

Pickrodt v Taylor

2019 NY Slip Op 31466(U)

April 18, 2019

Supreme Court, Nassau County

Docket Number: 610417/18

Judge: Thomas Feinman

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU**

Present:

Hon. Thomas Feinman
Justice

CODY PICKRODT and RAY RAY BOOKS,

Plaintiffs,

- against -

WHITNEY TAYLOR, LAURA KNETZGER,
EMMA LOUTHAN, HAZEL NEWLEVANT,
EMI GENNIS, BEN PASSMORE, ROBERT
CLOUGH, MORGAN PIELLI, JORDAN
SHIVELEY, TOM KACZYNSKI, JOSH
O'NEILL and UNCIVILIZED BOOKS, INC.

Defendants.

TRIAL/IAS PART 5
NASSAU COUNTY

INDEX NO. 610417/18

MOTION SUBMISSION
DATE: 2/19/19

MOTION SEQUENCE
NO. 2

The following papers read on this motion:

- Notice of Motion and Affidavits..... X
- Memorandum of Law in Support..... X
- Affirmation in Opposition..... X
- Memorandum of Law in Opposition..... X
- Reply Affirmation..... X
- Reply Memorandum of Law..... X

Relief Requested

Motion by the defendants for an order, pursuant to CPLR 3211(a)(7), dismissing the plaintiffs' third and fourth causes of action as against all defendants, dismissing all causes of action by plaintiff Ray Ray Books, dismissing all causes of action as against defendant Tom Kaczynski, and pursuant to CPLR 3211(a)(8), dismissing the plaintiffs' Amended Complaint as against defendants Laura Knetzger, Emma Louthan, Hazel Newlevant, Emi Gennis, Ben Passmore, Robert Clough, Jordan Shiveley, Josh O'Neill, Tom Kaczynski, and Uncivilized Books, Inc. The plaintiffs submit a memorandum of law in opposition. The defendants submit a reply memorandum of law.

Background

The plaintiffs initiated the instant matter alleging causes of action for defamation, tortious interference with business relationships, and intentional infliction of emotional distress based upon comments made on a google document, created on October 12, 2017, as well as social media platforms, disparaging Mr. Pickrodt as a sexual predator. The plaintiffs allege that the defendants made false and defamatory statements about plaintiff Cody Pickrodt, owner of plaintiff Ray Ray Books, that as a result of such statements, damages were caused to Ray Ray Books' business relationships, and that such statements were made with the intent of causing Mr. Pickrodt severe emotional distress.

Applicable Law

New York's long-arm statute provides that "a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent ... transacts any business within the state or contracts anywhere to supply goods or services in the state" (CPLR 302[a][1]; see *Deutsche Bank Sec., Inc. v. Montana Bd. Of Invs.*, 7 N.Y.3d 65). If the defendant is transacting business in New York, the second half of the CPLR 302(a)(1) inquiry asks whether the cause of action arises from that business transaction (*Best Van Lines, Inc. v. Walker*, 490 F.3d 239). In order to invoke jurisdiction pursuant to CPLR 302(a)(1), some articulable nexus must exist between the business transacted and the cause of action sued upon (*Kraker v. Battles Universal, Inc.*, 152 A.D.2d 656).

The Supreme Court of the United States found that California had jurisdiction over a resident of Florida where approximately 600,000 copies of the allegedly defamatory statements were published and distributed within California (see *Calder v. Jones*, 465 U.S. 783). Subsequently, Courts have taken a more narrow stance to ensure that jurisdiction is not based predominantly on the locus of the plaintiff's injury (*FireClean, LLC v. Tuohy*, 2016 U.S. Dist. LEXIS 96294).

Discussion

The parties in this action are involved in the comic book industry. Defendants Laura Knetzger, Emma Louthan, Emi Gennis, Ben Passmore, Robert Clough, Jordan Shiveley, Tom Kaczynski (individually and in his capacity as owner of defendant Uncivilized Books), and Josh O'Neill claim that New York lacks jurisdiction over them with regard to the plaintiffs' claims, and submit affidavits in support of their positions. All of these individuals live outside of the State of New York and acknowledge having made the statements alleged about Mr. Pickrodt on social media and/or in a shared google document. Each of these defendants argue that their contacts in the State of New York were minimal and that any content they published in New York is unrelated to the allegedly defamatory statements at issue.

Specifically, Ms. Knetzger states that she has not been to New York in over three years, and that her only business relationship with a New York-based entity began months after she made her allegedly defamatory statements. Ms. Louthan states that she is no longer involved in the comic book

industry, but has attended events in New York; however, no such events took place in the past three years. Ms. Gennis states that she has attended events in New York, but none within the last two years, and that she works with a distributor based in New York, but that her work is distributed widely and not just in New York. Mr. Passmore states that he appeared at an art show in 2018, that he did voice work over a weekend in New York unrelated to the comic book industry, and that he created a cartoon that was published in the New York Times, but did not conduct business in New York aside from these isolated, unrelated occasions. Mr. Clough states that he reviews comics online but has no ongoing business in New York, adding that it has been years since he has visited New York or worked with a New York-based publisher, and that he has not attended any New York events for the purpose of furthering sales. Mr. Shiveley states that he has only visited New York twice since 2016 on behalf of his employer, Uncivilized Books, and not for his own benefit. Mr. O'Neill states that he attended comic events in New York and did design work for charter schools based in New York, but that such work was unrelated to the statements he made about the plaintiff.

In addition, Mr. Kaczynski, owner of Minnesota-based Uncivilized Books, claims that the plaintiffs failed to allege that he personally made any defamatory statements. He further claims that the statements made on the social media accounts of Uncivilized Books should be attributed to Uncivilized Books and not to him personally. Mr. Kaczynski notes that Uncivilized Books works with comics from all over the country, including New York, and has sent review copies to New York-based media as well as others around the country. Mr. Kaczynski adds that Uncivilized Books attended two comic events in 2016 and three more in 2017, for the purpose of exhibiting and selling comics.

Here, while the non-domiciliary defendants acknowledge attending comic events as well as distributing their work in New York, they have demonstrated that their allegedly defamatory statements were unrelated to any such business they may have transacted in New York (see *Krakower, supra*; see also *American Radio Asso. v. A. S. Abell Co.*, 58 Misc.2d 483).

In opposition, plaintiffs rely on speculation in claiming that there may be further contacts which could be revealed through discovery. However, even if the defendants had such additional business contacts, plaintiffs have failed to demonstrate an articulable nexus between the defendants' actions in New York and the defamatory statements at issue here (see *Krakower, supra*; see also *Krajewski v. Osterlund, Inc.*, 111 A.D.2d 905). Contrary to the Supreme Court's finding in *Calder, supra*, the defamatory statements here were not part of any comics or content published or distributed throughout New York, but rather, the statements were posted on social media websites unrelated to any work in New York via the non-domiciliary defendants' business contacts. This includes defendant Hazel Newlevant, despite her failure to include an affidavit, as no nexus exists between her business contacts in New York and her allegedly defamatory statement made on social media.

Regarding the branch of defendants' motion to dismiss the plaintiffs' third and fourth causes of action for tortious interference with business relationships and intentional infliction of emotional distress, plaintiffs allege no new facts, nor do they seek damages distinct from the defamation claim

(see *Perez v. Violence Intervention Program*, 116 A.D.3d 601). The plaintiffs fail to point to any contracts between themselves and any third parties, and additionally fail to distinguish between any acts giving rise to this cause of action from the allegedly defamatory statements. Accordingly, those claims fall within the ambit of other traditional tort liability which is reflected in the plaintiffs' causes of action sounding in defamation (*Id.*, see *Segall v. Sanders*, 129 A.D.3d 819; see also *Herlihy v. Metro. Museum of Art*, 214 A.D.2d 250).

Further, as plaintiffs' claims for tortious interference with contract are duplicative of their claims for defamation, and as plaintiffs fail to allege any such defamatory statements made as against plaintiff Ray Ray Books, pointing only to comments made regarding plaintiff Cody Pickrodt, Ray Ray Books has therefore failed to state a cause of action (see CPLR 3211[a][7]).

Conclusion

In light of the foregoing, it is hereby

ORDERED that the defendants' motion is granted in its entirety, and it is further

ORDERED that the matter is dismissed as against the non-domiciliary defendants Laura Knetzger, Emma Louthan, Hazel Newlevant, Emi Gennis, Ben Passmore, Robert Clough, Jordan Shiveley, Tom Kaczynski, Josh O'Neill, and Uncivilized Books, and it is further

ORDERED that the plaintiffs' causes of action sounding in tortious interference with business relationships and intentional infliction of emotion distress are dismissed as to all defendants, and it is further

ORDERED that the complaint is dismissed in its entirety for all claims by plaintiff Ray Ray Books, and it is further

ORDERED that the caption in the above matter is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

CODY PICKRODT,

Plaintiff,

INDEX NO. 610417/18

- against -

WHITNEY TAYLOR and MORGAN PIELLI,

Defendants.

and it is further

ORDERED that the parties are hereby directed to appear for a Preliminary Conference which shall be held at the Preliminary Conference part located at the Nassau County Supreme Court on the 18th day of June, 2019, at 9:30 A.M. This directive, with respect to the date of the Conference, is subject to the right of the Clerk to fix an alternate date should scheduling require. The attorneys for the plaintiff shall serve a copy of this order on the Preliminary Conference Clerk and the attorneys for the defendants.

ENTER 

J.S.C.HON. THOMAS FEINMAN

Dated: April 18, 2019

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ENTERED
MAY 01 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE