

St. Louis v NYP Holdings, Inc.
2017 NY Slip Op 30261(U)
February 6, 2017
Supreme Court, New York County
Docket Number: 156522/2016
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32**

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JUNIOR ST. LOUIS,

Plaintiff,

-against-

**NYP HOLDINGS, INC., d/b/a "NEW YORK POST,"
and JULIA MARSH,**

Defendants.
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**Index No. 156522/2016
Motion Seq: 001**

DECISION & ORDER

HON. ARLENE P. BLUTH

The motion by defendants to dismiss plaintiff's verified complaint is granted.

Background

This defamation action arises out of plaintiff's application for employment with the NYC Department of Correction (DOC). DOC rejected plaintiff's application based, in part, on his criminal history which included arrests for marijuana possession and DUI as well as summonses for non-payment of fares and possession of an open container of alcohol in public. After DOC rejected his application for employment, plaintiff filed an Article 78 petition that was later rejected.

When plaintiff filed the Article 78 petition, New York Post reporter (defendant) Julia Marsh wrote an article about the proceeding. Plaintiff objects to purportedly false statements in the article and to the headline which proclaimed "Drunk driving-pothead thinks he's fit to be a corrections officer."

Defendants claim that the article fairly and accurately depicted the reasons that DOC

rejected St. Louis' employment application. Defendants insist that the article stressed that certain charges against plaintiff were dropped and included a quote from plaintiff.

Defendants first argue that this suit should be dismissed because it is protected under New York Civil Rights Law § 74 as a fair and accurate report of a judicial proceeding. Defendants also argue that the article's headline is a fair index of the purportedly accurate material in the news article. Finally, defendants argue that they did not publish the article with gross irresponsibility.

In opposition, plaintiff asserts that his libel and libel per se claims should stand because the headline, as well as certain statements in the article, are demonstrably false. Plaintiff insists that a minimal amount of investigation would have revealed that specific assertions in the article were untrue.

Discussion

“On a CPLR 3211 motion to dismiss, the court will accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Nonnon v City of New York*, 9 NY3d 825, 827, 842 NYS2d 756 [2007] [internal quotations and citation omitted]).

“Making a false statement that tends to expose a person to public contempt, hatred, ridicule, aversion or disgrace constitutes defamation” (*Thomas H. v Paul B.*, 18 NY3d 580, 584, 942 NYS2d 437 [2012]). “Generally, only statements of fact can be defamatory because statements of pure opinion cannot be proven untrue” (*id.*). “Libel is broken down into two discrete forms – libel per se, where the defamatory statement appears on the face of the

communication, and libel per quod, where no defamatory statement is present on the face of the communication but a defamatory import arises through reference to facts extrinsic to the communication” (*Ava v NYP Holdings, Inc.*, 64 AD3d 407, 412, 885 NYS2d 247 [1st Dept 2009]).

“The rule is general that both the headline and the item to which it is attached are to be considered as one document in determining the effect of an article complained of as being defamatory” (*Cole Fischer Rogow, Inc. v Carl Ally, Inc.*, 29 AD2d 423, 426, 288 NYS2d 556 [1st Dept 1968] *affd* 25 NY2d 943, 305 NYS2d 154 [1969]).

“Section 74 of the Civil Rights Law provides, in relevant part that ‘(a) civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding, or other official proceeding.’ For a report to be characterized as ‘fair and true’ within the meaning of the statute, thus immunizing its publisher from a civil suit sounding in libel, it is enough that the substance of the article be substantially accurate” (*Holy Spirit Assn. for Unification of World Christianity v New York Times Co.*, 49 NY2d 63, 67 424 NYS2d 165 [1979] quoting Civil Rights Law § 74).

As an initial matter, although plaintiff insists that the news article falsely claims that plaintiff was arrested for possession of more than 25 grams of marijuana, that is exactly how DOC characterized plaintiff’s arrest. DOC stated in its case summary that “the candidate was arrested for criminal possession of marijuana (5th degree) aggregate weight more than 25 grams”(affirmation of plaintiff’s counsel, exh 2). This same case summary states that “Mr. St. Louis demonstrated he has not learned from his past mistakes by receiving summonses for the same infraction and last but not least, driving after consuming alcohol” (*id.*).

Critically, this DOC case summary states that plaintiff's employment application was rejected because he drove after consuming alcohol even though he pled guilty to a lesser offense, reckless driving, that did not involve an admission that he drove under the influence of alcohol. This case summary was attached as exhibit 4 to plaintiff's Article 78 petition challenging his disqualification and defendant Marsh swears that she reviewed this document (as well as the Article 78 petition and its other exhibits) while drafting the subject article (aff of Marsh ¶¶ 7-8). Defendants should not be faulted for parroting DOC's findings.

Marsh's headline is unfortunate, sensationalist and drafted simply to garner attention. But the headline and the article, when considered together as one document, can only be characterized as a fair and true report of the substantive issues in plaintiff's Article 78 proceeding. The article makes clear that the marijuana charges were dropped and documents plaintiff's insistence he did not drive while drunk. This conclusion is further supported when viewing the article with the requisite degree of liberality (*see Holy Spirit*, 49 NY2d at 68). When considering the article in its entirety, the presence of an inaccurate statement does not require a finding that Civil Rights Law § 74 does not apply.

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted and the clerk is directed to enter judgment accordingly.

This is the Decision and Order of the Court.

Dated: February 3⁶, 2017
New York, New York

ARLENE P. BLUTH
J.S.C.



ARLENE P. BLUTH, JSC