

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Kern, J.P., Oing, Higgitt, Michael, JJ.

2338

HARVEY GOLDMAN,
Plaintiff-Appellant,

Index No. 158209/21
Case No. 2023-04691

-against-

ABRAHAM HESCHEL SCHOOL,
Defendant-Respondent,

JOHN DOE,
Defendant.

Law Office of Richard A. Altman, New York (Richard A. Altman of counsel), for appellant.

Troutman Pepper Hamilton Sanders, LLP, New York (Michael E. Baughman of counsel), for respondent.

Order, Supreme Court, New York County (Shlomo S. Hagler, J.), entered on or about March 7, 2023, which granted defendant Abraham Heschel School's motion to dismiss and referred the matter to a special referee to hear and determine the issue of attorneys' fees to be awarded to defendant as the prevailing party, unanimously affirmed, without costs.

The complaint failed to state a claim for defamation because defendant's statements to the New York Post and Fox News were nonactionable expressions of opinion and were substantially true. The use of the words "liar" or "lying" can sometimes be deemed actionable. However, under the circumstances of the case, defendant's assertion that plaintiff was lying was rhetorical. First, the tone of both

statements, which were made in the context of a public dispute between plaintiff and defendant, indicates to the reader that the person making the statement is expressing his or her personal views, in that it reflects a degree of frustration and resentment by defendant at plaintiff's allegations (*see Sandals Resorts Intl. Ltd. v Google, Inc.*, 86 AD3d 32, 43 [1st Dept 2011]). Second, in the context of the entire New York Post article, defendant's remark of calling the allegations against it untrue can only be understood as a specific denial of plaintiff's factual accusations and cannot be construed as defamatory (*see Independent Living Aids v. Maxi-Aids, Inc.*, 981 F Supp 124, 128 [ED NY 1997]). Moreover, the documentary evidence presented by defendant in connection with the motion to dismiss demonstrated that the challenged statements were substantially truthful, if not absolutely truthful (*see Stepanov v Dow Jones & Co., Inc.*, 120 AD3d 28, 34 [1st Dept 2014]).

Plaintiff's failure to meet the CPLR 3211(a)(1) and (7) standard necessarily establishes his failure to meet the higher CPLR 3211(g) standard, and the court properly concluded that plaintiff had not met the heightened pleading standard required by the amended anti-SLAPP law because he failed to establish by "clear and convincing evidence" that a claim for defamation existed (*see Smartmatic USA Corp. v Fox Corp.*, 213 AD3d 512, 512 [1st Dept 2023]).

The court properly granted defendant's request for attorneys' fees because an adjudication of a motion to dismiss pursuant to CPLR 3211(g) in its favor on the ground that no substantial basis for the claim existed was sufficient to demonstrate its entitlement to the attorneys' fees and costs (NYCRL §§ 70-a[1], 76-a[1][a][1], [2]; *see Reeves v Associated Newspapers, Ltd.*, _AD3d_, 2024 NY Slip Op 01898 [1st Dept 2024] [holding that the plaintiffs' failure to meet their burden under CPLR 3211[g] on a

motion to dismiss entitled defendants to attorneys' fees pursuant to Civil Rights Law § 70-a[1][a]; *215 W. 84 St Owner LLC v Bailey*, 217 AD3d 488, 488 [1st Dept 2023]; *Aristocrat Plastic Surgery P.C. v Silva*, 206 AD3d 26, 29-31 [1st Dept 2022]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 21, 2024

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas
Clerk of the Court