

**Zakinov v Nektalov**

2007 NY Slip Op 30965(U)

April 18, 2007

Supreme Court, Queens County

Docket Number: 0025934/2006

Judge: Allan B. Weiss

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS IA Part 2  
Justice

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ANATOLY ZAKINOV,		Number <u>25934</u> 2006
Plaintiff,		Motion
- against -		Date <u>January 24,</u> 2007
MAYA NEKTALOV,		Motion
Defendant.		Cal. Number <u>3</u>
	<u>x</u>	

The following papers numbered 1 to 9 read on this motion by defendant pro se Maya Nektalov for an order dismissing the summons and complaint on the grounds that it fails to state a cause of action.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits-Exhibits.....	1-3
Opposing Affidavit- Exhibits (1).....	4-6
Reply Affidavit-Exhibits(1A-B).....	7-8
Affidavit of Service.....	9

Upon the foregoing papers it is ordered that this motion is determined as follows:

Plaintiff pro se Anatoly Zakinov seeks to recover damages in the sum of \$15 million dollars for defendant's "applications for summons and complaints against the plaintiff," for libel and slander, for perjury in the Criminal Court, for malicious prosecution and for "abusement and harassment."

Plaintiff alleges that he is private investigator employed by Trackdown Investigations Inc., and that the defendant Maya Nektalov is the owner of a Russian deli known as Romashka. Plaintiff states that he was arrested on July 29, 2005 and charged with attempted grand larceny in the second degree, stalking in the fourth degree,

and harassment in the first and second degree, based on statements made by Ms. Nektalov to the police. Plaintiff alleges that as a result of defendant's statements to the police, an article was published in the "Jewish World" on August 25, 2005, stating that he was arrested and charged with racketeering and demanding money from businesses located in Kew Gardens, Queens. Although Romashka was identified in the article, Maya Nektalov was not named. Plaintiff alleges that he was libeled and slandered by said newspaper article and that he was publically humiliated, and vilified by the defendant, with the intent of destroying his professional career. Plaintiff states that he was arrested again on April 9, 2006, and charged with criminal contempt in the second degree, aggravated harassment in the second degree, and harassment in the second degree, based upon statements made by the defendant to the police. Plaintiff states that in both criminal actions, the statements made by defendant to the police were false and that all charges against him were dismissed.

The court notes that although plaintiff states that he is a private investigator, the documentary evidence submitted establishes that he is a licensed security guard and that neither he, nor his employer, are licensed private investigators.

Defendant Maya Nektalov states in her affidavit that in 2005 and again in 2006, the plaintiff attempted to extort money from her, and that he harassed and stalked her, and threatened her with bodily harm. The evidence submitted establishes that she obtained a temporary order of protection against the plaintiff on July 9, 2005, which was extended on August 12, 2005, and on October 3, 2005, and that she obtained a second order of protection on April 28, 2006 which was extended on June 8, 2006, and expired on July 13, 2006.

At the outset the court finds that although plaintiff is proceeding pro se, he is required to comply with the provisions of the CPLR, and that the complaint lacks numbered sentences, consecutively numbered paragraphs, and single allegations and does not properly set forth separate causes of action and thus fails to comply with CPLR 3014. In addition, plaintiff's allegations are insufficient to state any cause of action against the defendant. To the extent that the complaint seeks to state a cause of action for abuse of process based upon plaintiff's allegation that the defendant made "applications for summons and complaints against the plaintiff," it is well settled that the "institution of a civil action by summons and complaint is not legally considered process capable of being abused." (Curiano v Suozzi, 63 NY2d 113, 116 [1984].)

To the extent that plaintiff alleges a claim for "libel and slander" the complaint fails to set forth the particular words complained of, as required by CPLR 3016 [a]. In addition, as this claim is based upon a newspaper article which was neither written nor published by the defendant, it cannot form the basis of an action for defamation.

To the extent that plaintiff claims that the defendant committed perjury in the proceedings in Criminal Court, there is no civil cause of action for perjury. (See Burbrooke Mfg. Co. v St. George Textile Corp., 283 AD 640, [1954]; Lau v Berman, 6 Misc 3d 934 [2004]; Fun Fair Park, Inc. v Gabor Holding Corp., 22 Misc 2d 829 [1960]).

The claim for malicious prosecution is based upon the defendant's communications to the police department regarding the plaintiff's harassment of her which resulted in the criminal prosecution of the plaintiff. The criminal action arising out of the July 29, 2005 arrest was terminated when the plaintiff received an adjournment in contemplation of dismissal on March 3, 2006, and the criminal proceeding was subsequently dismissed. The acceptance of an adjournment in contemplation of dismissal bars an action for malicious prosecution (see, Hollender v Trump Vil. Coop., 58 NY2d 420 [1983]; Iorio v Lyons, 211 AD2d 699, 700 [1995]).

The criminal action based on the April 9, 2006 arrest was dismissed on September 5, 2006. Plaintiff's bare allegations are insufficient to state a claim arising out of the dismissal of said criminal action. A civilian complainant, by merely seeking police assistance or furnishing information to law enforcement authorities who are then free to exercise their own judgment as to whether an arrest should be made and criminal charges filed, will not be held liable for malicious prosecution (see, Levy v Grandone, 14 AD3d 660, 660-662 [2005]; Mesiti v Wegman, 307 AD2d 339, 340 [2003]; O'Connell v Luebs, 264 AD2d 385 [1999]). Nor does identifying plaintiff as the perpetrator of a crime, signing the summons or testifying at trial give rise to tort liability. (See, Collins v Brown, 129 AD2d 902 [1987]; Pugach v Borja, 175 Misc 2d 683 [1998]).

Finally, as regards plaintiff's claim for "abusement and harassment", "New York does not recognize a common-law cause of action to recover damages for harassment" (Daulat v Helms Bros., 18 AD3d 802, 803 [2005]; see, Jacobs v 200 E. 36th Owners Corp., 281 AD2d 281 [2001]; Board of Mgrs. of Executive Plaza Condominium v Jones, 251 AD2d 89, 90 [1998], lv dismissed 92 NY2d 1002 [1998];

General Motors Acceptance Corp. v Desbiens, 213 AD2d 886, 888 [1995]).

In view of the foregoing, defendant's motion to dismiss the complaint on the grounds that it fails to state a cause of action is granted.

Dated: April 18, 2007

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J.S.C.