Supreme Court of the State of New York
County of Kings

Index Number 518431/2017

Part 91

PIERRE DELOR LAGUERRE,

Plaintiff,

against

PASTOR JEAN RENAULD MAURICE AND THE GREATER NEW YORK CORPORATION OF SEVENTH DAY ADVENTIST, D/B/A GETHSEMANE SDA CHURCH,

Defendants.

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	2
Replying Affidavits	3
Exhibits	
Other	

Upon review of the foregoing papers, defendants' motion to dismiss this action is decided as follows.

Plaintiff alleges that defendant Pastor Maurice falsely told members of plaintiff's church congregation that plaintiff was gay and had viewed gay pornography. As a result, plaintiff was excluded from his church and his reputation within his church and community was irreparably harmed. Based on these allegations, plaintiff asserts claims for defamation and slander per se, intentional infliction of emotional distress ("IIED"), and a claim for negligent hiring and supervision.

Defendants move, pursuant to CPLR 3211(a)(1), (a)(2) and (a)(7), to dismiss all of plaintiff's claims. Defendants first argue that this court does not have subject matter jurisdiction pursuant to the First and Fourteenth Amendments to the US Constitution, citing *Serbian E. Orthodox Diocese for U. S. of Am. and Can. v Milivojevich* (426 US 696 [1976]) and *Kedroff v St. Nicholas Cathedral of Russian Orthodox Church in N. Am.* (344 US 94 [1952]). However, these cases concern the improper control asserted by government over church organization and

structure. They do not prohibit claims for defamation or emotional distress.

The First Amendment is not implicated in civil disputes involving religious parties as long as "neutral principles of law are the basis for their resolution" (*Congregation Yetev Lev D'Satmar, Inc. v Kahana*, 9 NY3d 282, 286 [2007], citing *First Presbyt. Church of Schenectady v United Presbyt. Church in U.S. of Am.*, 62 NY2d 110 [1984]). In this regard, this court will apply objective, well-established principles of secular law concerning the claims asserted to the allegations in this case (*see, e.g., Berger v Temple Beth-El of Great Neck*, 303 AD2d 346, 348 [2d Dept 2003] [holding that the court had subject matter jurisdiction over a defamation case because it did not "implicate matters of religious doctrine and practice").

Next, defendants argue that plaintiff fails to sufficiently state the causes of action asserted in the complaint. For a motion to dismiss pursuant to CPLR 3211(a)(7), "[t]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). "[O]n a motion to dismiss pursuant to CPLR 3211(a)(7), the court must determine whether, accepting as true the factual averments of the complaint and according the plaintiff the benefits of all favorable inferences which may be drawn therefrom, the plaintiff can succeed upon any reasonable view of the facts stated" (*VIT Acupuncture P.C. v State Farm Auto. Ins. Co.*, 28 Misc 3d 1230[A], 2010 NY Slip Op 51560[U], *1 [Civ Ct, Kings County 2010] quoting *Board of Educ. of City School Dist. of City of New Rochelle v County of Westchester*, 282 AD2d 561, 562 [2d Dept 2001]).

Likewise, to dismiss a claim based on documentary evidence, the documents "must resolve all factual issues as a matter of law, and conclusively dispose of the plaintiff's claim" and

they must be "unambiguous and of undisputed authenticity" (*VIT Acupuncture*, 28 Misc 3d 1230[A], 2010 NY Slip Op 51560[U], *1, quoting *Teitler v Max J. Pollack & Sons*, 288 AD2d 302, 302 [2d Dept 2001]).

Defendants contend that plaintiff's defamation per se claim should be dismissed because homosexuality is no longer considered to be immoral (*see, e.g., Yonaty v Mincolla*, 97 AD3d 141, 146 [3d Dept 2012]). However, the basis for this analysis is not this court's personal understanding of what is or is not immoral. The statements must be analyzed in the context of plaintiff's church community. The motion papers make clear that the plaintiff's church community considers homosexuality to be abhorrent (*see, e.g., Klepetko v Reisman*, 41 AD3d 551, 552 [2d Dept 2007] [finding that "[t]he false imputation of homosexuality is reasonably susceptible of a defamatory connotation"] [internal quotations and citation omitted]). Indeed, defendants submit a church manual that states homosexuality is grounds for removal from the church, which the manual describes as the "ultimate discipline that the church can administer". Therefore, plaintiff has sufficiently stated a claim for defamation per se.

Additionally, defendants argue that they made the statements to the congregation during a church meeting about expulsion of the plaintiff, and thus the statements are protected by the common interest privilege (*Berger v Temple Beth-El of Great Neck*, 41 AD3d 626, 627 [2d Dept 2007]). However, the only information about this church meeting and the purpose for it is in the affidavit of defendant Maurice, and an affidavit is not proper documentary evidence for purposes of a motion to dismiss (*VIT Acupuncture*, 28 Misc 3d 1230[A], 2010 NY Slip Op 51560[U], *1).

Defendants argue that plaintiff's IIED claim should be dismissed because the claim, as pleaded, is duplicative of plaintiff's defamation claim. A review of the claim shows that the conduct about which plaintiff complains are the alleged defamatory statements about plaintiff

(Complaint at ¶ 50). Thus, the IIED claim is duplicative and is dismissed without prejudice to replead, if plaintiff can assert an IIED claim that is not based solely on his allegations of defamation (*Segall v Sanders*, 129 AD3d 819, 821 [2d Dept 2015]; *Morgan v NYP Holdings, Inc.*, 58 Misc 3d 1203[A], 2017 NY Slip Op 51907[U], *9 [Sup Ct, Kings County 2017]).

Lastly, defendants move to dismiss plaintiff's negligent hiring and supervision claim. Where an employee is acting within the scope of his or her employment, the employer is liable under the theory of respondeat superior, and the plaintiff generally may not proceed with a separate claim to recover damages for negligent hiring, retention, supervision, or training (*Ambroise v United Parcel Serv. of Am.*, 143 AD3d 929, 931 [2d Dept 2016]). However, such a claim may proceed where plaintiff alleges punitive damages for gross negligence (*Talavera v Arbit*, 18 AD3d 738, 738-39 [2d Dept 2005]). While plaintiff seeks punitive damages in the complaint, he does not allege gross negligence. Accordingly, plaintiff's claim for negligent hiring and supervision is dismissed without prejudice to claims that the defendant church is liable for the acts of its employees.

For the reasons stated above, defendants' motion to dismiss is granted only to the extent that plaintiff's claim for negligent hiring and supervision is dismissed, and plaintiff's IIED claim is dismissed without prejudice. The remainder of defendants' motion is denied.

The parties shall appear in the Intake Park for a preliminary conference on September 12, 2018.

This constitutes the decision and order of the court.

June 13, 2018
DATE

DEVIN P. COHEN
Acting Justice, Supreme Court