

Sheridan v Carter
2006 NY Slip Op 30826(U)
December 4, 2006
Supreme Court, Nassau County
Docket Number: 18320/05
Judge: Anthony L. Parga
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SHORT FORM ORDER**SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY****Present:**HON. ANTHONY L. PARGA*Justice*-----X **PART 15****FONTAINE SHERIDAN and DONALD
SHERIDAN,****Plaintiffs,****INDEX NO. 18320/05****X X X****-against-****MOTION DATE: 10/10/06****SEQUENCE NO. 006, 007****CINDY CARTER, DOMESTIC WORKERS
UNITED and STAND UP MINISTRY,****Defendants.**

-----X

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Upon the foregoing papers, it is ordered that the motion by plaintiffs seeking leave to reargue and renew the motion which resulted in the decision of this Court dated June 30, 2006 is denied.

A motion for leave to renew must be supported by new or additional facts which, although in existence at the time of the prior motion, were not known to the party seeking renewal. Here, the plaintiffs did not submit any justification for failing to present facts known to them at the time of the original motion, and improperly

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relied on facts not in existence at the time of the original motion (see CPLR 2221 [e] [2], *Johnson v. Marquez*, 2 A.D.3d 786, (2nd Dept., 2003)).

Plaintiffs have failed to establish that the Court misunderstood the facts or misapplied the controlling principles of law (*Foley v. Roche*, 68 AD2d 558 [1st Dept. 1979]; *Gellert & Rodner v. Gem Cmty. Mgmt.*, 20 AD3d 388 [2nd Dept. 2005])).

The cross-motion by defendant Stand Up Ministry for an order dismissing the action pursuant to CPLR 3211(a)(7) is granted.

In this action plaintiffs seek damages from all defendants for defamation per se and a permanent injunction against defendants further slandering plaintiffs' names and characters.

Plaintiffs in January 2003 hired defendant Cindy Carter through an employment agency to work in their home as a child care provider for plaintiffs' three children. In 2005, the relationship deteriorated and a domestic dispute resulted in plaintiff Fontaine Sheridan's plea of guilty to a criminal harassment charge (PL§240.26(1)). After the criminal case was concluded, defendant Domestic Workers United on behalf of defendant Cindy Carter wrote to plaintiffs with demands for an apology and money in connection with the acrimonious employer-employee relationship. Upon plaintiffs' rejection of the demands, defendant Domestic Workers United contacted newspapers which resulted in at least 5 newspaper articles with photographs of plaintiffs and their children. The newspaper articles described the alleged mistreatment of defendant Cindy Carter by plaintiffs during her employment.

Subsequent to the publication of these articles, defendant Stand Up Ministry along with defendant Domestic Workers United began protesting and picketing in front of plaintiff's home and plaintiff Donald Sheridan's place of business in Manhattan.

The third and fourth causes of action against movant Stand Up Ministries allege that Stand Up Ministries distributed a flyer and posted on their website false and defamatory statements and picketed outside plaintiffs' home and place of business.

The Court has examined the Complaint in a manner consistent with uncontested law. "To determine whether a pleading is sufficient to withstand a challenge under CPLR 3211[a][7], the court must consider whether the pleading, taken as a whole, fails to state a cause of action. Looseness, verbosity and excursiveness, must be overlooked on such motion if any cause of action can be spelled out from the four corners of the pleading" (*Foley v. D'Agostino*, 21 AD2d 60 (1st Dept., 1964)).

It is uncontested that speech in constitutionally protected and privileged when the subject constitutes a public concern.

The question before the Court is whether an issue of public concern is presented in this case. There are no empiracal rules for determining when public statements involve matter of genuine public concern. It could be argued that movant's allocation of resources consistent with its mission statement is an indication that the employment conditions of domestic workers is a public interest. However, a matter is not of public concern if it involves an issue directed at a limited audience (*Chapadeau v. Utica Observer-Dispatch, Inc.*, 38 NY 196 (1975)).

Under the circumstances, it is undisputed that the events that precipitated defendants' activities are a matter of public record. The criminal charges and subsequent plea were "current event" news items in print and on television independent of defendant Domestic Workers United efforts. It is not unreasonable to find the underlying issues to be of genuine public concern. Hence, the Complaint

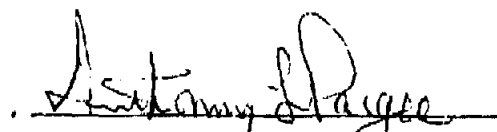
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must articulate malice or reckless disregard for the truth with particularity (CPLR 3126(a)).

The Complaint and opposition to this motion contain conclusory statements as to the truth of defendants' statements and defendants' intent in their publication, thus defendant Stand Up Ministries' motion is granted.

The equitable relief of a preliminary injunction pending the outcome of this litigation that defendants shall not stage any protests at the home of plaintiffs located at 112 Whitewood Drive, Massapequa Park, N.Y. granted by the order of the undersigned dated March 16, 2006 is vacated.

Dated: December 4, 2006.


Anthony L. Farga, J.S.C.