

Naimo v Ktori

2018 NY Slip Op 33457(U)

November 1, 2018

Supreme Court, Queens County

Docket Number: 4406/2018

Judge: Cheree A. Buggs

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Short Form Order

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NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**
Justice

IAS PART 30

SALVATORE NAIMO,

Index No. 4406/2018

Motion Date: October 17, 2018

Plaintiff,

Motion Sequence No. 1

-against-

Motion Calendar: 29

GALATIA KTORI,

FILED
NOV 13 2018
COUNTY CLERK
QUEENS COUNTY

Defendant.

The following papers numbered 1-11 submitted and considered on this pre-answer motion by defendant Galatia Ktori seeking an Order pursuant to CPLR 3111 (a) (7) (sic) to dismiss plaintiff Salvatore Naimo's complaint or in the alternative; pursuant to CPLR §3016 dismissing the complaint for failure to plead with particularity; and entering an Order for attorney's fees pursuant to CPLR §8303.

Papers
Numbered

- Notice of Motion -Affidavits-Exhibits..... 1-6
- Affirmation in Opposition-Affidavits-Exhibits..... 7-9
- Reply Affirmation-Affidavits-Exhibits..... 10-11

In this defamation action, defendant Galatia Ktori makes this application for an Order pursuant to CPLR §3111(a)(7) (sic) dismissing the complaint of plaintiff Salvatore Naimo for failing to set forth a claim; or in the alternative; pursuant to CPLR §3016 dismissing the complaint for failure to plead with particularity; and entering an Order for attorney's fees pursuant to CPLR §8303.

Naimo, self-represented, commenced this action on June 4, 2018. In his complaint, Naimo alleged that Ktori was his friend for over twenty years. Sometime in 2010 it is alleged that Ktori began having some financial difficulty and defendant allegedly defrauded investors into investing into a company named "Auto Auction Depot". and at the same time allegations were surfacing that

defendant was involved in illicit affairs. Naimo allegedly confronted Ktori about the allegations, being concerned about the defendant's children. After this confrontation, the parties remained amicable in front of family and friends. Naimo alleged that in a written sworn statement, plaintiff claimed that he "terrorized" two of defendant's friends/employees. In March 2018 Naimo was served with a sworn statement made by a third-party that had a business relationship with Naimo which contained false and defamatory statements made by Ktori. It is alleged that Ktori alleged that she was Naimo's partner, which is a false statement. Further, a fourth party, a past business partner of the plaintiff insinuated that defendant made investments in his businesses and had nothing to show for it, a completely false statement. He alleged that the aforementioned statements were made maliciously to defame him. As a result, he was seeking damages in the amount of \$1,100,000.00.

Ktori contends that Naimo maliciously filed this lawsuit in an attempt to continue to harass her. The parties are engaged in another lawsuit brought in the Supreme Court, Queens County under Index number 8394/15, titled *Galatia Ktori against Pipina Douroudakis and Salvatore Naimo*. The sole criteria for the Court in deciding this motion under CPLR 3211(a)(7) is whether Naimo's complaint states a cause of action, which it does not. Based upon the allegations in Naimo's complaint, it appears that the cause of action is defamation, but, the complaint contains vague assertions of sworn statements by the defendant and unnamed third-parties. If this is an action for defamation it should be dismissed due to Naimo's failure to plead with particularity. Plaintiff also asserted that the alleged statements were contained within "sworn statements". Thus, it would seem that the sworn statement of defendant was one from a Court related proceeding falling under the privilege in judicial proceedings to communicate freely (*see Flomenhaft v Finkelstein*, 127 AD3d 634 [1st Dept 2015]; *Frechtman v Gutterman*, 115 AD3d 102[1st Dept 2014]).

In opposition to the motion, Naimo contended that his complaint is not vague and the allegations therein get right to the point. In paragraph 11 of his complaint, he clearly alleged that a third-party, past partner of his made a sworn statement that defendant was also his partner, which was false, and malicious, and that defendant stated to the third-party that plaintiff had filed a case against her. Such statements made to his past partners were made to defame him and also fall under the per-se category of a defamatory claim. In paragraph 12 he alleged that defendant falsely claimed that she also made investments in his "so called businesses and had nothing to show for it" and that these statements were made to defame his business and professional practices, so that any past and future investors would fear investing in any of his businesses. Although the parties maybe involved in another litigation, he claimed that his lawsuit was not a frivolous one. Defendant has for years made false and defamatory statements about him to other parties without reason, therefore, he decided to assert his rights. He contended that he only quoted defendant's recent false and defamatory statements in his complaint. He asserted that he should be allowed to conduct discovery to collect necessary evidence to prove his cause of action, and that he had brought a proper cause of action for defamation under New York law. Further, under CPLR 3026, "pleadings shall be liberally construed. Defects shall be ignored if a substantial right of a party is not prejudiced." Moreover, the Court should disregard any claim that defendant makes regarding claims made in open Court. The Court must "accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any

cognizable legal theory” (see *Nonnon v City of New York*, 9 NY3d 825 [2007]; quoting *Leon v Martinez*, 84 NY2d 83 [1994]).

In response, Ktori restated her earlier arguments in support of the motion. The complaint was not filed within the statutory time period permitted to be defamatory in nature. Second, truth is an absolute defense to the action. Moreover, Naimo has not made any showing of any economic loss or damages required to maintain the action. Naimo alludes to multiple sworn statements yet failed to produce them in opposition to the motion. Again, an action for defamation requires that the particular words complained of be set forth in the complaint, and his complaint and opposition failed to do so. Defendant requests that this action be dismissed, attorney’s fees in the amount of \$4,500.00 and sanctions in the amount of \$3000.00 be awarded against plaintiff.


Movant alleged that the case should be dismissed pursuant to CPLR 3211 (a) (7) because the facts alleged do not fit within any cognizable legal theory, lacking any merit (see generally *Hecht v Andover Assocs. Mgmt. Corp., et al.*, 114 AD3d 638 [2d Dept 2014]; *G.L. v Markowitz*, 101AD3d 821 [2d Dept 2012]; *Salvatore v Bd. of Educ. of Mineloa Union Free School Dist.*, 89 AD3d 1078 [2d Dept 2011]; *Treeline 1 OCR, LLC v Nassau County Indus. Dev. Agency*, 82 AD3d 748 [2d Dept 2011]). “If from the four corners of the complaint factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion to dismiss will fail” (*Cooper v 620 Prop. Assocs.*, 242 AD2d 359 [1997]). “On a motion to dismiss pursuant to CPLR 3211 (a) (7), the claim must be afforded a liberal construction, the facts therein must be accepted as true, and the [plaintiff] must be accorded the benefit of every favorable inference” (*Leon v Martinez*, 84 NY2d 83 [1994]; see also *Sawitsky v State*, 146 AD3d 914 [2d Dept 2017]).

In order to proceed with a defamation action under New York law, plaintiff must demonstrate that there was “the making of a false statement which 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” (*Foster v Churchill*, 87 NY2d 744 [1996]; *Dillon v City of New York*, 61 AD2d 34 [2d Dept 1999]). Under CPLR 3016(a), a cause of action alleging defamation must set forth the particular words claimed of (see *Lemieux v Fox*, 135 AD3d 713 [2d Dept 2016]). “The reason for the requirement of specific pleading in defamation cases is to give adequate notice to the defendant as to the occurrence constituting the wrong and to discourage the institution of vexatious actions” (see *Pappalardo v Westchester Rockland Newspapers, Inc.*, 101 AD2d 830 [2d Dept 1984]). Here, plaintiff failed to set forth the particular words or statements in his complaint that were allegedly defamatory (see *Abakporo v Daily News*, 102 AD3d 815 [2d Dept 2013]; *Abe’s Rooms Inc., v Space Hunters, Inc.*, 38 AD3d 690 [2d Dept 2007]; *Skinner v GEICO*, 196 AD2d 494 [2d Dept 1993]; *Erlitz v Segal, Liling & Erlitz*, 142 AD2d 710 [2d Dept 1988]). “The requirement that the defamatory words must be quoted verbatim is strictly enforced” (see *Erlitz v Segal, Liling & Erlitz*, 142 AD2d 710 [2d Dept 1988]).

Therefore, based upon the foregoing, the defendant's motion is granted to the extent that the plaintiff's complaint is dismissed.

This constitutes the decision and Order of the Court.

Dated: November 1, 2018



Hon. Chere A. Buggs, J.S.C.