

Rent Stabilization Assn. of N.Y.C., Inc. v McKee
2019 NY Slip Op 33127(U)
October 21, 2019
Supreme Court, New York County
Docket Number: 155789/2018
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE **PART** **IAS MOTION 12EFM**

Justice

-----X

RENT STABILIZATION ASSOCIATION OF N.Y.C.,
INC.,

Plaintiff,

- v -

INDEX NO. 155789/2018

MOTION DATE _____

MOTION SEQ. NO. 001

MICHAEL MCKEE, TENANTS POLITICAL
ACTION COMMITTEE, INC., MET COUNCIL, INC.
d/b/a METROPOLITAN COUNCIL ON HOUSING
and REAL RENT REFORM CAMPAIGN,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 27-35, 37-48, 51
were read on this motion for summary judgment.

Defendants Met Council, Inc. d/b/a Metropolitan Council on Housing (Met Council) and
Real Rent Reform Campaign (RRRC) move pursuant to CPLR 3212 for an order summarily
dismissing plaintiff's claims against them. Plaintiff opposes.

I. BACKGROUND

On May 2, 2018, defendant McKee, among others, testified at a hearing before the New
York City Council Committee on Housing and Buildings (Committee) about supporting
resolutions regarding state rent laws. On a list in the hearing transcript of those appearing at the
hearing, McKee is identified as "Treasurer of Tenants' Political Action Committee, Board
Member of Met Council on Housing, and City-Wide Tenants Union and Member of Real Rent
Reform Campaign." (NYSCEF 40). The transcript reflects that McKee introduced himself by
stating:

I am the treasurer of the Tenants Political Action Committee. I am also a board member of the Met Council on Housing, the city-wide tenants union, and I'm a member of the Real Rent Reform Campaign, a lobbying group that represents local community groups throughout the city, and suburban counties [...]

(NYSCEF 31, 40).

Plaintiff alleges that during the course of his testimony and in response to a question posed to him, McKee defamed it. (NYSCEF 31, 40). On June 20, 2018, plaintiff commenced this action alleging defamation and defamation *per se*. (NYSCEF 1).

At his deposition on October 22, 2018, McKee stated that he had been invited to testify at the hearing via an email sent by the Committee to his email address at defendant Tenants Political Action Committee, Inc. (Tenants PAC). He claimed to have testified only on behalf of Tenants PAC, and denied having testified for Met Council or RRRC, which are lobbying groups. He observed that although he is on the board of Met Council and was once its vice president, Met Counsel sent its own representative to the hearing, and that RRRC, which is an unincorporated association, of which he is a founding member, sent no one. He also acknowledged that he did not inform the City Council that he was not speaking on behalf of Met Council and RRRC. (NYSCEF 29).

II. CONTENTIONS

A. Met Council and RRRC (NYSCEF 27-34)

Movants deny that McKee testified on their behalf, and thus deny liability for his statements. They observe that Met Council sent its own representative to testify, and that McKee stated at his deposition that he did not attend the hearing on its or RRRC's behalf. Moreover, movants argue that as RRRC is an unincorporated coalition of community groups without a president, treasurer, or any other individual authorized to act on its behalf, it may not be sued.

In support, they offer an email dated May 1, 2018 from Met Council seeking one or two

people to testify at the committee hearing and observe that McKee was not a recipient of the email. (NYSCEF 30). They also submit a copy of McKee's hearing testimony which was reduced to a writing on Tenants PAC letterhead and submitted at an unknown time to the Committee. It reflects that he is treasurer of Tenants PAC and does not reflect his association with movants. (NYSCEF 32).

B. Plaintiff (NYSCEF 37-47)

Plaintiff contends that this motion is premature, as there remains an issue of fact as to whether McKee was speaking on movants' behalf. It observes that at the beginning of his testimony, McKee identified himself as a board member of Met Council and a member of RRRC, that the transcript reflects that McKee appeared for them, and that McKee acknowledged that he did not inform the Committee that he was not appearing on movants' behalf.

Plaintiff offers three letters sent to the New York State Commission on Public Integrity and Joint Commission on Public Ethics from McKee as "Treasurer," "Member of Steering Committee," "Chief Administrative Officer," "Board Member," and "representative" of RRRC detailing some of its lobbying activities and authorizing certain members to lobby on its behalf from 2011 to 2014. In one of the letters, McKee enclosed a check from RRRC, thereby reflecting that RRRC maintains a bank account. (NYSCEF 46).

Absent the completion of discovery and an opportunity to depose movants, plaintiff argues that the evidence offered by movants is insufficient to warrant dismissal, that McKee has refused to engage in discovery, and that movants' discovery responses are defective, evasive, and incomplete. It asserts a need for information about movants' organizational structures and lobbying efforts, McKee's affiliation with them, the manner in which they authorize representatives to speak on their behalf, and the control they exercise over their authorized

representatives.

Plaintiff also relies on General Associations Law § 13 which, it alleges, permits an action against the president or treasurer of RRRC, and absent one, the person who exercises the usual functions of president and treasurer. It claims that additional discovery is needed to identify the proper person to sue at RRRC, and that once that person is revealed in discovery, plaintiff will amend the caption accordingly.

C. Reply (NYSCEF 48)

In reply, movants assert that plaintiff fails to raise an issue of fact as to whether McKee's testimony may be attributed to them. They observe that McKee mentioned movants only once in his testimony, yet repeatedly referenced his affiliation with Tenants PAC. Moreover, the alleged defamatory statement was not part of McKee's prepared remarks but was given in response to a question from a committee member, which as reflected in a video of the hearing, occurred "approximately 19 minutes" after he had noted his affiliation with Met Council and RRRC.

Movants contend that although the hearing transcript reflects that McKee appeared on their behalf, it lacks probative value as it is the product of the reporter's interpretation of McKee's spoken introduction. They also assert that the transcript inaccurately reflects McKee's membership in the "City-Wide Tenants Union," which is not a separate organization, but Met Council. These errors, movants claim, reveal that the hearing transcript is unreliable.

Absent evidence to support plaintiff's case, movants allege that plaintiff seeks a fishing expedition to "badger and harass a political opponent." They contend that have complied with all of their discovery obligations.

Movants also maintain that a suit against RRRC may be maintained only to the extent that a member can be held individually liable, which plaintiff does not argue, and that McKee's

statement that he is a member of RRRC does not imply that all RRRC members endorse his statement.

III. ANALYSIS

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. (*Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 [2019]). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; “conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient.” (*Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 [2016], quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 [1988]). In deciding the motion, the evidence must be viewed in the “light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference.” (*O’Brien v Port Authority of New York and New Jersey*, 29 NY3d 27, 37 [2017]).

A corporation may not be held liable for defamation if the allegedly defamatory statements were made without authorization and not within the scope of the declarant’s employment. (*Calafiore v Penna*, 289 AD2d 359, 359 [2d Dept 2001]; *Rausman v Baugh*, 248 AD2d 8, 11 [2d Dept 1998] [*respondeat superior* applicable in defamation cases]).

While an inference may be drawn from McKee’s written testimony that he did not appear on movants’ behalf, and although he denied having done so at his deposition, the hearing transcript reflects otherwise. Movants’ assertion that the transcript is inaccurate is fatally conclusory and unsupported by evidence that either organization disavowed that he represented them at the hearing. That McKee is not listed on the Met Council email seeking representatives to testify at the hearing proves only that he was not invited in that email. Accordingly, movants

do not demonstrate, *prima facie*, that McKee was not speaking on their behalf.

In any event, even had movants met their burden of proof, plaintiff raises factual issues necessitating further discovery as the hearing transcript reflects that McKee appeared on movants' behalf and plaintiff has not had the opportunity to depose movants. (CPLR 3212[f]).

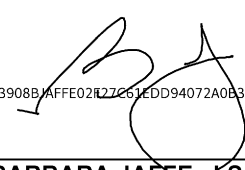
A different result is reached for RRRC, an unincorporated association that under the law "has no existence independent of its members" and "[n]o agency of one member for another is implied." (*Martin v Curran*, 303 NY 276, 280 [1951]). Thus, General Associations Law § 13 provides that although an action or proceeding against "the president or treasurer" of an unincorporated association may be maintained, liability depends on whether "the individual liability of every single member can be alleged and proven." (*Martin*, 303 NY at 282).

As plaintiff neither pleaded nor proved "that each member of [RRRC] authorized or ratified the alleged wrongful conduct" (*Palladino v CNY Centro, Inc.*, 23 NY3d 140, 147 [2014]), it has no viable cause of action against RRRC.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants Met Council, Inc.'s and Real Rent Reform Campaign's motion for summary judgment is granted to the extent that plaintiff's claims against Real Rent Reform Campaign are severed and dismissed, and is otherwise denied, and the Clerk is directed to enter judgment accordingly.

<u>10/21/2019</u>			
DATE		BARBARA JAFFE, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE