Rainbow v WPIX, Inc.
2018 NY Slip Op 32692(U)
October 18, 2018
Supreme Court, New York County
Docket Number: 152477/2015
Judge: Robert D. Kalish
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ROBERT D. KALISH** *Justice* | **PART** **IAS MOTION 29EFM**

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STARLIGHT RAINBOW,

Plaintiff,

- v -

WPIX, INC, JEREMY TANNER and MAGEE HICKEY,

Defendants.

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INDEX NO. 152477/2015

MOTION DATE 10/03/2018

MOTION SEQ. NO. 003

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion for SUMMARY JUDGMENT (AFTER JOINDER .

Motion by Defendants WPIX, Inc. and Magee Hickey (collectively, "Defendants")[1] for summary judgment, pursuant to CPLR 3212, dismissing the complaint is granted for the reasons stated herein:

BACKGROUND

On March 14, 2015, Defendant WPIX, Inc. ("WPIX") posted the following story titled "Flatbush 12-year-old claims her 5th grade teacher is bullying her":

> "Brooklyn (PIX11)-Jxxxxx Sxxxxxx walks to PS 235 each day with her mother for moral support because the 12-year-old claims her fifth-grade teacher has been bullying her for the past six months.
>
> 'Miss [Starlight] Rainbow makes me uncomfortable and even scared to come to school,' Jxxxxx told PIX11. 'I feel I am poison to the school.'
>
> The fifth grader claims the teacher made fun of her in front of her classmates, calling her poison in the classroom. Meeting in front of the school with community activist Tony Herbert, her family claims the bullying has only gotten worse, even turning physical, ever since they complained to the principal and superintendent about it.

[1] The complaint was dismissed without prejudice as against Defendant Jeremy Tanner on November 6, 2015. (NYSCEF Document No. 5.)

'Miss Rainbow opened the door and said I'm not allowed in,' Jxxxxx said, 'she pushed me and slammed the door in my face.'

But the moment that brings Jxxxxx's mother to tears is when she thinks about her daughter's response to the death of Avonte Oquendo, the teen with autism who went missing for months.

'I wish I was the boy Avonte that got killed because I don't want to be in the school anymore,' Jxxxxx said.

'Here's a young person threatening to kill herself has to be looked at," community activist Tony Herbert said, "we're asking the mayor to get involved and get involved quickly.'

Jxxxxx ran away from school Thursday and called 911 for help and that was the reason for the gathering in front of the school.

After a three-hour delay, the Department of Education released this statement: 'We take these allegations very seriously and are investigating the matter,' a spokesman said.

But Jxxxxx's family is still worried about this unhappy 12-year-old.

'What would make you comfortable at PS 235,' PIX11 asked.

'Nothing, at this point,' she said.

Does she want to change schools?

'Yes, as far as I can go from here,' the girl said."

(Affirm. in Supp., Ex. A [Complaint with Subject Article attached] [brackets around "Starlight" in original].)

As would later be revealed, the above article inaccurately reported the name of the alleged bullying teacher, whose actual name was *Cynthia* Rainbow. Plaintiff Starlight Rainbow, it turned out, was another teacher working at Lyons Community School in Brooklyn, who had no relationship with the student, Cynthia Rainbow, or PS 235.

According to Defendant Magee Hickey ("Hickey"), at the time of the story, she had worked in the news industry for over thirty years and had been at WPIX for the last 2.5 years. Prior to this lawsuit, Hickey states that she had never been sued before, and none of her stories had ever led to a defamation lawsuit against

one of her employers. (Affirm in Supp., Ex. B [Hickey EBT] at 8:09-14:16, 19:10-20.)

Hickey states that on the morning of March 14, 2014, her assignment editor told her to cover a news conference about the subject story taking place at 11 AM that day. Hickey states that she received a press release about the news conference that had been authored by a community activist named Tony Herbert. (Affirm in Supp. Ex. C [Press Release].) The press release contained many of the same (and additional allegations) as the subject WPIX article, but only referred to the alleged bullying teacher as "Ms. Rainbow"—her first name was not mentioned.

Hickey states that she attended the news conference that morning where she interviewed Mr. Herbert, the student, and the student's mother, Genae Simpson. Hickey states that during the interview she asked the student and her mother for the first name of the alleged bullying teacher, and they both told her that it was "Starlight." (Hickey EBT at 42:19-44:14.) Hickey states that she asked Mr. Herbert, the student, and the mother to repeat the bullying teacher's name because Starlight was "an unusual name," and that the name Starlight was repeated (but that she does not specifically recall whether Mr. Herbert also confirmed the name Starlight.) (Id.)

Mr. Herbert states, in an affidavit, that Hickey asked Ms. Simpson for the teacher's first name, and Ms. Simpson told her the teacher's name was "Starlight." (Affirm. in Supp. Ex. D [Herbert Aff.] ¶ 6.) Mr. Herbert states that Hickey "reacted somewhat incredulously and said something like, 'that's such an unusual name, are you sure?'" and that "Genae Simpson then repeated her answer and Ms. Hickey may have even asked it again and then I vaguely recall we all repeated her answer as if she hadn't been able to hear it." (Id. ¶¶ 7-8.)[2]

Hickey states that she then attempted to talk to parents, teachers and other students as they left the school by approaching them on the sidewalk. However, her attempts were unsuccessful because school safety agents ordered her (and her cameraman) to "get off the sidewalk" and "not to interfere with the business of the school." (Hickey EBT at 55:20-58:19.)

[2] Mr. Herbert further states: "I too was surprised at hearing that unusual name, although I have no personal knowledge of that teacher's name and only learned the bullying teacher's name was Cynthia Rainbow from subsequent news reports." (Id. ¶ 8.)

Hickey further states that she reports on a lot of stories involving the New York City school system, and as such she has certain questions that she will "always ask" the New York City Department of Education ("DOE") as part of her process of putting together a news story. Hickey states that as part of her process, she contacted the DOE Press Office for comment right after the interview. Hickey states that she did not attempt to contact PS 235's principal because, in her experience, school principals would generally just refer her to the DOE Press Office. Hickey further states that when she called the DOE Press Office, she spoke to an individual who was either the head of the office or one of the assistants. Hickey states that she cannot remember what was said verbatim, but that per her usual process, she probably communicated the following to the DOE Press Office:

> "I have an allegation that a teacher at a certain school, at P.S. 235, is accused of bullying. I have the name of the teacher. Can you confirm that that teacher is at this school? Can you confirm that you've heard of this allegation? What can you tell me about this teacher? Does she have a track record of problems, disciplinary action against her – or him, but in this case her - what can you tell me?"

(Hickey EBT at 45:24-51:03.) Hickey further states that although she does not recall what was said verbatim, she does have a "specific recollection" of asking the above questions. (Id.) In addition, Hickey states that she specifically provided the DOE Press Office with the name Starlight Rainbow. Hickey states that that DOE Press office told her "[w]e will get back to you."

Hickey states that the press office called back between 3 and 4 p.m. that day and told her that "these are serious allegations and we will be investigating" but would not say more when she repeated the above questions and asked if the DOE could tell her more about the incident. (Id. at 48:10-50:25.) Hickey states that usually the DOE Press Office would provide information that is "on the record" and information that is "off the record," but that in this case she did not recall receiving any information from the DOE Press Office off the record.

A video of the story was then broadcast on the 5 PM PIX11 News[3] and posted as a written article on the WPIX website that evening.

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[3] A recording of the broadcast was not submitted as an exhibit to this motion, and Defendants' counsel stated at oral argument that such recording was taped over after a 24-hour period, pursuant to WPIX's records retention procedures. (Oral Arg. Tr. at 4:03-26.)

On March 19, 2014, News 12 reported that the alleged bullying teacher, Cynthia Rainbow, abused and threatened a second student, and on March 27, 2014, the Canarsie Courier reported on these same allegations, using the correct first name, and included an apparent photograph of Cynthia Rainbow. (Affirm. in Supp., Ex. E [Other Articles].)

Plaintiff did not learn about the subject article until a colleague forwarded it to her in August of 2014. (Affirm. in Supp., Ex. F [Plaintiff EBT] at 8:22-9:10.) Concerned that a parent might inquire about the article and to see if there was another teacher working in the DOE with the same name, Plaintiff emailed her principal on August 25, 2014 about the article. (Affirm. in Supp., Ex. G [Principal Email Correspondence]; Plaintiff EBT 17:18-18:18; 27:5-16.) On that same day, Plaintiff's principal responded that, based on a check of the DOE Email system, Plaintiff was the only person with the name "Starlight Rainbow"—although there were a few other "Starlights" and "Rainbows" in the system. (Id.)

Plaintiff states that on August 26, 2014, she sent an email to WPIX at the email address news@pixll.com informing WPIX that an article published on March 14, 2015 inaccurately "names me as a teacher that was bullying a student at PS 235". (Affirm. in Opp., Ex. P [August 26, 2014 Email to WPIX]; Plaintiff EBT at 31:20-34:8.) Plaintiff explained that she did not work at PS 235 or know the student in the story. (Affirm. in Opp., Ex. P [August 26, 2014 Email to WPIX]; Plaintiff EBT at 31:20-34:8.) Plaintiff wrote: "I need you to retract this story or I will sue you for defamation of character. Please respond as soon as possible to let me know what you choose to do." (August 26, 2016 Email to WPIX.)

Plaintiff states that she also called and left voice messages on an automated system for WPIX on August 26 and August 27, 2014, but that she was unable to reach an actual person. (Plaintiff EBT at 31:12-34:08; Affirm in Opp. O [Plaintiff Phone Records].)

Plaintiff states that she then reached out to her union representative, and that in January 2015 her union informed her that they would not represent her "because it was a civil suit." (Plaintiff EBT at 34:09-37:12.)

Plaintiff states that after she was unable to get help from her union, she retained private counsel. On February 2, 2015, Plaintiff's counsel sent a letter to WPIX describing the March 14, 2018 article and demanding that "you remove this defamatory posting from your website and post a retraction immediately" and that "if you fail to do so, Ms. Rainbow intends to initiate legal action to compel its

removal and to recover damages." (Affirm. in Opp., Ex. O [February 2, 2015 Letter]; Plaintiff EBT at 37:13-38:08.)

On March 13, 2015, Plaintiff filed the instant complaint, alleging a single cause of action for defamation per se. Five days later, on March 18, 2015, WPIX removed the subject story from its website. (January 28, 2016 Defendant Responses to Initial Interrogatories] ¶ 7.)

Defendants state that WPIX has been unable to find any record of Plaintiff's calls, but that at the time, such voicemails would have gone to a line "monitored by [the] executive assistant to the general manager of WPIX and programming coordinator." (Affirm in Opp., Ex. Q [June 5, 2017 Def Supp Responses to Interrogatories]; Affirm in Supp., Ex K [February 18, 2017 Def Responses to Second Set of Interrogatories].)

Defendants further state that at "all relevant times," the news@pix11.com address that Plaintiff sent her initial retraction request to, has been a "generic email account that is automatically directed to the mailbox of those working on the assignment desk." (June 5, 2017 Def Supp Responses to Interrogatories.) According to Defendants, the assignment desk "receives between 1,000 and 2,000 emails each day," and the assignment editor on duty then scans the emails for tips. (June 5, 2017 Def Supp Responses to Interrogatories.)

Defendants now move for summary judgment arguing, in sum and substance, that their reporting and subsequent delay in removing the article were not the "grossly irresponsible" actions required to meet the standard for liability in the instant case. Plaintiff opposes the motion.

DISCUSSION

"To obtain summary judgment it is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor, and he must do so by tender of evidentiary proof in admissible form." (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [internal quotation marks and citation omitted].) "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution." (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003].) "On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Vega v Restani Constr. Corp.*, 18 NY3d

499, 503 [2012] [internal quotation marks and citation omitted].) In the presence of a genuine issue of material fact, a motion for summary judgment must be denied. (*See Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002].)

Defamation is "the making of a false statement that 'tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society.'" (*Manfredonia v Weiss*, 37 AD3d 286, 286 [1st Dept 2007], quoting *Sydney v. MacFadden Newspaper Publ. Corp.*, 242 NY 208, 211–212 [1926].) An action for defamation seeks to compensate the plaintiff for the injury to his or her reputation caused by the defendant's written expression, which is libel, or by the latter's oral expression, which is slander. (*Intellect Art Multimedia, Inc. v Milewski*, 24 Misc 3d 1248(A) [Sup Ct, NY County 2009] [Gische, J.]; *Idema v Wager*, 120 F Supp 2d 361, 365 [SDNY 2000], *affd*, 29 Fed Appx 676 [2d Cir 2002].)

To state a claim for defamation, a plaintiff must allege: (1) a false statement that is (2) published to a third party (3) without privilege or authorization (4) constituting fault as judged by, at a minimum, a negligence standard and that (5) causes harm, unless the statement constitutes defamation per se (in which case damages are presumed). (*Stepanov v Dow Jones & Co., Inc.*, 120 AD3d 28, 34 [1st Dept 2014]; *Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999].) There are four categories of statements that constitute defamation per se: "(1) statements charging plaintiff with a serious crime; (2) statements that tend to injure plaintiff in her trade, business or profession; (3) statements that plaintiff has a loathsome disease; or (4) imputing unchastity to a woman." (*Harris v Hirsh*, 228 AD2d 206, 208 [1st Dept 1996].)

Here, there is no dispute that the subject article inaccurately reported the first name of the bullying teacher as "Starlight"—rather than "Cynthia," as Defendants' competitors accurately reported. There also appears to be no dispute that the publication would constitute defamation per se as it would presumably injure Plaintiff in her profession as a teacher.

Defendants, however, argue that the story they reported on was one of public concern, and as such they can only be held liable if they acted in a grossly irresponsible manner—which, they argue that they did not do as a matter of law. Plaintiff does not contest that the subject article reported on a matter of public concern—the bullying of a twelve-year-old student by her own teacher—but

contends that Defendants acted in a grossly irresponsible manner: first, by publishing the article without proper fact-checking; and, second, by WPIX's failing to retract the subject article in a timely manner after Plaintiff gave notice that the article inaccurately named her as the bullying teacher.

The Court discusses each of these arguments in turn.

I. Defendants Did Not Act in a Grossly Irresponsible Manner by Publishing the Subject Article.

"Where the plaintiff is a private person, but the content of the article is arguably within the sphere of legitimate public concern, the publisher of the alleged defamatory statements cannot be held liable unless it 'acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties.'" (*Stone v Bloomberg L.P.*, 163 AD3d 1028, 1029 [2d Dept 2018], quoting *Chapadeau v Utica Observer-Dispatch*, 38 NY2d 196, 199 [1975].) "One is grossly irresponsible in this regard when he or she relies solely on conduits for unverified rumor, without investigation or research, fails to verify the accuracy or veracity of information before disseminating it, or evinces an inability or unwillingness to take any steps to obtain such a verification." (*Matthaus v Hadjedj*, 2018 N.Y. Slip Op. 30855[U], 5 [Sup Ct, New York County 2018] [Bannon, J.] [internal citations omitted].)

Under a gross irresponsibility standard, a news agency's liability for publishing a defamatory statement can be predicated on the grossly irresponsible conduct of one of its employees, pursuant to respondeat superior, or if it "had, or should have had, substantial reasons to question the accuracy of the information or the bona fides of [its] source." (*Ortiz v Valdescastilla*, 102 AD2d 513, 519 [1st Dept 1984]; *see also Weiner v Doubleday & Co., Inc.*, 74 NY2d 586, 595 [1989] [holding that a publisher is not required to do "original research with respect to every potentially defamatory reference"]; *Love v William Morrow and Co., Inc.*, 193 AD2d 586, 589 [2d Dept 1993] ["[A] publisher may rely upon the author's reporting abilities unless there is substantial reason to question the accuracy of the articles or the bona fides of the reporter."].)

Plaintiff argues that Defendants were grossly irresponsible by publishing her name as the bullying teacher because their sole source for the bullying teacher's first name was the mother of the bullied student, Ms. Simpson—whom Hickey had never met before. Plaintiff further complains that Hickey never attempted to

contact the accused bullying teacher or principal at PS 235. Rather, Plaintiff complains that Hickey's only attempt at fact-checking was her call to DOE's main press office, and that Hickey chose to run the story "despite the fact that she was unable to get confirmation from the DOE that Starlight Rainbow even taught at P.S. 235." (Memo in Opp. at 13.) Plaintiff further points out that Defendants' competitors correctly named the accused bullying teacher as Cynthia Rainbow—albeit days after Defendants' story ran. (Id. at 13-14.)

This Court finds that notwithstanding the clear inaccuracy in naming Plaintiff as the bullying teacher, Defendants did not act in a grossly irresponsible manner by publishing the name that was given to them. As a general matter, one would reasonably expect a parent to know the name of her child's teacher, especially if that parent was trying to protect her child from being bullied by that particular teacher. As such, it was not grossly irresponsible for Hickey to assume that Ms. Simpson had given her the correct name of the teacher bullying her daughter, when Ms. Simpson had arranged for a press conference for the purpose of shaming the DOE and the mayor into taking measures to protect her daughter.

Unlike the cases cited by Plaintiff, Hickey had no reason to suspect that the information she was receiving from Ms. Simpson was unreliable. (*See e.g. Lewis v Newsday, Inc.*, 246 AD2d 434, 437-38 [1st Dept 1998] [cited in Memo in Opp. at 12] [where source referred to the plaintiff as a "scab" which was "arguably an indication of animus in this context"]; *Sheridan v Carter*, 48 AD3d 444, 446 [2d Dept 2008] [cited in Memo in Opp. at 12] [allowing complaint to survive motion to dismiss where it alleged that the defendants published the statements "without examining police records or contacting the plaintiffs, and after being notified by the plaintiffs' lawyer that [the source's] claims were baseless"].)

Based on the evidence presented, there was never any reason for Hickey to suspect that she had been given the wrong name of the accused bullying teacher, and as such, there was no reason for her to investigate this fact further. (*Gaeta v New York News, Inc.*, 62 NY2d 340, 351 [1984].) At most, Hickey thought the name Starlight was unusual, and, according to Mr. Herbert, this apparently led to her asking it to be repeated, which, Mr. Herbert, the student, and Ms. Simpson all did. (Herbert Aff. ¶¶ 7-8.)[4]

[4] It also bears noting how unforeseeable the particular harm was at the time of publication: that there would be another teacher working in Brooklyn, with the same unusual last name, and the unusual first name of Starlight.

In addition, Hickey identified the alleged bullying teacher to the DOE Press Office as "Starlight Rainbow," and asked the DOE Press Office to confirm that the teacher was at PS 235 and that it had heard about the allegation. The DOE did not respond that there was not a teacher at PS 235 by the name Starlight Rainbow or indicate to Hickey that the information that she provided was in anyway inaccurate. To the contrary, the DOE told Hickey that the allegations she asked about were "serious" and that they would be "investigating." As such, in these circumstances, it was not grossly irresponsible for Hickey to believe that name of the alleged bullying teacher was Starlight Rainbow.

Similarly, because Hickey was not grossly irresponsible in publishing the subject article and because WPIX had no reason suspect the bona fides of Hickey, WPIX did not act in a grossly irresponsible in its decision to publish the subject story. (*Love v William Morrow and Co., Inc.*, 193 AD2d 586, 589 [2d Dept 1993].)

Accordingly, this Court finds that Hickey and WPIX did not act in a grossly irresponsible manner when they published the subject story inaccurately naming Plaintiff as a teacher bullying one of her students.

II. WPIX Is Not Liable for Its Failure to Timely Correct the Subject Story.

In addition to arguing that Defendants acted in a grossly irresponsible manner when they published the story on March 14, 2014, Plaintiff argues that WPIX was grossly irresponsible in its failure to timely "correct a blatant and obvious error in a story posted on their website, after it was repeatedly brought to WPIX's attention." (Memo in Opp. at 15.)

This appears to be a relatively novel theory for defamation liability under New York law.

As a preliminary matter, New York has long followed the "single publication rule," which holds that:

> "[T]he publication of a defamatory statement in a single issue of a newspaper, or a single issue of a magazine, although such publication consists of thousands of copies widely distributed, is, in legal effect, one publication which gives rise to one cause of action and that the applicable statute of limitations runs from the date of that publication."

(*Firth v State*, 98 NY2d 365, 369 [2002], quoting *Gregoire v G. P. Putnam's Sons*, 298 NY 119, 123 [1948].) The Court of Appeals has held that the "single publication rule" applies to material posted on internet websites and that each "'hit' or viewing" of the material does not constitute a new publication. (Id.)

Plaintiff cites to no authority for the proposition that a separate cause of action for defamation arises when a publisher is alerted to a potential inaccuracy in its content and then fails to timely issue a retraction. Rather, the rule is that a new cause of action does not accrue. (*See Firth v State*, 98 NY2d 365, 369 [2002].)

For example, in *Rodriguez v Daily News, L.P.*, the defendant news agencies received an email from the NYPD with the plaintiff's photograph, stating that the person in the photograph was sought for questioning in connection with an attempted rape. (2014 WL 12580400, at *1 [Sup Ct, Kings County 2014] [Walker, J.], affd, 142 AD3d 1062, 1064 [2d Dept 2016], lv to appeal denied, 28 NY3d 913 [2017].) The defendants then published a news reports based on the email and containing the plaintiff's photograph. Although it turned out that the plaintiff had no involvement with the attempted raped, the news reports containing the plaintiff's picture remained on the defendants' websites for months after the plaintiff notified the defendants that they had incorrectly identified him as the perpetrator.

The *Rodriguez* court found that the defendants reports were protected under Civil Rights Law § 74 as substantially accurate reports of the information provided by the NYPD in its press release, and as such granted summary judgment to the defendants. In addition, the *Rodriguez* court rejected the plaintiff's theory that the defendants could be held liable for failing to promptly remove the plaintiff's photograph from their websites. The court explained:

> "Nor has the court found, or plaintiff cited to, any legal authority under which defendants may be held liable to plaintiff for not promptly removing plaintiff's photograph from their websites, or for their failure to publish a retraction of the articles/stories, upon being informed that the person in the photograph was not the perpetrator of the sexual assault.
>
> While the court finds it unconscionable that a publisher, whether malicious or not, may refuse to remove a news article/report from its website that it knows to be false, this is a matter for the legislature, not the courts, to address."

(Id. at *3.)

Courts in other jurisdictions have generally rejected the idea that a new cause of action for defamation can arise based on a publisher's failure to timely retract an article when its inaccuracy is brought to the publisher's attention after publication. (*See e.g. McFarlane v Sheridan Square Press, Inc.*, 91 F3d 1501, 1515 (DC Cir 1996) ["[Plaintiff] presents no authority, however, nor are we aware of any, for the proposition that a publisher may be liable for defamation because it fails to retract a statement upon which grave doubt is cast after publication."]; *Lohrenz v Donnelly*, 223 F Supp 2d 25, 56 [DDC 2002] "[T]here is no duty to retract or correct a publication, even where grave doubt is cast upon the veracity of the publication after it has been released."], *affd*, 350 F3d 1272 [DC Cir 2003]; *D.A.R.E America v. Rolling Stone Magazine*, 101 F Supp 2d 1270, 1287 [CD Cal 2000) ["[T]here is no authority to support Plaintiffs argument that a publisher may be liable for defamation because it fails to retract a statement upon which grave doubt is cast after publication. "]; *Coughlin v Westinghouse Broad. & Cable, Inc.*, 689 F Supp 483, 488 [ED Pa 1988] ["Counsel have not been able to come up with any case in any American jurisdiction which recognizes a claim sounding in damages for failure to retract what is defamatory."].)

Plaintiff nonetheless points out that, under this state's law, the fact that a defendant news organization retracted an article is evidence of a lack of gross irresponsibility. (Memo in Opp. at 14, citing *Kipper v. NYP Holdings Co., Inc.*, 12 NY3d 348, 359 [2009], *Gordon v. Lin TVCorp.*, 89 A.D.3d 1459 [4th Dept. 2011], and *Alicea v Ogden Newspapers*, 495 A.D.2d 233 [4th Dept. 1985], aff'd 67 N.Y.2d 862 [1986].) Plaintiff argues "that if the retraction of an article constitutes evidence of a lack of gross irresponsibility, then, as a logical corollary, the failure to retract a defamatory article is evidence of gross irresponsibility." (Pl. Letter to Court at 2 [NYSCEF Doc. No. 62.) Defendants' counter that although publishers have a "moral obligation" to timely correct inaccuracies in published stories after such inaccuracies are brought to their attention, they do not have a legal duty do so. (Oral Arg. Tr. at 14:14-15:07.)

The Court agrees with Defendants. That the law offers a carrot to incentivize timely retractions does not imply that the law also wields a stick at those publishers who do not make timely retractions. Moreover, while the Court agrees with Justice Walker and Defendants that it is morally reprehensible for news agencies not to diligently and quickly remove reporting errors from their websites when an affected party—like Plaintiff—brings such errors to their attention, this Court also agrees with Justice Walker that imposing liability for

untimely corrections is "a matter for the legislature, not the courts, to address." (*Rodriguez*, 2014 WL 12580400, at *1.) This is especially so given that the Court of Appeals declined to change the single publication rule in the context of the internet, reasoning that to do so "would either discourage the placement of information on the Internet or slow the exchange of such information, reducing the Internet's unique advantages." (*Firth v State*, 98 NY2d 365, 372 [2002]; *see also Gertz v Robert Welch, Inc.*, 418 US 323 [1974].)

Accordingly, this Court finds, as a matter of law, that WPIX is not liable for its alleged failure to timely correct the inaccuracy in the subject article until after the commencement of this action, notwithstanding the various attempts by Plaintiff and her counsel to bring the inaccuracy to WPIX's attention.[5]

CONCLUSION

Accordingly, it is hereby

ORDERED that Defendants WPIX, Inc. and Magee Hickey's motion for summary judgment, pursuant CPLR 3212, is granted and the complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly; and it is further

ORDERED that said defendants are directed to serve a copy of this order upon the Clerk of the Court with notice of entry within twenty (20) days of the date of this order.

10/18/2018
DATE

HON. ROBERT D. KALISH J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
	X	GRANTED	☐	DENIED		GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐	REFERENCE

[5] However, given WPIX's apparent failure in its "moral obligation" to make a timely correction, this Court finds that in these circumstances it would be inequitable to award Defendants costs and disbursements pursuant to CPLR 8101.