

Gugliotta v Wilson

2016 NY Slip Op 32981(U)

April 12, 2016

Supreme Court, Suffolk County

Docket Number: 605584-15

Judge: Denise F. Molia

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PUBLISH

Index No.: 605584-15

**SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY**

PRESENT:

Hon. DENISE F. MOLIA,
Justice

ANTHONY GUGLIOTTA,

Plaintiff,

- against -

BARBARA WILSON,

Defendant.

CASE DISPOSED: NO
MOTION R/D: 9/4/15
SUBMISSION DATE: 1/15/16
MOTION SEQUENCE No.: 001 MD

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Upon the following papers filed and considered relative to this matter:

Notice of Motion dated July 14, 2015; Affirmation in Support dated July 14, 2015; Exhibits A through F annexed thereto; Affirmation in Opposition dated August 27, 2015; Exhibits A and B annexed thereto; Reply Affirmation dated September 3, 2015; Plaintiff's Memorandum of Law; and upon due deliberation; it is

ORDERED, that the motion by defendant, pursuant to CPLR 3211(a)(7), for an Order dismissing the Complaint on the ground that the Complaint fails to state a cause of action, is denied.

The Complaint seeks compensatory and punitive damages as a result of certain alleged defamatory statements, made by the defendant about the plaintiff, during and after a public hearing that was held before the Board of Architectural Review and Historic Preservation of the Incorporated Village of Southampton ("Board") on April 13, 2015.

Prior to the service of an Answer, the defendant has moved for dismissal of the Complaint, contending(1) that her statements are not actionable, even if defamatory, because they were made during the pendency of a quasi-judicial proceedings and are absolutely privileged; and (2) that even if her statements were not absolutely privileged, nevertheless they were not reasonably susceptible to a defamatory meaning and, therefore, are not actionable.

The plaintiff and defendant are next door neighbors. On October 9, 2014, the defendant filed an application with the Board seeking a certificate of appropriateness authorizing defendant to construct an outside staircase and deck on the second floor of her residence. On April 13, 2015 a public hearing on the defendant's application, along with other pending applications, was held at the Southampton Village Hall. In addition to the defendant and plaintiff, Village officials and employees and members of the public were in attendance. The proceeding was aired in its entirety for television viewing and published on the Village's website.

The following excerpts of statements made by the plaintiff, defendant and Board members during the course of the hearing. The plaintiff's motion papers have indicated certain statements made by defendant which are alleged to be defamatory, and these will be set forth in bold:

From Anthony Gugliotta's testimony, appearing on the transcript tape at times 1:19:53 to 1:24:04:

Anthony Gugliotta: Anthony Gugliotta, 161 Elm Street. I'm the other neighbor. I was just mentioned about the staircase that's on my existing house, which was existing from 1920 I believe. I'm against it, I was against the balconies but I guess I wasn't here for the last meeting. I did send a letter objecting to the second floor balcony. Now, I'm here for the first time. A stairway, and I'm looking at it, I'm calculating a stairway to be somewhere along 20 feet in length I believe, I would think.

The prior person just mentioned lights burning at night. So we will have lights on the first floor and lights on, on the second floor. And having to count on the person to turn the lights off at night doesn't always happen because the lights on the lower level at this point are on 24/7. And the distance of the staircase to my property will be ten feet. And as far as the purpose of the staircase, I don't see a reason for the staircase. The house is two-family. It's been rented for years as a two-family. Going up th front stairs and coming out the back stairs, no issues ever before.

And now all of a sudden there's an issue that we need, she needs, a second staircase for the rear for her daughter's safety, if I remember the last time. Her daughter has been living there for the last, since, if I remember, for the last 16 years - has a bedroom downstairs and she has a bedroom upstairs. So I don't see any issue that she needs a staircase to get out of the house in the event of a fire.

Chairman Highsmith: I won't get into parents' needs to make sure their daughter or child is protected.

Anthony Gugliotta: But it was brought up. It was brought up.

Chairman Highsmith: Being a father of a daughter, trust me, I'd build an elevator if I could.

Anthony Gugliotta: And the person to the north, I mean the ARB had me put in hedging, which blocks the view of Ms. Wilson's house. Unfortunately, the person to the, excuse me, to the north is going to be looking - when he comes out of his house, he'll be looking at a staircase 24/7 with lights on. And depending on who she rents it to, traffic up and down the

stairs, especially in the summertime. I probably have a few more things, but maybe I'll think of them before the meeting is over.

From Barbara Wilson's testimony, appearing on the transcript tape at times 1:27:15 to 1:34:37:

Barbara Wilson: May I respond to some of the issues that there were?

Chairman Highsmith: Sure.

Barbara Wilson: First of all, I'll try to say this calmly as a mother . . . (Wilson turns towards Gugliotta in audience) **I'm so glad you're worried about my daughter.**

Chairman Highsmith: No, please address the, address (Wilson turns to face the Board).

Barbara Wilson: **Since he's so concerned about my daughter I'll be enforcing the, um, settlement that we entered into where his camera . . .**

Chairman Highsmith: Irre-irrelevant to - (Wilson talks over Chairman Highsmith)

Barbara Wilson: . . . **is not supposed to be on my daughter's bedroom window.**

Chairman Highsmith: Please. Irrelevant before this Board. Please.

Barbara Wilson: Thank you. Just when people bring up my daughter it gets a little upsetting to me.

Chairman Highsmith: Oh I understand that. Just, as I stated before -

Barbara Wilson: **Especially when grown men want to look at little girls.**

Chairman Highsmith: Whoa . . . Uh . . . Don't want to . . . Don't want to get into that.

Barbara Wilson: I don't want to get into it either.

After the formal adjournment of the defendant's hearing, but prior to the Board's adjournment for the evening, and outside visual range of the camera, the camera's microphone appears to have recorded the defendant stating to the plaintiff, in the presence of third-parties, **"You better stay away from my daughter."** This statement was recorded on the transcript tape at 1:36:50.

On May 27, 2015, the plaintiff filed his complaint alleging that the defendant had made defamatory statements about him both during and after the open proceedings before the Board. The complaint alleges that the aforesaid statements in bold, each by themselves and in context with each other, falsely and in a defamatory manner, accuse plaintiff of engaging in sexual predator behavior directed at children, in general, and defendant's infant daughter, in particular, and exposes him to public contempt, ridicule, aversion, disgrace, scorn, shame and induces an evil and immoral opinion

of him in the minds of others. On July 14, 2015, defendant filed this pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a)(7), contending that such statements are absolutely privileged and, in any event, are not reasonably susceptible to having a defamatory meaning.

The allegation of the Complaint have sufficiently set forth causes of action sounding in slander and libel so as to preclude dismissal of the Complaint at this juncture. Whether the plaintiff's statements were actually privileged or susceptible to a defamatory meaning are issues of fact that require the production of more evidence than is presently before the Court. Determination of such matters would require the filing of an Answer by the defendant and the depositions of the parties and other witnesses.

The foregoing constitutes the Order of this Court.

Dated: April 12, 2016


HON. DENISE F. MOLIA A.J.S.C.