

Moss v Associated Press

2014 NY Slip Op 30157(U)

January 16, 2014

Supreme Court, New York County

Docket Number: 158705/2013

Judge: Cynthia S. Kern

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
CYNTHIA S. KERN
J.S.C.
Justice

PART _____

Index Number : 158705/2013
MOSS, CHICO S.S.
vs
ASSOCIATED PRESS
Sequence Number : 002
DISMISS ACTION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

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

is decided in accordance with the annexed decision.

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

Dated: 1/16/14

CK, J.S.C.

CYNTHIA S. KERN
 NON-FINAL DISPOSITION

- 1. CHECK ONE: CASE DISPOSED
- 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: Part 55

-----x,

CHICO SS MOSS,

Plaintiff,

Index No. 158705/2013

-against-

DECISION/ORDER

THE ASSOCIATED PRESS, FORBES INC., NEWS
CORPORATION d/b/a THE NEW YORK POST,
CARLA M. FRANKLIN, TIME WARNER
INC. d/b/a AOL, INTERACTIVE CROP. d/b/a THE
DAILY BEAST and JOHN DOES 1-100,

Defendants.

-----x

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmations in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

This action arises from a longstanding intensely personal conflict between plaintiff and defendant Carla M. Franklin (“Franklin”), which has resulted in the two parties being locked in litigation with one another for the past several years over accusations of stalking, harassment, cyberbullying and defamation. In the instant action, plaintiff is asserting, among other things, a claim for defamation against several news organizations that published articles about the two individuals after Franklin brought suit against Moss in September of 2012. Defendants The Associated Press (“Associated”), Time Warner Inc. (“Time Warner”) (sued herein as Time

Warner Inc. d/b/a AOL), NYP Holdings, Inc. (sued herein as “News Corporation d/b/a The New York Post), Forbes Inc. (“Forbes”) and The Daily Beast Company LLC (“the “Daily Beast”) (sued herein as “Interactive Corp. d/b/a The Daily Beast”) (collectively referred to herein as the “media defendants”) now move for an order dismissing plaintiff’s second amended complaint on the grounds that this court lacks personal jurisdiction over them and the complaint fails to state a cause of action as a matter of law. Additionally, Time Warner moves to dismiss on the ground that it is an improper party as it is a wholly separate and unrelated company from AOL. Plaintiff cross-moves for leave to file a third amended complaint. For the reasons set forth below, media defendants’ motions to dismiss are granted and plaintiff’s cross-motion is denied.

The relevant facts are as follows. Plaintiff Chico SS Moss (“Moss”) and defendant Franklin are former romantic partners who have been locked in numerous litigations with one another over the past several years involving initial allegations by Franklin that Moss harassed and cyberstalked her. The instant action stems from news articles that were published after Franklin brought suit against Moss in September of 2012 (the “September Litigation”) wherein Franklin sought to enjoin Moss from further harassment and an award of damages. Franklin’s complaint in the September Litigation (the “Franklin Complaint”) contained numerous allegations describing Moss’s behavior through the years as obsessive and describing stalking behavior that included authorship of a YouTube Video and Facebook page, which Franklin described as “Shrines” to her as well as an allegation that Moss had “spoofed” her cell phone to make harassing calls and texts. Specifically, the Franklin Complaint alleged that the IP address she obtained from Google/YouTube as a part of pre-trial discovery “linked directly back to [Moss’s] apartment in Manhattan . . . and his office and computer at his former employer, and

current investment partner . . . proving his absolute guilt in this action.” Additionally, the Franklin Complaint further alleged that Moss’s attorney admitted at a December 2011 hearing that “his client was guilty of creating the online harassing ‘Shrines’ and ‘spoofing’[Franklin’s] phone in an effort to harass and menace [Franklin].” The Franklin Complaint also alleged that [Franklin] received an “Order of Protection for the state of New York, in April 2011, ‘after showing good cause’ and sufficient evidence that [Moss] was stalking, harassing, intimidating and menacing her in person and online.” By decision/order of this court, the September Litigation was ultimately dismissed as to Moss on the ground that Franklin failed to properly serve Moss.

After the Franklin Complaint was filed against Moss, several news organizations picked up and published articles about the Franklin Complaint and Franklin’s legal efforts to identify her harasser. The instant action, specifically, involves the following articles:

- The Associated Press: “NY Woman Sues Man She Unmasked Through Google;”
- The New York Post: “Harass’ Vic Goes After Bum” (also published under the headline “Columbia Grad Sues ‘Stalker’ Who Called Her ‘Whore’ on YouTube”);
- Forbes: “How To Bait and Catch The Anonymous Person Harassing You On The Internet;”
- The Daily Beast: “Busting a Cyberstalker: How Carla Franklin Fought Back—and Triumphed;”

The New York Post (the “Post”) story, by Dereh Gregorian, was published on September 26, 2012. The Post article reported the filing of the Franklin Complaint and quoted directly from the allegations contained therein. The Forbes article, on the other hand, was an article about online harassment generally and reported on two different cases in which individuals sought to discover

the identity of someone who had engaged in online harassment against them, which included the September Litigation. The article contained a lengthy quotation from an email from Franklin in which she explained the methods she used to identify her harasser. The article originally contained Moss's name but his name has since been removed. The Daily Beast article is written in first person narrative in the voice of Franklin "as told to" the reporter. In the article, Franklin is seen to be telling the story of her and Moss and her path to filing the Franklin Complaint. Plaintiff also attaches a screen shot of an "AOL" webpage that contains a link to a video of Carla Franklin with the description: "Cyberbullying victim Carla Franklin talks about enduring online harassment after a series of dates turned into a nightmare." However, plaintiff's complaint is devoid of any allegations as to the content of this video and plaintiff admits in his opposition papers that he is never mentioned in the video.

Moss initiated the instant action asserting a claim for defamation against the media defendants by sending his original summons and complaint by Federal Express to the offices of the various media defendants. The media defendants now move to dismiss the action on the ground that said delivery does not constitute proper service and as such this court lacks jurisdiction over them. Additionally, the media defendants argue that a claim for defamation cannot stand as the articles identified above are entitled to absolute immunity under Section 74 of the Civil Rights Law. In opposition, plaintiff concedes that he never effectuated proper service and seeks leave to file a third amended complaint to fix this procedural defect as well as to assert an additional allegation that media defendants acted in a "grossly irresponsible manner."

It is a fundamental principle of law that proper service of a summons and complaint is a prerequisite to the exercise of jurisdiction and absent proper service a court has no personal

jurisdiction over a defendant. *See, e.g., Macchia v. Russo*, 67 N.Y.2d 592, 595 (1986); *Klein v. Educational Loan Servicing, LLC*, 71 A.D.3d 957 (2nd Dept 2010). In the present case, it is undisputed that plaintiff's attempts at service of process by mailing the summons and complaint by Federal Express to media defendants did not comport with the requirements of CPLR § 312-a and as such were inadequate to obtain personal jurisdiction over the media defendants. Thus, this court lacks personal jurisdiction over said defendants and the action must be dismissed as to them.

Additionally, based on the foregoing, plaintiff's motion to amend his complaint is denied as moot as this court cannot consider such a motion without first having personal jurisdiction over the media defendants.

Accordingly, the media defendants' motions to dismiss are granted and plaintiff's motion to amend his complaint is denied. It is hereby ORDERED that this action is dismissed as to defendants The Associated Press, Time Warner Inc. (sued herein as Time Warner Inc. d/b/a AOL), NYP Holdings, Inc. (sued herein as "News Corporation d/b/a The New York Post), Forbes Inc. and The Daily Beast Company LLC (sued herein as "Interactive Corp. d/b/a The Daily Beast"). The Clerk is directed to enter judgment accordingly. This constitutes the decision and order of the court.

Dated: 1/16/14

CK
J.S.C.
CYNTHIA S. KERN
J.S.C.