

<b>Giggles World Corp. v Smokers Mecca Corp</b>
2016 NY Slip Op 32884(U)
April 5, 2016
Supreme Court, Dutchess County
Docket Number: 51666/2015
Judge: Christine A. Sproat
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
GIGGLESWORLD CORPORATION,

Plaintiff,

**DECISION & ORDER**

- against -

**Index No. 51666/2015**

SMOKERS MECCA CORP, GRANT MCCABE,  
ANDREW D’ALESSO and JESSICA LINQUIST,

Defendants.

-----X  
C. A. SPROAT, J.S.C.

Defendants Andrew D’Alessio (s/h/a Andrew D’Alesso) and Jessica Linquist move for an order, pursuant to CPLR §3211(a)(7), dismissing the first, second, third, sixth, seventh and eighth causes of action as against defendant Jessica Linquist and dismissing the third cause of action as against defendant Andrew D’Alessio for failure to state a cause of action as a matter of law and failure to allege defamation with particularity pursuant to CPLR §3016(a).

Defendants Smokers Mecca Corp. and Grant McCabe move for an order, pursuant to CPLR 3211 (a) (7), dismissing the complaint against them.

The following papers were read:

- Notice of Motion - Affirmation of Kenneth M. Stenger, Esq. - 1-3
- Annexed Exhibits
- Notice of Motion - Affirmation of Anthony M. DeFazio, Esq. - 4-6
- Annexed Exhibits
- Louis M. Spizzirro, Esq.’s Affirmation in Opposition - 7-8
- Affidavit of Timothy M. Serino

Louis M. Spizzirro, Esq.'s Affirmation in Opposition - Affidavit of Timothy M. Serino	9-10
Reply Affirmation of Anthony M. DeFazio, Esq.	11

Upon the foregoing papers it is hereby ORDERED that the defendants Andrew D'Allesio and Jessica Linquist's motion is granted to the extent that the first, second, third, sixth, seventh and eighth causes of action against defendant Jessica Linquist are dismissed and the third cause of action against defendant Andrew D'Allesio is dismissed. Further, defendants Smokers Mecca Corp. and Grant McCabe's motion is granted to the extent that the third cause of action against defendant Smokers Mecca Corp. is dismissed and the third, fourth, and fifth causes of action against defendant Grant McCabe are dismissed. All other requested relief is denied.

In the instant action for, *inter alia*, defamation plaintiff alleges in its first cause of action that defendant Jessica Linquist published defamatory statements about the plaintiff. Pursuant to CPLR 3016(a), "In an action for libel or slander, the particular words complained of shall be set forth in the complaint . . ." While Exhibit C to the plaintiff's complaint reveals allegedly defamatory statements made or published by the other defendants, none of those statements are attributable to defendant Linquist. Accordingly, the first cause of action for defamation against defendant Linquist must be dismissed. Further, the second cause of action for an injunction enjoining defendant Linquist from making defamatory statements must be dismissed as against defendant Linquist.

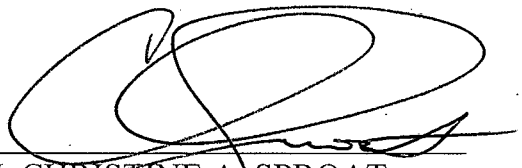
New York's CPLR declares that "[p]leadings shall be liberally construed. Defects shall be ignored if a substantial right of a party is not prejudiced." (McKinney's CPLR §3026.) New York's case law makes clear that "[u]nder modern pleading theory, a complaint should not be dismissed on a pleading motion so long as, when the [pleading party] is given the benefit of every possible favorable inference, a cause of action exists."

(*Rovello v. Orofino Realty Co.*, 40 N.Y.2d 633, 634, 357 N.E.2d 970, 971 [1976]) It is, however, also the rule in New York that while courts shall afford that liberal construction, such pleadings must set forth “a cognizable legal theory.” (See, *83-17 Broadway Corp. v. Debcon Fin. Servs., Inc.*, 39 AD3d 583, 585, 835 N.Y.S.2d 602, 604 [2nd Dept., 2007].) It is understood that “[u]nder the Civil Practice Law and Rules, the sufficiency of a pleading to state a cause of action or defense will generally depend upon whether or not there was substantial compliance with CPLR §3013 providing that ‘[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences intended to be proved and the material elements of each cause of action or defense.’” (*Foley v. D’Agostino*, 21 AD2d 60, 62, 248 N.Y.S.2d 121, 124 [1st Dept., 1964] quoting CPLR §3013.) The failure by the plaintiff to adequately allege a specific act or omission on the part of the defendant in the third through eighth causes of action fails both the material element and notice requirements of CPLR §3013. Each of these alleged causes of action contains only simple conclusory statements lacking in any of the factual detail sufficient to sustain a cause of action in New York. Accordingly, the defendants’ motions for dismissal of the third through eighth causes of action must be granted.

This matter is adjourned to September 26, 2016 at 9:30 a.m. for a pre-trial conference.

So Ordered.

Dated: April 5, 2016  
 Poughkeepsie, New York



HON. CHRISTINE A. SPROAT  
 Supreme Court Justice

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