Williams v United States of Am. Cricket Assn.

2013 NY Slip Op 32041(U)

August 30, 2013

Supreme Court, New York County

Docket Number: 104189/2012

Judge: Richard F. Braun

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This opinion is uncorrected and not selected for official publication.

SCANNED ON 9/4/2013

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. RICHARD F. BRAUN J.S.C. PART 23

Justice

Index Number : 104189/2012
WILLIAMS, KENWYN S.
vs.
U.S.A. CRICKET ASSOCIATION, et al
SEQUENCE NUMBER : 001
DISMISS

INDEX NO. _____
MOTION DATE 5/23/13
MOTION SEQ. NO. _____

The following papers, numbered 1 to ____, were read on this motion to/for dismiss the Complaint

Notice of Motion/~~Order to Show Cause~~ — Affidavits — Exhibits _____ | No(s). 1,2

Answering Affidavits — Exhibits _____ | No(s). 3

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted to the extent of dismissing the Complaint as to defendants Gordon Alphonso, Marshall Beil, Robert M. Tyler, and McDavid Woods, and it is further

ORDERED that the Clerk is directed to enter judgment accordingly, and the remaining claims are severed and shall continue, and it is further ORDERED that a total of $1100 in costs have been awarded to said defendants against plaintiff as constituted the decision and order of this Court. See separate Opinion.

FILED

SEP 04 2013

NEW YORK
COUNTY CLERK'S OFFICE

Dated: New York, New York, August 30, 2013

ENTER: _____, J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

1. CHECK ONE: ..... ☐ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 23

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KENWYN S. WILLIAMS

Index No. 104189/12

Plaintiff,

OPINION

- against -

UNITED STATES OF AMERICA CRICKET ASSOCIATION, JOHN THICKETT, GLADSTONE DAINTY, MICHAEL GALE, KEITH GILL, RAFEY SYED, BRIAN WALTERS, GORDON ALPHONSO, individually, MARSHALL BIEL, individually, ROBERT M. TYLER, individually, MCGUIREWOODS.,

Defendants.

FILED
SEP 04 2013
NEW YORK
COUNTY CLERK'S OFFICE

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RICHARD F. BRAUN, J.:

Pro se plaintiff Kenwyn Williams brought this action in which the verified complaint contains three causes of action: the first for libel, the second for slander, and the third for "conspiracy to deny opportunities." Defendants McGuireWoods, and three McGuireWoods attorneys, Gordon Alphonso (Alphonso), Marshall Beil (Beil), and Robert M. Tyler (Tyler), move to dismiss the complaint for failure to state a cause of action, pursuant to CPLR 3211 (a) (7), and for sanctions pursuant to 22 NYCRR 130-1.1.

On a motion pursuant to CPLR 3211 (a) (7), a complaint must be liberally construed, the factual allegations therein must be accepted as true, the plaintiff must be given the benefit of all favorable inferences therefrom, and the court must decide only whether the facts alleged fall under any recognized legal theory (*Miglino v Bally Total Fitness of Greater N.Y., Inc.*, 20 NY3d 342, 351

[2013]; *Molina v Phoenix Sound*, 297 AD2d 595, 596 [1st Dept 2002]). "Allegations of defamation present, in the first instance, an issue of law for judicial determination" (*Dillon v City of New York*, 261 AD2d 34, 39 [1st Dept 1999]).

Defamation consists of "[m]aking a false statement that tends to expose a person to public contempt, hatred, ridicule, aversion or disgrace" (*Thomas H. v Paul B.*, 18 NY3d 580, 584 [2012]), or "to induce an evil or unsavory opinion of him in the minds of a substantial number of the community [citation omitted]." (*Golub v Enquirer/Star Group*, 89 NY2d 1074, 1076 [1977].) A defamation cause of action also must meet the heightened pleading requirements of CPLR 3016 (a), which requires: "In an action for libel or slander, the particular words complained of shall be set forth in the complaint, but their application to the plaintiff may be stated generally." The complaint must state the particular words that were said, who said them and who heard them, when the speaker said them, and where the words were spoken [citation omitted]." (*Glazier v Harris*, 99 AD3d 403, 404 [1st Dept 2012].)

> A claim for defamation must allege 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. Even though a statement is defamatory, there exists a qualified privilege where the communication is made to persons who have some common interest in the subject matter. The plaintiff may overcome this qualified privilege with allegations that the defendant made the defamatory statement with malice or reckless disregard for the truth or falsity of the statement [internal quotation marks and citations omitted].

(*O'Neill v New York Univ.*, 97 AD3d 199, 212 [1st Dept 2012].) While the minimum negligence standard applies generally, a higher standard of "actual malice" or "gross irresponsibility" applies to public figures, including "limited public figures" (*see Farber v Jefferys*, 103 AD3d 514, 515 [1st Dept 2013]).

An otherwise defamatory statement may not be actionable if it is privileged. As the Court of Appeals stated:

> Generally, a statement is subject to a qualified privilege when it is fairly made by a person in the discharge of some public or private duty, legal or moral, or in the conduct of his own affairs, in a matter where his interest is concerned [internal quotation marks and citation omitted].

(*Rosenberg v MetLife, Inc.*, 8 NY3d 359, 365 [2007].) One rationale behind the qualified privilege is that "so long as the privilege is not abused, the flow of information between parties sharing a common interest should not be impeded [citation omitted]." (*Herlihy v Metropolitan Museum of Art*, 214 AD2d 250, 259 [1st Dept 1995].)

In addition to the protection afforded by the qualified common interest privilege, "statements made during the course of a judicial or quasi-judicial proceeding are clearly protected by an absolute privilege" (*Rosenberg v MetLife, Inc.*, 8 NY3d at 365), and "statements made by counsel and parties in the course of judicial proceedings are privileged as long as such statements are material and pertinent to the questions involved . . . irrespective of the motive with which they are made [internal quotation marks and citations omitted]." (*Wiener v Weintraub*, 22 NY2d 330, 331 [1968].)

Additionally, truth is an absolute defense to a cause of action based on defamation (*see Silverman v Clark,* 35 AD3d 1, 12 [1st Dept 2006]). A statement need only be substantially true (*seeAmaranth LLC v J.P. Morgan Chase & Co.*, 100 AD3d 573, 574 [1st Dept 2012]).

The complaint is mostly conclusory and non-specific in that few alleged defamatory words are pled, and where they are, they are insufficient to support the claims of defamation. The second cause of action does not allege any spoken communication. Neither the second cause of action, nor the supporting affidavit alleges any specific spoken statement that is claimed to be defamatory.

Where specific words are pled, they are matters of opinion and/or privileged. Plaintiff does not allege actual malice, gross irresponsibility, or special damages. The libel and slander claims must be dismissed.

As to the third cause of action, "New York does not recognize an independent tort cause of action for civil conspiracy [internal quotation marks and citation omitted]." (*Robinson v Day*, 103 AD3d 584, 588 [1st Dept 2013].) Clearly, the third cause of action is insufficient as a matter of law, and plaintiff has not pled a legal entitlement to the opportunities that he allegedly has been denied. Nor do the allegations of the complaint suffice to demonstrate that plaintiff has any other cause of action based on the allegations comprising the third cause of action.

Plaintiff's actions do not rise to the level of frivolousness, pursuant to 22 NYCRR 130-1.1. Thus, no sanctions or attorney's fees have been awarded to movants. Pursuant to CPLR 8106 and 8202, a total of $100 motion costs have been awarded to movants.

Accordingly, by separate decision and order of this date, the moving defendants' motion was granted to the extent of dismissing the complaint as to defendants Alphonso, Beil, Tyler, and McGuireWoods. The remaining causes of action were severed and shall continue.

FILED
SEP 04 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: New York, New York
August 30, 2013

Richard F. Braun
RICHARD F. BRAUN, J.S.C.