

Liddie v Collymore

2012 NY Slip Op 32520(U)

September 28, 2012

Supreme Court, Queens County

Docket Number: 19596/2011

Judge: Robert J. McDonald

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

ALLENE LIDDIE, Index No.: 19596/2011
Plaintiffs, Motion Date: 05/24/12
- against - Motion No.: 31

CHARLES COLLYMORE, UNITED COMMUNITY Church of God, First Church of God,
VIRGINIA ROBINSON, EASTERN NEW YORK General Assembly of the Church of God
CHRISTIAN BIBLE INSTITUTE a/k/a Christian Bible Institute and Eastern
NEW YORK GENERAL ASSEMBLY OF THE Church of God,
Defendants. Motion Seq.: 2

- - - - - x

CHARLES COLLYMORE,
Third-Party Plaintiff,
-against-

MICHAEL LIDDIE,
Third-Party Defendant

-----x

The following papers numbered 1 to 21 read on this motion by third-party defendant, MICHAEL LIDDIE, for an order pursuant to CPLR 3211(a)(7) dismissing the third-party complaint on the ground that it fails to state a cause of action; and the cross-motion of defendant/third-party plaintiff, CHARLES COLLYMORE, for an order, pursuant to CPLR 3025(b), granting the third-party plaintiff leave to amend the third-party complaint:

Papers
Numbered

Notice of Motion-Affirmation-Exhibits.....	1 - 5
Cross-Motion and Affirmation in Opposition.....	6 - 11
Opposition to Cross-Motion.....	12 - 16
Reply Affirmation.....	17 - 21

Upon the foregoing papers this motion is determined as follows:

In the main action, commenced on August 18, 2011, plaintiff Allene Liddie alleges that on December 2, 2010, while attending a bible study class at United Community Church of God, located at 110-10 167th Street, Jamaica, New York, she was sexually assaulted by defendant/third-party plaintiff, Charles Collymore, the Pastor of United Community Church of God.

In his amended verified third-party complaint, dated November 2, 2011, Charles Collymore states that as a result of the plaintiff's allegations concerning the sexual assault he was arrested and charged with rape in the third degree. He states that all of the criminal charges were ultimately dismissed and his record sealed. Collymore states that on April 13, 2011, third-party defendant, Michael Liddie, published a statement which stated in sum and substance that "Pastor Collymore Pleads Guilty" and attached a copy of a printout from a court website, "WebCrims" which stated that Collymore pled guilty to attempted rape in the third degree. The third-party complaint asserts causes of action for libel/libel per se and slander/slander per se stating that Michael Liddie's written statements and e-mails as well as his spoken accusations were made by him with malicious intent, ill will and malevolence and with reckless disregard of the truth, knowing that the statement on the website was false. Collymore states that as a result of the publication of the false statement to members of his church he has been caused to suffer extreme emotional distress, public embarrassment, humiliation, contempt, ridicule, scorn, derision and disgrace, as well as sustaining damages in his professional capacity including loss of financial income.

In the instant motion, Liddie contends that the third-party complaint must be dismissed pursuant to CPLR 3211(a)(1) and (a)(7) on the ground that it fails to state a cause of action for either libel or slander and in addition that documentary evidence shows that his published statement was true. Liddie asserts that the causes of action for libel and slander fail to allege the time, place and manner of the false statement and fails to

specify to whom it was made (citing Arsenault v Forquer, 197 AD2d 554 [2d Dept. 1994][time, manner, and audience, must be alleged in order for a cause of action sounding in libel to succeed]; Vardi v Mutual Life Insurance Co. of New York, 136 AD2d 453 [1st Dept. 1988]). In addition, Liddie contends that he has a complete defense to defamation as the statements made by him were true and were taken from the New York State governmental website known as "WebCrimis." In support of the motion, Liddie submits a copy of a print-out regarding Collymore's record in the subject case taken from the New York State Unified Court System, WebCrimis, dated April 11, 2011. The record states that Collymore was arrested on December 14, 2010 and charged with rape in the third degree, an E Felony, under Penal Law § 130.25(3). It also states that Collymore pled guilty to attempted rape in the third degree under Penal Law § 110/130.25 on April 11, 2011 in AP4S before Judge Koenderman. The record also indicates that there was an added charge of disorderly conduct, a violation under Penal Law § 240.20, but does not indicate the disposition of that charge.

Liddie contends that the Court records indicate that on April 11, 2012, Collymore accepted a reduced plea offer to attempted rape in the third degree. As a result Liddie contends that the documentary evidence shows that the the causes of action for libel and slander must be dismissed as Liddie had no reason to believe that the information contained in the court website was not true. Liddie states that at no time did did he ever accuse Collymore of raping anyone. He states that he only published a copy of what was previously published on the New York State website which is a record open and accessible to the public. Liddie asserts that if the information on the website was incorrect than Collymore's action for defamation should properly be brought against the State.

In opposition to the motion, Collymore cross-moves for leave to amend the third-party complaint based upon the e-mail which was sent by Liddie to seven recipients who were members of the Eastern General Assembly of the Church of God on April 13, 2011. Collymore states that the recipients belong to a group of members of the religious community who oversee Pastor Collymore and his church. Counsel submits a copy of the email which is entitled "Pastor Collymore Pleads GUILTY!!!!" Collymore claims that the information contained in Liddie's email is false because Collymore never pled guilty to attempted rape, that the information contained in the website was a mistake and moreover, that Liddie knew or should have known that the information on the website was incorrect.

Based upon the facts contained in the email, such as to whom it was sent and the time, place and manner of its publication, Collymore moves to amend the third-party complaint in the form annexed to the cross-motion to include the particulars of the disseminated email. Counsel also requests permission to amend the complaint to state that the information contained on the website was false or was an error made by the webcrims website. Counsel asserts that the defendant had no authority to disseminate or circulate the information contained on the website and that he violated the specified terms of the website by not verifying the accuracy of the information contained therein. The amended complaint states that defendant acted with gross negligence, with malice, and with ill will in disseminating the incorrect information contained on the court website because he knew the information was incorrect as Liddie is an attorney and was present in criminal court during the course of the legal proceedings as well as on the date that the matter was resolved.

In further opposition to the motion to dismiss, Collymore attaches a copy of a Certificate of Disposition which states that on November 1, 2011 all charges were dismissed against Collymore in Part AL4S by Judge Suzanne Melendez. Counsel contends, therefore, that the amended complaint has merit and that the complaint should not be dismissed as Liddie, who was allegedly in court on the date of the plea and was in close contact with the district attorney's office during the pendency of the case, knew that Collymore did not plead guilty to attempted rape and knew, as well, that the information on the court website was not true. Collymore asserts that Liddie was grossly negligent in failing to confirm the accuracy of the information found on e-courts.

In reply, Liddie states that after Collymore was arrested on December 14, 2010, a committee of five pastors was formed to investigate the allegations against Collymore. Liddie asserts that he was encouraged by the committee to communicate with them any and all information relating to the investigation. Liddie states that it was in this confidential capacity that he disseminated the information taken from WebCrims to the committee. Liddie states that he had no reason to believe the information was untrue, stating that he was not in court on April 11, 2012, the date Collymore accepted a plea bargain. Collymore reiterates that he did not publish a false statement but, in effect, merely sent a copy of information that was contained on the New York State website to the pastors to aid in their investigation.

On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (Greer v National Grid, 89 AD3d 1059 [2d Dept. 2011]; also see Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314 [2002]; Leon v Martinez, 84 NY2d 83[1994]; Prestige Caterers, Inc. v Siegel, 88 AD3d 679[2d Dept. 2011]; Peery v United Capital Corp., 84 AD3d 1201 [2011]; Sokol v Leader, 74 AD3d 1180 [2d Dept. 2010]).

Generally, the test of the sufficiency of the complaint is whether it gives sufficient notice of the transaction, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments. (see JP Morgan Chase v J.H. Elec. of New York, Inc., 69 AD3d 802 [2d Dept. 2010]). However, a court may consider evidentiary material submitted by a defendant in support of a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) (see CPLR 3211[c]; Sokol v Leader, 74 AD3d 1180 [2d Dept. 2010]). When evidentiary material is considered" on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the criterion is whether the plaintiff has a cause of action, not whether he or she has stated one (see Basile v Wiggs, 98 AD3d 640 [2d Dept. 2012]).

Upon review and consideration of the third-party defendant's motion, the cross-motion of third-party plaintiff to amend the complaint and the respective replies thereto, this court finds as follows:

First, Collymore's cross-motion to amend the complaint pursuant to CPLR 3025(b) to clarify the transactions with more particularity, as set forth in the form annexed to the cross-motion, is granted. "Motions for leave to amend pleadings should be freely granted absent prejudice or surprise to the opposing party, unless the proposed amendment is devoid of merit or palpably insufficient" (Janssen v Incorporated Vil. of Rockville Ctr., 59 AD3d 15 [2d Dept. 2008]; Smith-Hoy v AMC Prop. Evaluations, Inc., 52 AD3d 809[2d Dept. 2008]; Bennett v Long Is. Jewish Med. Ctr., 51 AD3d 959 [2d Dept. 2008]). Here, Collymore's proposed amended complaint seeks to cure certain deficiencies in the initial complaint by facts which were subsequently obtained by Collymore from the subject emails. The proposed amendments are not palpably insufficient or clearly devoid of merit and are premised upon the same facts, transactions or occurrences alleged in the original complaint (see Castor Petroleum, Ltd. v Petroterminal de Panama, S.A., 90 AD3d 424 [1st Dept. 2011]).

Further, a court may consider any factual submissions made in opposition to a motion to dismiss in order to remedy pleading defects (see CPLR 3211[c]; Harris v Barbera, 947 NYS2d 548 [2d Dept. 2012]; Quinones v Schaap, 91 AD3d 739, 740; Ryan v Cover, 75 AD3d 502 [2d Dept. 2010]).

The motion by Liddie to dismiss the complaint for failure to state a cause of action is denied. The elements of defamation are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se (see Dillon v City of New York, 261 AD2d 34 [1st Dept. 1999]). CPLR 3016 (a) requires that in a defamation action the particular words complained of must be set forth in the complaint. The complaint also must allege the time, place and manner of the false statement and specify to whom it was made. This court finds that the complaint, as amended, taken together with the emails submitted by Collymore is sufficient to plead all of the elements of a cause of action for defamation.

Second, "under CPLR 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (Matter of Chin, 79 AD3d 867[2d Dept. 2010] citing Leon v Martinez, 84 NY2d 83 [1994]). Liddie claims that he merely republished information from the website which was public knowledge and which he had no reason to believe was not the truth. As such, he claims that the truth provides a complete defense to the causes of action for defamation as no libelous or slanderous information was ever disseminated or published against Collymore.

However, in view of the fact that the charges were ultimately dismissed and sealed it appears that there is a question as to whether the information contained on the website was a mistake. Collymore, states in an affidavit that he did not plead guilty to rape in the third degree. Although Liddie states that he had no reason to know that the website may have contained incorrect information when he disseminated same, there is a question of fact as to whether he knew or should have known that the information was incorrect. Collymore's counsel alleges that Liddie was in court during the proceedings and that he acted as a representative and liaison on behalf of the complainant and the District Attorney's office. If such contention is true, then Liddie may have had knowledge that the plea was to another charge, rather than rape in the third degree, and if so, the dissemination that he pled guilty to rape in the third degree

could be considered by a jury to be an intentional or reckless disregard of the facts. Liddie, however, claims that he was not in Court on April 11, 2012, the date Collymore pled guilty to a reduced plea. Further, the website contains a disclaimer stating that "because the transcription or other errors may arise when compiling the information provided on the website, users should verify the accuracy of the information by consulting original court records or sources. The Unified Court System is not responsible for consequential use of website errors." Thus, there is a further question of fact as to what efforts if any Liddie made to verify the accuracy of the website's information prior to disseminating same, whether he had a duty to take the proper steps to confirm the information contained on the website and whether the failure to verify the accuracy constitutes negligence or malicious intent.

Accordingly, this court finds that the documentary evidence submitted does not resolve all factual issues as a matter of law and does not conclusively establish a defense to the asserted claims. In view of the foregoing, it is hereby,

ORDERED, that the cross-motion of the third party plaintiff to amend the third-party complaint is granted and the amended complaint is deemed served upon third-party defendant Michael Liddie in the form annexed to the plaintiff's motion, and it is further,

ORDERED, that the motion by the third-party defendant to dismiss the amended third-party complaint for failure to state a cause of action is denied.

Dated: Long Island City, N.Y.
September 28, 2012

ROBERT J. MCDONALD
J.S.C.