

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

D36119
N/kmb

_____AD3d_____

Argued - September 11, 2012

RANDALL T. ENG, P.J.
REINALDO E. RIVERA
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2011-05120

DECISION & ORDER

Hustedt Chevrolet, Inc., et al., appellants, v
Newsday, Inc., respondent, et al., defendants.

(Index No. 10698/08)

John J. Napolitano, Oyster Bay, N.Y., for appellants.

Levine Sullivan Koch & Schulz, LLP, New York, N.Y. (David A. Schulz and Amba M. Datta of counsel), for respondent.

In an action to recover damages for libel, the plaintiffs appeal from an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated April 6, 2011, which granted the motion of the defendant Newsday, Inc., for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

In this action to recover damages for libel, the plaintiffs alleged that a newspaper article published by the defendant Newsday, Inc. (hereinafter Newsday), “falsely implied . . . that the plaintiffs knowingly took advantage of a handicapped person.” The article, entitled “Risks of giving autistic adults financial freedom,” published on March 2, 2008, told the story of a young adult with a high-functioning form of autism who purchased a used car from the plaintiffs for the sum of \$11,400 after receiving a credit for trading in his vehicle. It is undisputed that, after the purchaser’s mother complained to the plaintiffs, the sale price was renegotiated and lowered to a total of \$8,550. The article included the plaintiffs’ position that the purchaser had all of the required paperwork, and that the price “had nothing to do with [his] condition.”

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Even if the newspaper article in question can be interpreted to imply the defamatory meaning alleged in the complaint (*see Armstrong v Simon & Schuster*, 85 NY2d 373, 380-381; *WDM Planning v United Credit Corp.*, 47 NY2d 50, 53; *see also Aronson v Wiersma*, 65 NY2d 592, 593-594), it is nevertheless nonactionable as an expression of pure opinion based upon disclosed facts (*see Steinhilber v Alphonse*, 68 NY2d 283, 289; *see also Gross v New York Times Co.*, 82 NY2d 146, 151-152). The other allegations of defamation in the complaint have no basis in the text of the article. Since Newsday made a prima facie showing of entitlement to judgment as a matter of law, which the plaintiffs failed to rebut by raising a triable issue of fact, the Supreme Court properly granted Newsday's motion for summary judgment dismissing the complaint insofar as asserted against it (*see Zuckerman v City of New York*, 49 NY2d 557, 560).

ENG, P.J., RIVERA, HALL and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court