

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33917
C/kmb

_____AD3d_____

Argued - January 20, 2012

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2011-03388

DECISION & ORDER

Christopher Broich, appellant, v Nancy C. McGann,
et al., respondents.

(Index No. 18772/08)

Law Office of Steven A. Morelli, P.C., Garden City, N.Y. (Eric S. Tilton of counsel),
for appellant.

Devitt Spellman Barrett, LLP, Smithtown, N.Y. (Diane K. Farrell of counsel), for
respondents.

In an action to recover damages for defamation, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Baisley, Jr., J.), dated February 8, 2011, which granted that branch of the defendants' motion which was for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contention, the Supreme Court properly determined that the defendants demonstrated their prima facie entitlement to judgment as a matter of law by establishing that the challenged statements were entitled to a qualified "common interest" privilege (*Lieberman v Gelstein*, 80 NY2d 429, 437; *see Stukuls v State of New York*, 42 NY2d 272, 278-279; *Phelan v Huntington Tri-Vil. Little League, Inc.*, 57 AD3d 503, 504; *Golden v Stiso*, 279 AD2d 607, 608; *Suozzi v Parente*, 202 AD2d 94, 101; *ATN Marts v Ireland*, 195 AD2d 959), and a conditional privilege arising from the plaintiff's status as a public figure (*see Shulman v Hunderfund*, 12 NY3d 143, 147; *Silsdorf v Levine*, 59 NY2d 8, 16-17, *cert denied* 464 US 831; *Cancer Action NY v St. Lawrence County Newspapers Corp.*, 12 AD3d 880, 880-881; *Sands v News Am. Publ.*, 237 AD2d

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177). The affirmation of the plaintiff's attorney in opposition to the motion failed to raise a triable issue of fact with regard to the requisite showing of malice necessary to defeat either privilege (*see Liberman v Gelstein*, 80 NY2d at 437-439; *Cosme v Town of Islip*, 63 NY2d 908, 909; *James v Gannett Co.*, 40 NY2d 415, 424-425; *Liere v Scully*, 79 AD3d 821, 822; *Sands v News Am. Publ.*, 237 AD2d at 177-178). Similarly, the plaintiff failed to demonstrate how further discovery might reveal the existence of material facts that would warrant the denial of the defendants' motion (*see Phelan v Huntington Tri-Vil. Little League, Inc.*, 57 AD3d at 505; *Shover v Instant Whip Processors*, 240 AD2d 560, 560-561; *Paskiewicz v National Assn. for Advancement of Colored People*, 216 AD2d 550). Accordingly, the Supreme Court properly granted the defendants' motion for summary judgment.

In view of the foregoing, we need not reach the parties' remaining contentions.

MASTRO, A.P.J., ANGIOLILLO, ENG and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court