

<b>Rosenwasser v Carroll</b>
2011 NY Slip Op 32832(U)
October 11, 2011
Supreme Court, New York County
Docket Number: 105186/11
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

ROSENWASSER, MATTHEW

INDEX No. 105186/11

Plaintiff,

MOTION DATE \_\_\_\_\_

-v-

MOTION SEQ. No. 001

JOHN CARROLL, et al.,

MOTION CAL No. \_\_\_\_\_

Defendants.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for \_\_\_\_\_.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1 + 4

Answering Affidavits- Exhibits \_\_\_\_\_

2

Replying Affidavits \_\_\_\_\_

3 **FILED**

CROSS-MOTION: \_\_\_\_\_ YES  NO

OCT 13 2011

Upon the foregoing papers, it is ordered that this motion is:

NEW YORK  
COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 10/11/11

*Donna M. Mills*  
J.S.C.

Check one: \_\_\_\_\_ FINAL DISPOSITION

**DONNA M. MILLS, J.S.C.**  
NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 58

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MATTHEW J. ROSENWASSER,

Plaintiff,

- against -

JOHN CARROLL, HEAD OF SECURITY,  
FORDHAM UNIVERSITY; MELINDA JOYNER,  
SECURITY GUARD, SUMMIT SECURITY;  
FORDHAM UNIVERSITY; and SUMMIT SECURITY  
SERVICES, INC.,

Defendants.  
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INDEX NO.  
105186/11

DECISION/ORDER

**FILED**

OCT 13 2011

DONNA M. MILLS, J:

NEW YORK  
COUNTY CLERK'S OFFICE

Motions designated sequence numbers 001 and 002 are consolidated for disposition.

Before this Court are motions by the above-captioned defendants seeking an Order dismissing the above-captioned action, pursuant to CPLR 3211(a)(7), on the grounds that the complaint fails to state a cause of action.

The Verified Complaint alleges defamation (First, Fourth, Sixth and Seventh Causes of Action ("Defamation Claims")) and that the Fordham Defendants failed to follow Fordham's Sexual Harassment Policy in their investigation of a sexual harassment complaint raised by Co-Defendant Melinda Joyner ("Ms. Joyner"), an employee of Summit Security Services, Inc ("Summit").

According to the Complaint, the plaintiff is a former student who had taken various classes at Fordham University's Manhattan campus over the years and who in January 2010 purchased a one-year library access pass. It is alleged that on May 17, 2010, he was removed from the library by security personnel and brought to the Security Supervisor's office at which time he was questioned concerning encounters with the defendant, Ms. Joyner. Specifically, according to the Complaint, he was asked by Fordham Security Supervisor Dan Cronin: if he followed Ms. Joyner in a car; if he flashed his headlights at her; if he followed her to the uptown #1 train at Columbus Circle; and if he loitered by the vending machine to wait for her to exit the locker room.

Plaintiff then, according to the complaint, ultimately received a letter from the defendant, John Carroll, permanently banning him from the Fordham campus and threatening arrest if he appeared on campus.

Plaintiff now alleges that Ms. Joyner field a report and defamed his character by accusing him of sexual harassment and stalking. Plaintiff also maintains that Mr. Carroll defamed his character by sending him the letter banning him from Fordham.

On a motion to dismiss pursuant to CPLR 3211(a)(7) the court must give the allegations of the complaint, as supplemented by any additional material submitted by the plaintiff, "their most favorable intendment" (Arrington v. New York Times Co., 55 N.Y.2d 433, 442 [1982]). Even under that liberal standard, it is clear that the plaintiff has no claim for defamation. To constitute defamation, plaintiff must prove that defendants made a false statement, published that statement to a third party without privilege, with fault measured by at least a negligence standard, and the statement caused special damages or constituted defamation per se (see Dillon v City of New York 261 AD2d 34, 38 [1999]).

Here, the complaint alleges defamation as against Mr. Carroll and Ms. Joyner. This court finds that the questions asked by Mr. Cronin in his investigation of plaintiff do not constitute false statements as required to prove defamation. The one statement in which plaintiff alleges was made accusing him of following Ms. Joyner was related to the investigation and thus subject to a qualified privilege (see Stukuls v State, 53 AD2d 368 [1976]).

Plaintiff's claim for intentional infliction of emotional distress must similarly be dismissed. For a claim of intentional infliction of emotional distress, a plaintiff "must allege more than conduct that causes inconvenience or embarrassment, even if such conduct continues for a protracted period of time" (Doin v Dame, 82 AD3d 1338, 1340 [2011]). The complaint must allege that the defendant's conduct was " 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency . . . and [was] utterly intolerable in a civilized community' " (Murphy v American Home Prods. Corp., 58 NY2d 293, 303 [1983], quoting Restatement [Second] of Torts § 46, Comment d). Moreover, plaintiff failed to present medical evidence of severe emotional distress, and as a result, defendants are entitled to dismissal of plaintiff's speculative cause of action for intentional infliction of emotional distress (see Waentas v Johnes,

257 AD2d 352, 353 [1999]).

Plaintiff's remaining causes of action alleging that the Fordham Defendants failed to follow University procedures in permanently banning him from campus, does state a cause of action pursuant to the CPLR. The cases cited by the Fordham Defendants, that suggest plaintiff's only recourse was an Article 78 proceeding and not this plenary action, are not persuasive.

Accordingly, it is

ORDERED that the motion of the Defendants to dismiss the complaint is granted to the extent of dismissing the first, fourth, fifth, sixth and seventh causes of action; it is further

ORDERED that the motion of defendants Melinda Joyner and Summit Security to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED the remaining defendants, John Carroll and Fordham University are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the remaining parties are directed to appear for a preliminary conference in Room 574, 111 Centre Street, on January, 2012, at <sup>10:00</sup> 10.00 AM.

**FILED**

OCT 13 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 10/11/11

ENTER:

*[Handwritten Signature]*

J.S.C.

*[Faint, illegible text]*

**FILED**

OCT 13 2011

NEW YORK  
COUNTY CLERK'S OFFICE