. Defendant Errol Louis ("Louis") is a New York City-based journalist who, until recently, wrote a column for *The Daily News*.

Louis's column routinely contained articles focusing on local political and social issues. One such article was published in *The Daily News* on January 28, 2007, entitled "This Case Could Topple Legal Titans" ("First Article") (Handman Aff. in Support of Motion, Exh. B). A second, related article, entitled "Weed Out Bad Judges," and

subtitled "More Resources Will Help Nail Corrupt Jurists," was published on February 8, 2007 ("Second Article"; collectively, the "Articles") (*id.* at Exh. C). The Articles were published in the Op-Ed section of *The Daily News*, both in the newsprint and on-line editions. *The Daily News* also maintains a Daily Politics Blog on which Louis and members of the public may post comments concerning articles appearing in *The Daily News.*

Justice Martin was mentioned in both of Louis's Articles and in several of his blog postings. Claiming that the Articles and blog postings, posted between February 8-12, 2007 (*id.* at Exhs. D and E), were false and defamatory, Justice Martin commenced this action seeking compensatory and punitive damages in the amount of $10 million. In his complaint (*id.* at Exh. A), Justice Martin alleged three causes of action against DNLP and Louis for defamation and/or defamation per se based on the publication of Louis's Articles and his February 8 and 12, 2007 blog postings.[1]

In his First Article, Louis wrote about judicial corruption in Brooklyn. Calling it "a snake pit filled with bribery and back-room political deals," he identified Batra as his chief source of information, calling him "a longtime insider who has decided to start talking publicly about what he knows." Louis wrote about the lawsuit entitled *Riskin v Karp* (the "Karp Action"), which Batra commenced on behalf of his client, Martin Riskin ("Riskin"), charging another well-known Brooklyn attorney, Jerome Karp ("Karp"), with

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[1] The complaint asserted three similar causes of action against attorney Ravi Batra ("Batra") based upon his participation in the Articles and his blog postings on February 11 and 12, 2007 (*id.* at Exh. E).

violating conflict of interest rules.[2] Describing both Batra and Karp in his article as "insiders," Louis asserted that Karp's reputation is such that he is "so trusted that he specializes in defending judges who get into legal trouble." Louis summarized the allegations in the Karp Action as follows:

> Karp secretly took payments from a party in the real estate fight, Ted Singer, and provided legal advice and strategy to him - all without disclosing the fact that Karp once represented Supreme Court Justice Larry Martin, the judge hearing the multimillion-dollar case.
>
> In plain English, Batra claims that Karp tried to rig the case by simultaneously representing Singer and the judge hearing his case.

The First Article further states: "Batra says the suit will expose the inner workings of the Brooklyn judge-making apparatus he once helped operate," and that "Batra's suit could uncover more about the courts than insiders want revealed." He quotes Batra as saying "I am hoping that some of the people who own Brooklyn may end up getting disclosed."

While the First Article concluded with a call for an investigation into this situation, the Second Article, which was published some 12 days later, called for increased resources for the New York Commission on Judicial Conduct (the "Commission"), the disciplinary agency charged with reviewing complaints of judicial misconduct and with enforcing high judicial standards of conduct (*see* www.scjc.state.ny.us). The premise of the Second Article, which neither mentions nor references Batra, is that because the

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[2] The Karp Action was initially filed under Kings County Index No. 34131/06 and then transferred to New York County and assigned New York County Index No. 401508/08. As more fully discussed *infra*, by decision and order dated December 9, 2010 this court dismissed the Karp Action.

Commission is "underfunded and understaffed and overworked", it is unable to properly monitor and discipline judges.

After identifying two former Brooklyn judges by name and explaining why they were "crooked" jurists, Louis focused his attention in the Second Article on Justice Martin, reporting that the Commission admonished Justice Martin for having twice, once in 1999 and once in 2000, sent letters to other jurists on courthouse letterhead requesting special consideration and/or leniency in the sentencing of family friends. Louis identified Karp as the attorney who represented Justice Martin before the Commission, stating:

> [n]ow the judge is in the hot seat again. According to a lawsuit filed in November, Martin is hearing a real estate case, *Singer vs. Riskin*, in which *the judges' personal lawyer* - Jerome Karp, who defended Martin before the commission in the letter-writing cases - is representing one of the parties in the case, Ted Singer (emphasis in original).
>
> That's an obvious conflict of interest. Martin should have disclosed the Karp connection and recused himself from the case - but he didn't. So [Commission Administrator] Tembeckjian's staff will need to spend time and money to sort through the charges.
>
> * * *
>
> [T]he commission needs beefed-up support to do more labor-intensive, old-fashioned investigation and enforcement. It's the only way to keep a close eye on judges who consider themselves above the law.

By way of explanation, *Singer v Riskin* (Kings County Index No. 15812/01) is one of a series of litigations (11 actions) stemming from Ted Singer and Riskin's joint effort to locate distressed properties and then finance, rehabilitate and resell the properties to third parties. The *Singer v Riskin* action centered around their dispute over the distribution/sharing of proceeds from the sale of some of the properties.

Immediately following publication of the Second Article, several blog postings as well as emails directed to Louis's attention sought to correct and/or educate him to the fact that Justice Martin presided over *Riskin v Belinda* (the "Belinda Action"), a related foreclosure action, rather than *Singer v Riskin*. This included an email from nonparty Regina Felton informing Louis that she was the attorney representing Singer in the *Singer v Riskin* action and confirming the fact that Justice Martin was not the presiding Justice in that matter.

In his February 12, 2007 blog comment, Louis sought to clarify this issue by posting a link to the complaint in the Belinda Action, which he explains is "one of the 11 lawsuits that make up the Singer/Riskin litigation" and the one which "Justice Martin has been involved in . . . issuing rulings on the case (and refusing to recuse himself) as recently as August 12, 2005" (*id.* at Exh. D). However, deeming this gesture inadequate to rectify the damage the Articles and blog commentaries allegedly caused him professionally, Justice Martin commenced the instant action on or about January 2, 2008. Following service of the complaint, defendants DNLP and Louis, by counsel, and Batra, acting pro se, filed separate pre-answer motions to dismiss the complaint which were granted in part and denied in part.

Upon examination of the complaint and the parties' arguments, this court determined that the First Article is not reasonably susceptible of a defamatory meaning as to Justice Martin and dismissed the claims related thereto. While this court did not come to the same conclusion with respect to the Second Article, it did find that Louis's February 8 and 12, 2007 blog postings, as well as Batra's blog postings dated February

11 and 12, 2007, likewise were not susceptible of a defamatory meaning. Therefore, by order dated July 14, 2009 ("Prior Order"), this court granted defendants' motions to the extent of: dismissing the complaint as against Batra in its entirety[3]; dismissing the second and third causes of action against DNLP and Louis; and dismissing that aspect of the first cause of action which was predicated on the First Article (*id.* at Exh. K).

Thereafter, the parties engaged in lengthy and somewhat contentious discovery related to the portion of the first cause of action predicated solely on the Second Article. Multiple depositions were conducted, interrogatories and documents were exchanged and plaintiff filed the note of issue on or about May 10, 2012. DNLP and Louis now move for summary judgment dismissing the balance of the complaint. While familiarity with the Prior Order is presumed, the underlying facts and arguments, as relevant to the summary judgment motion, are as follows.

As with the First Article, Justice Martin claims that the Second Article was false and defamatory. More specifically, he argues that the Second Article was intended to convey and was understood by reasonable readers to mean that plaintiff was being investigated by the Commission for failing to recuse himself in an action in which his former attorney (Karp) was representing one of the parties. As referenced above, Louis erroneously identified the action as *Singer v Riskin,* which was pending before another Brooklyn jurist, the Hon. Ira Harkavy, when Justice Martin actually presided over the Belinda Action, which had been randomly assigned to him on January 27, 1999.

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[3] This court denied Batra's additional request for costs and sanctions pursuant to CPLR § 8303-a and 22 NYCRR § 130.1-1.

Justice Martin explains that Batra was Riskin's counsel in the Belinda Action and that nonparty Singer claimed to hold a 50% interest in the property at issue. Concerned about the impending foreclosure and sale scheduled for July 26, 2000, Singer, by his then-attorney Sol Mermelstein ("Mermelstein"), brought an order to show cause for leave to intervene in that action on July 25, 2000. However, due to defendant Belinda's Chapter 13 bankruptcy filing on the same day (July 25, 2000), an automatic stay prevented the foreclosure sale from going forward. Singer withdrew his intervention motion on or about September 14, 2000.

Nevertheless, about nine months later, on or about June 27, 2001, Batra, on behalf of Riskin, served a motion for sanctions against Singer and Mermelstein, claiming the intervention motion was frivolous. Singer cross-moved in response and the motions were argued before Justice Martin in or about August and November 2001.

Justice Martin points out that it was not until additional argument on the sanctions motions was held in August 2005 that Batra raised, for the first time, the issue of a possible conflict of interest with respect to the Belinda Action. The parties herein dispute whether or not Justice Martin should have granted Batra/Riskin's application for recusal at that time.

Batra's concern about a possible conflict of interest involving Justice Martin came about following his receipt of a motion in the *Singer v Riskin* action. Evidently, one of Singer's former attorneys, Robert Allan Muir, Jr. ("Muir"), was seeking to be relieved as Singer's counsel of record in that action, and in support of his motion, Muir included a statement to the effect that Karp had been the referring attorney. Batra's concern was further increased when Karp contacted him a few days later to

arrange/schedule a meeting to try to settle all of Singer's lawsuits with Riskin (*see* letter dated February 2, 2005 [*id.* at Exh. R, sub-exh. 3b], by which Singer authorized Karp to act as his agent for the purpose of negotiating a global settlement of his lawsuits involving Riskin).

Batra viewed the request as an indication that Karp was actually the attorney controlling all of Singer's legal matters, including the intervention motion. He viewed the fact that other attorneys were listed as Singer's counsels of record in various litigations a subterfuge intended to hide the fact that Karp was controlling all of Singer's litigations, including the matter pending before plaintiff. As explained below, Batra's suspicions were also aroused by payments Singer made to Karp.

Riskin, by Batra, then commenced the Karp Action, charging Karp with fraud, deceit, abuse of process and with violating Judiciary Law §487 based on his alleged orchestration and/or supervision of Singer's attorneys in the various litigations involving Riskin. Calling Karp "shadow counsel" to Singer, Batra claimed that Karp was prevented, or "conflicted," from acting on Singer's behalf in the Belinda Action because he previously represented Justice Martin before the Commission. The parties in the Karp Action disputed whether the payments Singer was making to Karp represented payment for legal services, as argued by Batra, or were payments for rent for Singer's use of space in Karp's office, as argued by Karp.

By order dated December 9, 2010, this court granted Karp's motion to dismiss the Karp Action on the ground that the complaint was factually and legally meritless. Among other things, the complaint failed to explain how Karp, who was only conflicted from representing Singer in the Belinda Action from January 2001 through June 2003,

deceived either the court or Riskin, or how Riskin might have been damaged by Karp's alleged influence over the judge during that time period. There were no allegations of ex parte communications with the judge and even if Karp did act as "shadow counsel" to Singer by giving advice to Singer's attorney of record, there was nothing illegal or improper about doing so, absent some indication that Justice Martin knew of and/or acted upon Karp's involvement in the Belinda Action so as to prejudice Riskin's claims.

With this background, Justice Martin asserts that defendants defamed him (libel per se) in the Second Article, maliciously portraying him as a corrupt jurist by reporting that he presided over *Singer v Riskin,* which he did not, that his former attorney (Karp) was Singer's counsel, which he was not, and that as a result of these purported conflicts of interest, the Commission was investigating him with respect to that action, which it was not.

As a public official, Justice Martin's defamation action is governed by the rule promulgated in *New York Times Co. v Sullivan* (376 US 254 [1964]) prohibiting "a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' - that is, with knowledge that it was false or with reckless disregard of whether it was false or not" (*id.* at 279-280). In reaching this conclusion, the Supreme Court emphasized our nation's profound "commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." (*id.* at 270). The Court also found, among other things, that even erroneous statements which are

"inevitable in free debate . . . must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive'" (*id.* at 271-272), that "neither factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct" (*id.* at 273), and that "occasional injury to the reputations of individuals must yield to the public welfare, although at times such injury may be great." (*id.* at 281). The Supreme Court also stated that:

> A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions - and to do so on pain of libel judgments virtually unlimited in amount - leads to a comparable "self-censorship" . . . [Such a rule would] dampen[] the vigor and limit[] the variety of public debate [and would be] inconsistent with the First and Fourteenth Amendments.

(*id.* at 279).

Because defendants' statements about Justice Martin related solely to his role as a public official, the burden rests with plaintiff to demonstrate not only that the statements are false, but with clear and convincing evidence that defendants acted with actual malice in publishing the falsehoods (*see Freeman v Johnston*, 84 NY2d 52, 56, *cert denied* 513 US 1016 [1994]; *Guerrero v Carva*, 10 AD3d 105, 115 [1st Dept 2004]). To this end, Justice Martin contends that both bias and actual malice are demonstrated by: (1) the inclusion of erroneous and defamatory statements in the Second Article; (2) Louis's reliance on dubious sources for his information; (3) Louis's purposeful disregard for the truth; (4) his failure to fact-check his information prior to publication; (5) Louis's ulterior motive of furthering his own career as a journalist by publicizing scandalous

information about public officials; (6) defendants' failure to retract the erroneous Second Article; and (7) defendants' republication of the Second Article in March 2010.[4]

Justice Martin explains that, because Louis had an ethical obligation to insure the accuracy of the information he used, he should have, among other things, checked court records and/or spoken with plaintiff and/or any of the attorneys involved in the proceedings to verify the information prior to publication. He insists that Louis's reliance on Batra as a source was unreasonable in light of Batra's own questionable reputation in and about the Brooklyn courts, of which Louis had knowledge,[5] and that Louis's use of the complaint in the Karp Action as an additional source was, likewise, unreasonable as it was convoluted and poorly drafted, and because Louis made no effort to verify its factual allegations.

According to Justice Martin, actual malice is also demonstrated by the fact that Louis's admitted goal in obtaining additional funding for the Commission was to expose and remove "corrupt" judges, which would, in turn, advance his own career as a "muckraking" journalist (*see Currier v Western Newspapers, Inc.*, 175 Ariz 290, 294, 855 P2d 1351, 1355 [1993]). Defendants then furthered this goal by knowingly and/or recklessly rushing to publish the disparaging and inaccurate Second Article when there

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[4] DNLP restored both Articles to its website in or about March 2010 after discovering that certain technical changes to its website had rendered the Articles unavailable. This purported "republication" was the subject of a second action by plaintiff against defendants, commenced under New York County Index No. 103129/11 ("Martin II"), which this court ultimately dismissed by decision and order dated March 21, 2012.

[5] Justice Martin lists incidents where other jurists chastised Batra for his questionable litigation strategies and demeanor, including an instance where Batra opposed the recusal of a judge with whom he had a close political relationship.

was no reason to rush (*see* Louis's April 15, 2010 Deposition, at 286 [Schwab Aff. in Opp. at Exh. 21]; *see also Lake Park Post, Inc. v Farmer*, 264 Ga App 299, 590 SE2d 254 [2003], *cert denied* 543 US 875 [2004]).

Justice Martin contends that actual malice and bias are also demonstrated by defendants' failure and refusal to retract the Second Article after the errors of fact were pointed out (citing *Kipper v NYP Holdings Co., Inc.*, 12 NY3d 348 [2009] and *Crane v Bennett*, 177 NY 106 [1904]), and later by DNLP's republication of the article in March 2010 (citing *Taylor v Friedman*, 214 AD 198 [1st Dept 1925], quoting *Turton v New York Recorder Co.*, 144 NY 144, 150 [1894]).[6] The evidence, plaintiff argues, readily meets the prerequisites set by the United States Supreme Court in *Harte-Hanks Communications, Inc. v Connaughton* (491 US 657 [1989]), *St. Amant v Thompson* (390 US 727 [1968]), *Curtis Publ. Co. v Butts* (388 US 130 [1967]) and their progeny, precluding summary judgment in defendants' favor.

At his depositions, Louis explained, among other things, that he viewed the allegations in the complaint in the Karp Action relating to a possible conflict of interest as indicative of serious problems plaguing the Brooklyn judicial community in general, and of serious problems involving one of its esteemed, senior members in particular. Louis explained that he viewed it as his responsibility as a columnist for *The Daily News* to inform his readers about issues involving the Brooklyn courts and its jurists, and that he hoped that his article would engender public support for additional funding for the

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[6] This court's decision and order dated March 21, 2012 in Martin II addressed the issue of republication, finding that DNLP's restoration of the Articles to its website was not a republication.

Commission. Louis holds fast to his decision to dedicate one or more of his columns in *The Daily News* to these issues, and together with DNLP, denies plaintiff's allegations of recklessness and/or of publishing despite an awareness of probable falsity.

"[R]eckless conduct is not measured by whether a reasonably prudent man would have published or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant[s] in fact entertained serious doubts as to the truth of his publication" (*St. Amant v Thompson*, 390 US at 731). A review of the parties' submissions, including Louis's deposition testimony, fails to reveal that defendants published the Second Article either with knowledge that it contained false information or with reckless disregard for whether or not the information contained therein was false (*see New York Times v Sullivan*, 376 US at 279-280; *Bose Corp. v Consumers Union of U.S., Inc.*, 466 US 485, 511 n 30 [1984]; *Freeman v Johnston*, 84 NY2d at 56-57 [1994]).

When questioned about his decision to use Batra as a source, Louis acknowledged that while he thought about Batra's trustworthiness, he "regarded [himself] as well acquainted with the questions of reliability surrounding Mr. Batra" (see Louis's June 29, 2010 Deposition, at 87 [*id.* at Exh. 22]) and chose to proceed. He pointed out that he addressed the issue in the First Article (*id.* at 88), stating midway through his column that "[s]ome will criticize Batra as too much of an insider to mount a credible attack on Brooklyn's judicial old-boy network. I disagree. Who better to expose a rotten system than a man who once participated in it?"

When questioned about his failure to respond to Regina Felton's email and correct his mistakes in one of his later columns, instead of alluding to it in *The Daily News* blog posting, Louis stated the following:

> Well, the process of trying to explain to people what the whole thing is about would have been complicated and time consuming. I thought the best thing to do and frankly I did not know - - I did not consider it necessarily a material error. It didn't change the substance of the columns that I wrote and I didn't think it warranted that kind of correction.

(*id.* at 158). Louis admitted that his goal in writing about judges was to have them exposed, disciplined and/or removed:

> [F]or years I had been writing about need to clean up the Courts, create an environment and an atmosphere and apparatus, so that judges who stepped out of line or judges that were involved in wrongdoing, especially around judicial elections, would be found, would be exposed, would be disciplined or removed.

(Louis's April 15, 2010 Deposition, at 290-291 [*id.* at Exh. 21]).

With respect to his decision to summarize the complaint in the Karp Action in the Second Article without verifying its (Batra's) factual allegations,[7] Louis responded, in relevant part:

> I feel very much that I don't have to litigate a . . . complex complaint in order to tell the public that . . . complaint has been filed . . . [and that] I'm saying that this is a public document involving in some ways prominent members of the legal and political community. It is my right and privilege as a columnist to relate the substance or what I regard as the important points within those public documents and those disputes to my readers, which is what I did.

(Louis's June 29, 2010 Deposition, at 89-90 [*id.* at Exh. 22]).

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[7] Louis testified that he made one attempt, albeit unsuccessful, to contact Karp's attorney Nancy Ledy-Gurren, Esq.

Finally, when plaintiff's counsel attempted to engage Louis in discussions about a journalist's moral obligation and about the various avenues available to him to check the reliability of his sources and the accuracy of the information, Louis made it clear that he relied on what he referred to as his "journalistic judgement" (Louis's April 15, 2010 Deposition, at 283 [*id.* at Exh. 21]). He stated that the point of his column "is to give my opinion on important issues of the day. In this case I brought forward what I considered an important issue, namely, the allegations contained in the *Riskin v Karp* complaint . . . [T]he idea was to raise this public issue of the underfunding of the [Commission] and explain why that needed to be changed" (*id.* at 283 and 288).

Based upon a review of all the submissions, the plaintiff's arguments concerning Louis's research methods and DNLP's decision to publish the Second Article without verifying the information prior to print and distribution fall short of establishing that defendants "entertained serious doubts as to the truth of [the] publication or acted with a high degree of awareness of . . . probable falsity" (*Kipper*, 12 NY3d at 354 [internal quotations and citations omitted]). Furthermore, even if, as plaintiff argues, Louis and/or DNLP were unprofessional and/or negligent in their fact-checking and/or rush to publication, "such proof of mere negligence does not suffice to establish actual malice by clear and convincing evidence" nor does it establish, by clear and convincing evidence, "a willful avoidance of knowledge" on their part (*id.* at 355; *see also Harte-Hanks Communications, Inc.*, 491 US at 692).

The bar is set high for a public official to recover monetary damages based upon the publication of defamatory misstatements of fact concerning that individual's conduct

while acting in his or her official capacity. "Even a false statement may be deemed to make a valuable contribution to public debate, since it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error.' Mill, On Liberty (Oxford: Blackwell, 1947), at 15; see also Milton, Areopagitica, in Prose Works (Yale, 1959), Vol. II, at 561" (*New York Times v Sullivan*, 376 US at 279 n 19). The court's have long recognized that:

> This decidedly high standard of culpability has been set because "it is essential that the First Amendment protect some erroneous publications as well as true ones" (*see St. Amant*, 390 US at 732). The actual malice standard recognizes that falsehoods relating to public figures are "inevitable in free debate" and that publishers must have sufficient "breathing space" (*see Hustler Magazine, Inc. v Falwell*, 485 US 46, 52 [1988]) so that the First Amendment's commitment to "the principle that debate on public issues should be uninhibited, robust, and wide-open" will be realized (*see New York Times*, 376 US at 270).

(*Kipper*, 12 NY3d at 355).

As plaintiff has failed to present sufficient evidence to preclude summary judgment dismissing the complaint, the motion and cross motion to exclude certain expert testimony (motion sequence number 012) have been rendered moot.

Accordingly, it is

ORDERED that defendants Daily News, LP and Errol Louis's motion for summary judgment (motion sequence number 010) is granted and the complaint is dismissed in its entirety against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the motion and cross motion (motion sequence number 012) are denied as moot.

The foregoing constitutes this court's Decision and Order. Courtesy copies of this Decision and Order have been provided to counsel for the parties.

Dated: New York, New York
December 3, 2012

Martin Shulman

HON. MARTIN SHULMAN, J.S.C.