

<b>Dae Hyun Chung v Google, Inc</b>
2020 NY Slip Op 31114(U)
April 29, 2020
Supreme Court, New York County
Docket Number: 451373/2017
Judge: Kathryn E. Freed
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

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DAE HYUN CHUNG,

Plaintiff,

- v -

GOOGLE, INC, ABC CORPORATION, IHATED HC,
RAYMOND YANG

Defendant.

-----X

INDEX NO. 451373/2017

MOTION DATE 02/04/2020

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 192, 193, 194, 195, 196

were read on this motion to/for DISMISS

In this defamation action, defendant John Doe, identified in the caption as "IHATEDHC," moves to dismiss the second amended complaint of plaintiff Dae Hyung Chung ("Chung") based on the doctrine of the "case of the law and/or, pursuant to CPLR 3211(a)(7), for failure to state a cause of action." (Doc. 192). After a review of the motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is granted.

FACTUAL AND PROCEDURAL BACKGROUND:

The underlying facts of this case are set forth in detail in the decision and order of this Court entered May 20, 2019 ("the 5/20/19 order") (Doc. 189), which dismissed the second amended complaint as against defendant Raymond Yang ("Yang") on the grounds that, inter alia, Chung failed to state a cause of action with respect to each of its claims: (1) libel; (2) tortious interference with contract and prospective economic advantage; and (3) injunctive relief (Doc.

189). In the instant motion, IHATEDHC moves for the same relief awarded to Yang by the 5/20/19 order, arguing, *inter alia*, that the doctrine of the law of the case applies to the identical causes of action asserted against IHATEDHC (Doc. 196 at 9-10).

#### LEGAL CONCLUSIONS:

“‘The doctrine of law of the case’ is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned” (*Martin v City of Cohoes*, 37 NY2d 162, 165 [1975] [internal quotation marks and citations omitted]; see *Matter of Goldstein v Zabel*, 146 AD3d 624, 631 [1st Dept 2017]). The doctrine “applies only to legal determinations that were necessarily resolved on the merits in [a] prior decision” (*Baldasano v Bank of N.Y.*, 199 AD2d 184, 185 [1st Dept 1993]), and it “contemplates that the parties had a full and fair opportunity to litigate the initial determination (*PHH Mtge. Corp. v Burt*, 176 AD3d 1242, 1243 [2d Dept 2019] [internal quotation marks and citations omitted]).

This Court agrees that dismissal of the second amended complaint is warranted as against IHATEDHC under the doctrine of the law of the case. In the 5/20/19 order, this Court reasoned that the three causes of action asserted against Yang failed to state a cause of action because, *inter alia*, the blog posts that served as the basis for the libel claim constituted nonactionable opinion; that Chung failed to allege the existence of a contract so as to sustain his claim for tortious interference with contract and prospective economic advantage; and that he failed to establish the irreparable harm necessary for injunctive relief (Doc. 189). All of the allegations in the second amended complaint use the singular “defendant” and, thus, Chung fails to particularize whether the alleged defamatory statements were made by Yang or IHATEDHC. Since the underlying

allegations against Yang are identical to those asserted against IHATEDHC, the motion is granted (see *Barklee 94 LLC v Oliver*, 167 AD3d 415, 416 [1st Dept 2018]; *Dart Direct, Inc. v Urban Express/NJ LLC*, 2016 NY Slip Op 30847[U], 2016 NY Misc LEXIS 1704, \*8-9 [Sup Ct, NY County 2016]).

The remaining arguments are either without merit or need not be addressed given the findings above.

Therefore, in accordance with the foregoing, it is hereby:

**ORDERED** that defendant IHATEDHC's motion to dismiss the second amended complaint based on the doctrine of the law of the case is granted without opposition, and the second amended complaint is dismissed; and it is further

**ORDERED** that, within 20 days after this order is uploaded to NYSCEF, counsel for defendant IHATEDHC shall serve a copy of this order, with notice of entry, on plaintiff, as well as on the County Clerk (60 Centre Street, Room 141 B), in accordance with the e-filing protocol, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.govisupctmanh)]; and it is further

ORDERED that this constitutes the decision and order of the Court.

4/29/2020

DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE