Matthaus v Hadjedj
2018 NY Slip Op 30855(U)
May 1, 2018
Supreme Court, New York County
Docket Number: 161769/14
Judge: Nancy M. Bannon

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42
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CHRISTINA MATTHAUS,

Plaintiff

Index No. 161769/14

v

DECISION AND ORDER

MICHAEL HADJEDJ

Defendant. MOT SEQ 004
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NANCY M. BANNON, J.:

I. INTRODUCTION

In this action to recover damages for defamation, false arrest, and malicious prosecution, the defendant moves pursuant to CPLR 3212 for summary judgment dismissing the first cause of action, which seeks to recover for defamation. The plaintiff opposes the motion. The motion is denied.

II. BACKGROUND

As more fully described in the court's prior order entered January 12, 2016, the plaintiff, Christina Matthaus, was accused by her former boyfriend, the defendant Michael Hadjedj, of taking and using his credit card without authorization. He complained to the police, and the plaintiff was arrested on a charge of grand larceny (Penal Law 155.35). The charges were later

dismissed. The plaintiff commenced this action seeking to recover for defamation, false arrest, false imprisonment, prima facie tort, and intentional infliction of emotional distress. In its prior order, the court dismissed the causes of action alleging intentional infliction of emotional distress and prima facie tort, but declined to dismiss the false arrest and malicious prosecution causes of action. The Appellate Division, First Department, affirmed. See Matthaus v Hadjedj, 148 AD3d 425 (1st Dept. 2017). The defamation cause of action was not implicated in either this court's prior order or the Appellate Division's determination.

III. DISCUSSION

A. STANDARDS ON A MOTION FOR SUMMARY JUDGMENT

The proponent of a motion for summary judgment pursuant to CPLR 3212 must establish his or her prima facie entitlement to judgment as a matter of law (see Zuckerman v City of New York, 49 NY2d 557 [1980]) by submitting proof in admissible form demonstrating the absence of triable issues of fact. See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (1985). If the movant fails to meet this burden and establish his or her claim or defense sufficiently to warrant a court's directing judgment in the movan'ts favor as a matter of law (see Alvarez v Prospect Hosp., 68 NY2d 320 [1986]; Zuckerman v City of New York, supra;

O'Halloran v City of New York, 78 AD3d 536 [1st Dept. 2010]), the motion must be denied regardless of the sufficiency of the opposing papers. See Winegrad v New York Univ. Med. Ctr., supra; O'Halloran v City of New York, supra. Should the movant meet his or her burden, it then becomes incumbent upon the party opposing the motion to come forward with proof in admissible form to raise a triable issue of fact. See Alvarez v Prospect Hosp., supra.

"The drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the issue is even 'arguable.'" De Paris v Women's Natl. Republican Club, Inc., 148 AD3d 401, 403-404 (1st Dept. 2017); see Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr., 161 AD2d 480 (1st Dept. 1990). Thus, a moving defendant does not meet his or her burden of affirmatively establishing entitlement to judgment as a matter of law by merely pointing to gaps in the plaintiff's case. He or she must affirmatively demonstrate the merit of his or her claim or defense. See Koulermos v A.O. Smith Water Prods., 137 AD3d 575 (1st Dept. 2016); Katz v United Synagogue of Conservative Judaism, 135 AD3d 458 (1st Dept. 2016). "In determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility." Garcia v J.C. Duggan, Inc., 180 AD2d 579, 580 (1st Dept. 1992).

B. DEFAMATION

"The elements of a cause of action [to recover] 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." Gaccione v Scarpinato, 137 AD3d 857, 859 (2nd Dept. 2016), quoting Epifani v Johnson, 65 AD3d 224, 233 (2nd Dept. 2009). "To establish actionable defamation, it must be shown that the facts are false and," depending on whether the plaintiff is or is not a public figure, "that their publication was generated by actual malice, i.e. with a purpose to inflict injury upon the party defamed, or in a grossly irresponsible manner." Kuan Sing Enterprises, Inc. v T.W. Wang, Inc., 86 AD2d 549, 550 (1st Dept. 1982), affd 58 NY2d 708 (1982).

The parties' submissions reveal the existence of triable issues of fact, inter alia, as to whether, in the first instance, the plaintiff was a "public figure" for the purposes of the defamation claim, and whether the defendant's statements to police were defamatory and made with actual malice. Since it is undisputed that the defendant made allegations that the plaintiff was involved in criminal conduct, the plaintiff was not, contrary to the defendant's contention, required to prove pecuniary loss as part of her defamation cause of action.

1. Private Versus Public Figure

To succeed on a defamation cause of action, a person who is not a public figure

> "must establish, by a preponderance of the evidence, that the publisher acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties."

Chapadeau v Utica Observer-Dispatch, 38 NY2d 196, 199 (1975); see Huggins v Moore, 94 NY2d 296 (1999); Farber v Jefferys, 103 AD3d 514 (1st Dept. 2013). One is grossly irresponsible in this regard when he or she relies solely on conduits for unverified rumor, without investigation or research (see Lewis v Newsday, Inc., 246 AD2d 434 [1st Dept. 1998]), fails to verify the accuracy or veracity of information before disseminating it (see Matovcik v Times Beacon Record Newspapers, 108 AD3d 511 [2nd Dept. 2013]; see generally Gaeta v New York News, 62 NY2d 340 [1984]), or evinces an inability or unwillingness to take any steps to obtain such a verification. See Fraser v Park Newspapers of St. Lawrence, Inc., 246 AD2d 894 (3rd Dept 1998).

Where the plaintiff is a public figure, he or she must show by clear and convincing evidence that the defendant published the allegedly offending statements with actual malice, i.e., with knowledge of the statements' falsity or a reckless disregard as to whether the statements were true or false. See Gertz v Robert Welch, Inc., 418 US 323 (1974); Huggins v Moore, supra; James v

Gannett Co., 40 NY2d 415 (1976); see also Kipper v NYP Holdings Co., 12 NY3d 348 (2009).

Public figures are generally defined as persons who "have assumed roles of especial prominence in the affairs of society," "occupy positions of . . . persuasive power and influence," and have achieved "general fame or notoriety in the community." Gertz v Robert Welch, Inc., supra at 345, 352; see Yiamouyiannis v Consumers Union of U.S., 619 F2d 932 (2nd Cir. 1980). A person may become a public figure by taking affirmative steps to attract personal attention or striving to achieve a measure of public acclaim. See Maule v NYM Corp., 54 NY2d 880 (1981). The issue of whether a plaintiff is or is not a public figure is generally a question of fact. See Perez v Violence Intervention Program, 116 AD3d 601 (1st Dept. 2014).

The defendant has the burden of proving that the plaintiff is a public figure. See Maule v NYM Corp., supra. The parties' submissions reveal the existence of a triable issue of fact as to whether the plaintiff is a public figure for the purposes of defamation claims. Her mere marriage to a celebrity does not make her a public figure in her own right. See Krauss v Globe Intl., Inc., 251 AD2d 191 (1st Dept. 1998). Although the defendant has adduced some evidence that the plaintiff is publicly known in connection with her modeling career, she raises a triable issue of fact with her own affidavit and deposition

testimony, in which she asserts that she is not known in the United States for her modeling, and is not even very widely known in the few European countries in which she has modeled.

a. Gross Irresponsibility

To the extent that any finder of fact determines that the plaintiff is not a public figure, the parties' submissions reflect the existence of triable issues of fact as to whether the defendant was grossly irresponsible in making false statements to the police concerning the plaintiff's use of his credit card. At the very least, the parties' deposition transcripts reveal a sharp factual dispute as to whether the defendant made his statements to police based solely on an unverified suspicion that the plaintiff's use of the card was unauthorized.

b. Actual Malice

Even were the plaintiff found by the finder of fact to be a public figure, the parties' deposition transcripts and affidavits further reveal the existence of triable issues of fact as to whether the defendant made his statement to police with knowledge of its falsity, i.e., whether he knew that the plaintiff was using his credit card and he gave her permission therefor, but wished to punish her in connection with a domestic dispute. There is thus a triable issue of fact as to whether he made actionable defamatory statements regardless of whether the plaintiff is or is not a public figure.

2. Qualified Immunity

False accusations of criminal or illegal activity, even in the form of an opinion, are not constitutionally protected. See Rinaldi v Holt, Rinehart & Winston, Inc., 42 NY2d 369 (1977); Angel v Levittown Union Free School Dist. No. 5, 171 AD2d 770 (2nd Dept. 1991). A statement made by an individual to a law enforcement officer is subject to qualified immunity, which does not provide the declarant with total immunity against the imposition of liability in a defamation action, but merely negates any presumption of implied malice flowing from a defamatory statement, and places the burden of proof on this issue upon the plaintiff. See Toker v Pollak, 44 NY2d 211 (1978); Schottenstein v Silverman, 128 AD3d 591 (1st Dept. 2015).

Since there is a triable issue of fact as to whether the defendant made his statements to police with actual malice, there is thus also a triable dispute as to whether the subject statements are protected by qualified immunity.

3. Proof of Special Harm or Pecuniary Loss-Defamation Per Se

To the extent that the defendant argues that the plaintiff will not be able to show actual pecuniary loss arising from the alleged defamatory statements to the police, it is undisputed that the allegedly defamatory statements "fairly implied that the plaintiff was a criminal," thus constituting defamation per se

and "obviating the need to prove special damages." Morsette v "The Final Call." 309 AD2d 249, 252 (1st Dept. 2003). In any event, in connection with the issue of special damages, the defendant merely points to gaps in the plaintiff's case, and does not make a prima facie showing that she has not sustained such damage. See Koulermos v A.O. Smith Water Prods., supra; Katz v United Synagogue of Conservative Judaism, supra.

IV. CONCLUSION

In light of the foregoing, it is

ORDERED that the defendant's motion for summary judgment dismissing the cause of action to recover for defamation is denied.

This constitutes the Decision and Order of the court.

Dated: May 1, 2018

ENTER: _____

J.S.C.

HON. NANCY M. BANNON