

Vanessa Buia, LLC v Boone Assoc., L.P.

2017 NY Slip Op 32778(U)

December 8, 2017

Supreme Court, Richmond County

Docket Number: 150921/16

Judge: Charles M. Troia

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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VANESSA BUIA, LLC VANESSA BUIA,

Plaintiffs,

- against -

BOONE ASSOCIATES, L.P. d/b/a THE MARY BOONE
GALLERY and MARY BOONE,

Defendants.

DCM1M
Present:
HON. CHARLES M. TROIA
DECISION AND ORDER
Index No.: 150921/16
Motion Nos: 2171-003
2946-004

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The following papers numbered 1 to 3 were fully submitted on the 8th day of September, 2017:

| | Papers Numbered |
|---|-----------------|
| Notice of Motion to Dismiss, with Supporting Papers and Exhibits (dated June 1, 2017)..... | 1 |
| Plaintiffs' Cross Motion and Opposition to Motion to Dismiss (dated July 20, 2017)..... | 2 |
| Plaintiffs' Affidavit in Support of Cross-Motion (dated July 20, 2017)..... | 3 |

Upon the foregoing papers, plaintiffs' cross-motion to deem the complaint timely served and filed is granted. Defendants' motion to dismiss the complaint pursuant to 3211 (a)(7) and CPLR 3016(a) is also granted.

Plaintiffs commenced this action against defendant Mary Boone and Boone Associates, LP for defamation, tortious interference with contract and tortious interference with a business relationship. According to plaintiff Vanessa Buia, her professional reputation and business have been harmed by defendants' purported defamatory statements. Defendants moved to dismiss the

complaint pursuant to 3211 (a)(7) and CPLR 3016(a), which was denied. Plaintiffs cross-moved for leave to re-plead and included a proposed amended complaint, which was granted upon the condition that plaintiffs were to serve an amended summons and supplemental complaint and particularize its cause of action for defamation. Defendants now move to dismiss the amended complaint.

In support of its motion, defendants contend that plaintiffs have failed to state a cause of action and plead defamation with specificity and properly plead any defamatory act that interfered with an alleged business relationship. According to defendants the “first amended complaint” is actually the “second” amended complaint, and nonetheless fails to plead elements of slander or trade libel. Specifically, defendants contend that plaintiffs have failed to set forth with specificity the time, place and manner of the purported defamatory statements. According to defendants, the allegations in the last amended complaint that the defamatory statements were made “on or about June 1, 2016” is fatally vague. Defendants contend that the dispute between the parties did not arise until a month later, allegedly by an e-mail exchange in July 2016. Defendants also contend that, in the amended complaint, plaintiffs’ allegations that Boone made statements to “several major international gallery owners,” “several major international art collectors” or “to several international artists,” fail to identify the specific individuals to whom to whom Boone’s defamatory statements were made. In addition, defendants contend that the Sebastien affidavit does not remedy the defects in the amended complaint.

Defendants also contend plaintiffs have failed to demonstrate any conduct by defendants amounting to tortious interference with a contract or a tortious interference with plaintiffs’ business relations with third parties. Specifically, defendants contend that plaintiffs’ conclusory allegations of unlawful conduct or improper means are insufficiently plead. Defendants further

contend that plaintiffs trade libel claim fails to demonstrate that Boone “published” the defamatory statements to a third party and the manner of its publication.

Plaintiffs opposed defendants’ motion and cross-move to deem the first amended complaint which was filed on May 16, 2017 to be timely served. According to the amended complaint, statements were made by Defendant Boone on June 1, 2016 and on several occasions to “several major international art collectors,” that plaintiff Buia is “loathsome and talentless at what she does for a living” and that those who choose to do business with plaintiff would develop a “poor reputation, if anyone in the art world even cared to deal with them any further.” Specifically, plaintiffs contend defendant Boon made defamatory statements to the artist commonly known as “KAWS” which injured plaintiff’s business reputation. Plaintiffs also contend that defendants made statements that plaintiff Buia is a “lying,” “dishonest” person with “no ethics” and a “trashy” reputation in the art world. ” Plaintiffs contend that defendant Boone’s slanderous statements, including that “association and/or business with Vanessa Buia of Buia Gallery [is] ‘death’ to the career of an artist,” have tarnished her business reputation.

The elements of a cause of action for 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 (*Geraci v. Probst*, 61 AD3d 717, 718 [2nd Dept. 2009]). The complaint must set forth the particular words complained of and allege the time, place, and manner of the false statement and specify to whom it was made (CPLR 3016[a]). Here, even if the content of the allegedly slanderous comments is sufficiently specific, plaintiffs have failed to meet the specificity requirements as to the time, place and manner of the defamatory remarks (*see* CPLR 3016(1); *see Siriani v. Rafaloff*, 284 AD2d 447, 448 [2nd Dept. 2001]). Plaintiffs’ allegations that defamatory

statements were made “on or about June 1, 2016 and upon several occasions” and were made to “KAWS” and other “several major international art collectors,” as supplemented by the Pierre Sebastien affidavit, are not sufficiently specific with respect to time, place and manner.

In addition, to distinguish between statements of fact and nonactionable expressions of opinion, the factors to be considered are: (1) whether the specific language in issue has a precise meaning which is readily understood, (2) whether the statements are capable of being proven true or false, and (3) whether either the full context of the communication signals to listeners that what is being heard is likely to be opinion, not fact (*see Brian v. Richardson*, 87 NY2d 46, 51 [1995]) Moreover, the identity, role and reputation of the author may be considered (*see Brian v. Richardson*, 87 NY2d at 52). Here, defendants purported statements are insufficiently pleaded or constitute nonactionable opinion (*see Arvanitakis v. Lester*, 145 AD3d 650, 651-652 [2nd Dept. 2016]).

The tort of trade libel or injurious falsehood consists of the knowing publication of false matter derogatory to the plaintiff's business of a kind calculated to prevent others from dealing with the business or otherwise interfering with its relations with others, to its detriment (*see Waste Distillation Techn., Inc. v. Blasland & Bouck Engineers, P.C.*, 136 AD2d 633 [2nd Dept. 1988]). Here, plaintiff has not demonstrated that plaintiff published defamatory statements to a third party and the manner of its publication.

In addition, plaintiffs have failed to sufficiently plead a cause of action for tortious interference with contract and tortious interference with business relations (*see M.J. & K. Co., Inc. v. Matthew Bender and Co., Inc.*, 220 AD2d 488 [2nd Dept. 1995]).

Accordingly, plaintiffs' cross-motion to deem the complaint timely served and filed is granted. Defendants' motion to dismiss the complaint pursuant to 3211 (a)(7) and CPLR 3016(a)

is also granted.

This constitutes the decision and order of the court.

Dated: December 8, 2017

ENTER,

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal stroke, positioned above a solid horizontal line.

J. S. C.

Hon. Charles M. Troia
Justice of the Supreme Court