

Courtman v Hudson Valley Bank

2006 NY Slip Op 30309(U)

April 18, 2006

Supreme Court, New York County

Docket Number:

Judge: Karen Smith

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KAREN SMITH

PART 44

Justice

Index Number : 109891/2005

COURTMAN, BOBB L.

vs

HUDSON VALLEY BANK

Sequence Number : 004

REARGUMENT/RECONSIDERATION

IDEX NO. _____

OTION DATE 03/08/06

OTION SEQ. NO. _____

OTION CAL. NO. _____

TI _____ motion to/for _____

PAPERS NUMBERED

1

2

3

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is*

decided in accordance with the attached memorandum decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED
MAY 02 2006
COUNTY CLERK
NEW YORK

Dated: 4/15/06

K.S.S.
KAREN SMITH J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 44

-----X
BOBB L. COURTMAN,

Plaintiff,

-against-

Index no.: 109891/2005
Motion seq.: 004
Motion date: 03/08/06

HUDSON VALLEY BANK, GRIFFIN, COOGAN
& VENERUSO, P.C., and MELISSA D. LESCAULT
ESQ., Individually and DOES 1-10,

DECISION AND ORDER

Defendants.

-----X

PRESENT: KAREN S. SMITH, J.S.C.:

Defendants' motion to re-argue the decision of this court dated January 6, 2006 and entered January 18, 2006 is granted. Upon such re-argument, the court adheres to its prior decision except as it relates to the dismissal of plaintiff's fifth cause of action, for intentional infliction of emotional distress. With respect to the fifth cause of action, the court reverses its prior decision and denies the motion to dismiss that cause of action. With respect to all other causes of action, the court adheres to its prior decision.

As alleged in the complaint, this action arises out of incidents surrounding a letter which was sent, on or about October 23, 2002, by Griffin, Coogan & Veneruso, P.C. and Melissa D. Lescault (hereafter referred to individually as "GCV" and "Lescault", respectively, and collectively as the "Moving Defendants") on behalf of defendant Hudson Valley Bank (hereafter referred to as "HVB") to the Pasco County, Florida, Sheriff's Office concerning the plaintiff,

Bobb L. Courtman (hereafter referred to as "Courtman"). The letter stated, inter alia, that; "Mr. Courtman has knowingly stolen \$40,000 that does not belong to him and he has put it to his own use." (see paragraph 11 of the complaint). The complaint alleges that, contrary to the statements made in the October 23, 2002 letter, the funds in question were being held in escrow, on behalf of Courtman, in an escrow account at HVB and, therefore, were not stolen but, in fact, were Courtman's own funds. As a result of the letter, Courtman alleges that, on August 4, 2004, he was falsely arrested by the Pasco County Sheriff and put to the time, expense, effort and embarrassment of having to defend himself against false criminal charges which were ultimately dismissed. Additionally, Courtman alleges that the letter was sent with the intent that Courtman be arrested in order to harass and intimidate him into returning the funds to the escrow deposit at HVB.

This action was commenced by the filing of the summons and complaint on July 18, 2005. In the complaint, Courtman asserts five causes of action, to wit; libel per se, libel, negligent misrepresentation of facts, false arrest and intentional infliction of emotional distress. The Moving Defendants have not yet answered the complaint. As indicated in their notice of motion, the Moving Defendants seek re-argument of this court's decision, dated January 6, 2006, which partially granted and partially denied their prior motion.

HVB has submitted a separate motion seeking the dismissal of the complaint as against it and has not joined in or submitted any papers in connection with this motion. Courtman opposes the motion. In his opposition to the motion, Courtman specifically points out the he was arrested by the Pasco County, Florida Sheriff's Department on August 5, 2004.

The court misapprehended the facts before it at the time of the Moving Defendants' prior

motion. The vast majority of the events involved in this matter took place in 2002. Therefore the bulk of the arguments before the court addressed the incidents occurring at that time. With this backdrop, the court inadvertently overlooked the substantial delay between the events occurring in 2002, including the Moving Defendants' mailing of their letter to the Pasco County Sheriff's Department, and Courtman's arrest on August 4, 2004. This fact only impacts upon the issues raised in connection with Courtman's fourth and fifth causes of action. It does not impact the decision previously reached by the court with respect to Courtman's first three causes of action.

The court declines to revise its prior decision on Courtman's fourth cause of action for false imprisonment. Since the decision reached with respect to that cause of action was that it remains a viable claim, the outcome is not changed by the fact previously overlooked by the court.

However, the court's dismissal of Courtman's fifth cause of action for intentional infliction of emotional distress premised upon the one-year statute of limitations for intentional torts was in error. It has been held that; "...all the elements of the cause of action for reckless infliction of emotional distress were not present until the plaintiff suffered severe emotional distress,..." (*Dana v. Oak Park Marina, Inc. et al*, 230 AD2d 204, 210 [4th Dept, 1997], cf. *Long v. Sowande, et al*, 2006 NY Slip Op 1561, 2006 NY App Div Lexis 2495 [1st Dept, 2006]). Thus, Courtman's fifth cause of action did not accrue until his arrest on or about August 5, 2004. Since the instant action was commenced July 18, 2005, it is not time-barred. The only question remaining is whether the cause of action can survive the Moving Defendants' motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

In the context of such a motion, the First Department has stated:

The scope of a court's inquiry on a motion to dismiss under CPLR 3211 is narrowly circumscribed. The court must 'accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory' (*Marone v Marone*, 50 NY2d 481, 484, 413 N.E.2d 1154, 429 N.Y.S.2d 592 [citation omitted]; see also *Guggenheimer v Ginzberg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17). The complaint must be construed 'liberally' (CPLR 3026; see *New York Trap Rock Corp. v Town of Clarkstown*, 299 NY 77, 85 N.E.2d 873), and the court must accept as true not only 'the complaint's material allegations' but also 'whatever can reasonably be inferred there from' in favor of the pleader (*McGill v Parker*, 179 A.D.2d 98, 105, 582 N.Y.S.2d 91; see also *Cron v Hargro Fabrics*, 91 N.Y.2d 362, 366, 670 N.Y.S.2d 973, 694 N.E.2d 56). In ruling on a motion to dismiss, the court is not authorized to assess the merits of the complaint or any of its factual allegations, but only to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action."

(*P.T. Bank Central Asia, New York Branch v ABN Amro Bank N.V.*, 301 AD2d 373,375-376 [1st Dept 2003])

Accepting the facts alleged in Courtman's complaint as true and granting them every favorable inference, Courtman's fifth cause of action for intentional infliction of emotional distress sets forth a legally cognizable cause of action against the Moving Defendants. "New York ... does permit a claim for intentional infliction of emotional distress 'for conduct exceeding all bounds usually tolerated by decent society' ... The conduct must, however '[have] been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community'" (*Kaminski v United Parcel Service et al*, 120 AD2d 409, 412 [1st Dept, 1986], internal citations omitted). Courtman's complaint alleges each of the necessary elements of the cause of action. Additionally, the complaint alleges willful and malicious conduct by the defendants. Therefore, this cause of action and its demand for punitive damages may not be dismissed pursuant to CPLR

§3211 (a) (7). Accordingly, it is;

ORDERED: that upon re-argument of this court's decision dated January 6, 2006, the court adheres to its prior decision except as it relates to Courtman's fifth cause of action for intentional infliction of emotional distress and, as to that cause of action, the court reverses its prior decision and denies the motion to dismiss this cause of action and, it is;

FURTHER ORDERED: that counsel for all parties are directed to appear before Part 44 of the court in room 581 at 111 Centre Street, New York, New York on May 12, 2006 at 9:30AM for a preliminary conference.

The foregoing constitutes the decision and order of this court.

Dated: April 18, 2006

ENTER:



Hon. Karen S. Smith, J.S.C.

FILED
MAY 02 2006
COUNTY CLERK'S OFFICE
NEW YORK