

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

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Submitted - October 4, 2012

RANDALL T. ENG, P.J.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2011-10293

DECISION & ORDER

Selim Zherka, appellant, v Larry Gribler, et al.,
respondents.

(Index No. 24267/10)

Selim Zherka, New Rochelle, N.Y., appellant pro se.

In an action, inter alia, to recover damages for defamation, the plaintiff appeals from an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered October 4, 2011, which granted the defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the second amended complaint.

ORDERED that the order is affirmed, without costs or disbursements.

The plaintiff commenced this action alleging, inter alia, that the defendants had made certain slanderous statements. "Slander as a rule is not actionable unless the plaintiff suffers special damage. Special damages contemplate the loss of something having economic or pecuniary value" (*Liberian v Gelstein*, 80 NY2d 429, 434-435 [internal quotation marks and citations omitted]). "The four established exceptions [to the requirement of special damages] (collectively 'slander per se') consist of statements (i) charging plaintiff with a serious crime; (ii) that tend to injure another in his or her trade, business or profession; (iii) that plaintiff has a loathsome disease; or (iv) imputing unchastity to a woman" (*id.* at 435). Here, the plaintiff failed to plead that he suffered special damages with the requisite particularity (*see Matherson v Marchello*, 100 AD2d 233, 236). Moreover, contrary to the plaintiff's contention, the second amended complaint failed to allege that the defendants charged him with committing a serious crime (*see Caffee v Arnold*, 104 AD2d 352, 353; *Privitera v Town of Phelps*, 79 AD2d 1, 4; *Klein v McGauley*, 29 AD2d 418, 421).

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Accordingly, the Supreme Court properly granted the defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the complaint for failure to state a cause of action.

In light of our determination, we need not reach the plaintiff's remaining contention.

ENG, P.J., LEVENTHAL, HALL and LOTT, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court