Petty v Law Office of Robert P. Santoriella, P.C.
2020 NY Slip Op 33908(U)
November 25, 2020
Supreme Court, New York County
Docket Number: 155468/2015
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 26
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SARA PETTY,

Plaintiff,

-against-

THE LAW OFFICE OF ROBERT P. SANTORIELLA, P.C., and ROBERT SANTORIELLA, individually,

Defendants.
---X

DECISION AND ORDER AFTER TRIAL

Index No.: 155468/2015

Mary V. Rosado, J.:

By Order dated July 22, 2020, the Hon. Anthony Cannataro directed counsel to appear on August 5, 2020 for a court scheduled judicial mediation via Skype or the matter would be sent to inquest. (NYSCEF Doc. No. 50) Defendants failed to appear on August 5, 2020 and on September 25, 2020, an inquest was conducted before this Court and in support of her claim for damages against defendants, Plaintiff presented evidence and testified as to the following facts.

BACKGROUND

During 2014, Plaintiff commenced a lawsuit against her ex-boyfriend for, *inter alia*, sexual assault/rape ("civil litigation") (Complaint ¶ 8; NYSCEF Doc. No. 1). Plaintiff's ex-boyfriend asserted various counterclaims against her, including fraud and negligence for pregnancy. (*Id.*) Plaintiff's ex-boyfriend also filed a separate lawsuit (which is ongoing) against his former girlfriend alleging defamation of his character by libel and slander ("defamation litigation"). (*Id.*) In December 2014, in the defamation litigation, the former girlfriend served Plaintiff with a subpoena duces tecum and ad testifcandum. (*Id.* at ¶ 9) The former girlfriend asserted that Plaintiff was a relevant witness with respect to her existing sexual assault/rape claims against the ex-boyfriend. (*Id.*) Plaintiff sought an attorney to represent her as a non-party witness in the defamation litigation. (*Id.* at ¶ 10)

On December 17, 2014, Plaintiff submitted a referral request to Legal Shield for an attorney to represent her in the upcoming deposition and to file a motion to quash and/or limit a subpoena duces tecum.

(*Id.* at ¶ 8) That same day, Plaintiff received an email from Legal Shield referring her to Defendant The Law Office of Robert P. Santoriella, P.C., ("The Law Firm"). (*Id.* at ¶ 11)

On December 17, 2014, Plaintiff contacted The Law Firm to schedule an initial consultation at the Manhattan office on the following Monday, December 22, 2014. (*Id.* at ¶ 12) Plaintiff was unable to make her appointment and called The Law Firm to reschedule, but the receptionist informed her that the next available appointment was in January 2015. (*Id.* at ¶ 13) Therefore, plaintiff requested that Defendant Robert Santoriella ("Santoriella") contact her via phone to discuss the representation. (*Id.*)

Santoriella contacted Plaintiff over the phone later that afternoon, and Plaintiff discussed with him the defamation litigation; her related civil litigation and her concerns with appearing at the deposition. (*Id.* at ¶ 14) Santoriella informed her that he would charge her approximately $2,000 for his legal services. (*Id.*)

Plaintiff and Santoriella communicated about the defamation litigation via text message over the course of the following week. (*Id.* at ¶ 15) At Santoriella's request, Plaintiff sent Santoriella recordings, pictures and other documents and information related to her ex-boyfriend and the defamation litigation, because he claimed it was needed to evaluate properly her claims. (*Id.*) Plaintiff informed Santoriella of her reluctance to send him the documents and information because of her ongoing trust issues with men as a result of the rape and the photographs triggered her Post Traumatic Stress Disorder (PTSD). (*Id.* at ¶ 16) However, Santoriella continuously asked her to send sexually explicit photographs and videos of her and her ex-boyfriend. (*Id.* at ¶ 18) He asked her detailed questions of the sexual encounters depicted in the photographs and videos, which Plaintiff found to be "inappropriate and humiliating." (*Id.* at ¶ 19) Santoriella also allegedly texted Plaintiff photographs of his girlfriend "wearing lingerie and a strap on dildo" and invited her to join him and his girlfriend for drinks at his home. (*Id.* at ¶¶ 20-21) Plaintiff, in response, asked Santoriella if he had shown his girlfriend the sexually explicit photographs that Plaintiff sent to him, and Santoriella "confirmed that he had shown his girlfriend the confidential photographs."

(*Id.* at ¶ 21) Plaintiff, believing that Santoriella violated her privacy by using her photographs for his own sexual gratification, immediately ignored Santoriella's subsequent text messages and calls beginning January 4, 2015, and sought new legal representation. (*Id.* at ¶ 22)

DISCUSSION

Plaintiff commenced this lawsuit asserting three causes of action against defendants: (1) discrimination in a public accommodation pursuant to New York State Executive Law § 296 (2) (a); (2) discrimination in a public accommodation pursuant to New York City Administrative Code § 8-107 (4) (a); and (3) intentional infliction of emotional distress.

New York State Executive Law

Under this statute, "it shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the . . . sex . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof . . . or that the patronage or custom thereat of any person or purporting to be of any particular . . . sex . . . is unwelcome, objectionable or not acceptable, desired or solicited" (New York State Exec. Law § 296 [2] [a]).

Plaintiff alleges that Defendants violated this statute because Defendants discriminated against her in a public accommodation based on her gender by rationalizing that the legal representation of her was dependent on her submission to Santoriella's sexual advances.

A public accommodation is an establishment that deals with the goods or services of any kind, such as dental offices because they provide services to the public even if they may be conducted on private premises and by appointment, as such places are generally open to the public (*Cahill v Rosa*, 89 NY2d 14, 21 [1996]). The definition of "place" has been interpreted broadly and has been construed as a term of convenience and not a limitation, which "need not be a fixed location, it is the place where [defendants] do what they do," but was still interpreted to be a location where the defendants met and activities occurred (*U.S. Power Squadrons v State Human Rights Appeal Bd.*, 59 NY2d 401, 411 [1983]).

This definition has been expanded even further to include establishments that provide goods and services to individuals without access to any particular place, similar to home delivery services or services performed in the customer's home, and even includes websites (*Andrews v Blick Art Materials, LLC*, 268 F Supp 3d 381, 400 [ED NY 2017]). Given such a broad interpretation, it seems that a law firm can generally be considered a place of public accommodation.

However, here, Plaintiff failed to allege that Defendants withheld from or denied her "any of the accommodations, advantages, facilities or privileges" that the law firm provides, and also failed to show that her patronage was "unwelcome, objectionable or not acceptable, desired or solicited." Therefore, Plaintiff failed to establish this cause of action and it is dismissed.

New York City Administrative Code

Under this statute,

> [I]t shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of any person's . . . gender . . . directly or indirectly to refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation; or directly or indirectly to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, facilities and privileges of any such place or provider of public accommodation shall be refused, withheld from or denied to any person on account of . . . gender . . . or the patronage or custom of any person is unwelcome, objectionable, not acceptable, undesired or unsolicited because of such person's . . . gender . . . .

New York City Admin. Code § 8-107 [4] [a].

Even though this statute uses similar language to the New York State Executive Law, the New York City Administrative Code must be given "an independent liberal construction analysis in all circumstances, even where state and federal civil rights law have comparable language" (*Williams v NYC Hous. Auth.*, 61 AD3d 62, 66 [1st Dept 2009]). Since the legislative history of the Administrative Code considered the New York City Human Rights Law to be liberally and independently construed, case law that discussed the State Human Rights Law "should merely serve as a base for the New York City Human

Rights Law, not its ceiling" (*Jordan v Bates Adv. Holdings, Inc.*, 11 Misc 3d 764, 771 [Sup Ct, New York 2006]). The federal and state civil rights laws create a floor "below which the City's Human Rights law cannot fall" (*Blick Art Materials. Inc.*, 268 F Supp 3d at 400, quoting *Loeffler v Staten Island Univ. Hosp.*, 582 F3d 268, 278 [2d Cir 2009]). A website was considered to be a provider of a public accommodation, because "it undoubtedly 'provides' to the public "accommodations, advantages, services, facilities or privileges" (*Blick Art Materials. Inc.*, 268 F Supp 3d at 400). If a law firm may generally be considered a public accommodation under the broader New York State Executive Law, then it seems logical that a law firm may also be considered to be a public accommodation under the New York City Administrative Code.

Here, Plaintiff has not established this cause of action as she failed to allege that Defendants withheld from or denied her the "full and equal enjoyment" of "any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation"; or that Defendants made any "declaration, published, circulated, issued, displayed, posted or mailed any written or printed communication, notice of advertisement" of "any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation"; or that her "patronage or custom" was "unwelcome, objectionable, not acceptable, undesired or unsolicited" because of her gender. Therefore, this cause of action is dismissed.

Intentional Infliction of Emotional Distress

In order to prevail on a cause of action for intentional infliction of emotional distress, Plaintiff must show that Defendants, "by extreme and outrageous conduct intentionally or recklessly caused severe emotional distress to [plaintiff]" (*Howell v New York Post Co., Inc.*, 81 NY2d 115, 121 [1993] [internal citations omitted]). Claims of emotional distress require allegations of conduct "so outrageous and extreme as to exceed all bounds of decency" (*Mollerson v City of New York*, 8 AD3d 70, 71 (1st Dept 2004); *see also Sheila C. v Povich*, 11 AD3d 120, 130-131 [1st Dept 2004]). There can be recovery on a claim of emotional distress "only where severe mental pain or anguish is inflicted through a deliberate and malicious campaign of harassment or intimidation" (*(Owen v Leventritt*, 174 AD2d 471, 472 [1st Dept

1991] [internal citations omitted]). Here, Plaintiff's interactions with Santoriella were exclusively through text messaging and phone calls over the course of eighteen (18) days. Although Plaintiff may have found Santoriella's conduct humiliating and offensive, Plaintiff failed to allege and establish a deliberate and malicious campaign of harassment or intimidation, as is required. For these reasons, this cause of action is dismissed.

Damages

Although Defendants have conceded liability by defaulting, the court cannot blindly award damages (*see Chase Manhattan Bank v Evergreen Steel Corp.*, 91 AD2d 539 [1st Dept 1982]). "Where there has been a default in appearing or answering, or summary judgment has been granted on the issue of liability and an inquest directed, it is still necessary to present proof of damages" *Paulson v Kotsilimbas*, 124 AD2d 513, 514 (1st Dept 1972). Plaintiff seeks (1) punitive damages; (2) compensatory damages; (3) lost wages; and (4) attorneys' fees.

Plaintiff's claim for punitive damages is dismissed as New York does not recognize a separate cause of action for punitive damages (*see Goldstein v. Winard*, 173 AD2d 201 [1st Dept 1991]). Moreover, the facts alleged do not establish willful, gross or wanton fraud or other morally culpable or reprehensible conduct such as to warrant the imposition of punitive damages (*see Cohen v. Mazoh*, 12 AD3d 296, 297 [1st Dept 2004]; *see also New York Univ. v. Cont. Ins. Company*, 87 NY2d 308, 315-316 [punitive damages available only in limited circumstances where it is necessary to deter gross, morally reprehensible or wantonly dishonest conduct or egregious conduct directed at the public generally]).

Plaintiff's claim for compensatory damages is dismissed since, as detailed above, the pleadings fail to contain any legally cognizable causes of action for the imposition of an award of damages.

Plaintiff's claim for lost wages is dismissed since, as detailed above, there is no cause of action upon which an award of damages may be based.

Generally, attorneys' fees and disbursements are "incidents of litigations" and a prevailing party may not collect such fees from the "loser unless an award is authorized by agreement between the parties or by statute or court rule" (*A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1, 5 [1986]). Here, there is

no mention as to an agreement between the parties, and Plaintiff does not cite to any statute or court rule that may allow attorneys' fees to be collected.

CONCLUSION

It is hereby

ORDERED that Plaintiff shall serve a copy of this Decision and Order with Notice of Entry upon all parties entitled to notice.

This constitutes the Decision and Order of this Court.

11/25/2020
DATE

Mary V. Rosado, J.S.C.

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