

McRedmond v Sutton Place Rest. & Bar, Inc.

2007 NY Slip Op 31435(U)

May 30, 2007

Supreme Court, New York County

Docket Number: 0112845/2006

Judge: Debra A. James

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

PRESENT: DEBRA A. JAMES
Justice

PART 59

KRISTEN MCREDMOND and ALEXANDRIA LIPTON,
Plaintiffs,

Index No.: 112845/06

Motion Date: 02/13/07

- v -

Motion Seq. No.: 01

SUTTON PLACE RESTAURANT AND BAR, INC.,
RICHARD KASSIS, ALAN BRADBURY, SELENA
STEDDINGER, and NEIL "DOE,"

Motion Cal. No.: 62

Defendants.

The following papers, numbered 1 to 3 were read on this motion to dismiss.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____	<u>1</u>
Answering Affidavits - Exhibits _____	<u>2</u>
Replying Affidavits - Exhibits _____	<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers,

Plaintiffs move to dismiss defendants' counterclaims except for the third counterclaim. Defendants oppose the motion but at oral argument the defendants discontinued their second counterclaim for harassment and the court shall therefore dismiss same. The court shall upon consideration of the papers grant the remainder of plaintiffs' motion.

Defendants' first counterclaim for intentional infliction of emotional distress falls far short of the pleading requirements

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

FILED
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for such a cause of action because the pleading fails to set forth with specificity the acts that are alleged to be so "outrageous" as to warrant consideration of this claim. As stated by the Court, "a cause of action for either intentional or negligent infliction of emotional distress must be supported by allegations of conduct by the defendants 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. Such extreme and outrageous conduct must be clearly alleged in order for the complaint to survive a motion to dismiss." Sheila C. v Povich, 11 AD3d 120, 130-131 (1st Dept 2004); see also Ruggiero v Contemporary Shells, Inc., 160 AD2d 986, 987 (2d Dept 1990) ("allegations that the defendants harassed and ultimately discharged the plaintiff . . . failed to allege 'extreme and outrageous' conduct"). Here, defendants' failure to specify the conduct alleged to be "extreme and outrageous" subjects their claim to dismissal at the pleading stage.

Defendants' fourth, fifth, sixth and seventh counterclaims for defamation shall be dismissed because they lack the particularity required by CPLR 3016 (a) which states that "[i]n an action for libel or slander, the particular words complained of shall be set forth in the complaint, but their application to the plaintiff may be stated generally." In this case, the

alleged defamatory statements are not set forth in the complaint but instead are incorporated by reference through various unauthenticated press and internet clippings. Even if the court were to overlook the failure of defendants to sufficiently allege the content, manner and means by which the plaintiffs' allegedly published the alleged defamation, defendants' counterclaims would be subject to dismissal because a review of defendants' submissions makes plain that the statements complained of are protected by the absolute litigation privilege. "As long as the subject of an out-of-court communication relates to pending or contemplated litigation, and is made in connection with a judicial proceeding, it furthers an interest of social importance and should be protected." Caplan v Winslett, 218 AD2d 148, 153 (1st Dept 1996) (citation omitted). "Section 74 of the Civil Rights Law prohibits a civil action that alleges injury from 'the publication of a fair and true report of any judicial proceeding.' The absolute privilege under that statute also extends to the release of background material with regard to the case, so long as the statement is a substantially accurate description of the allegation." Fishof v Abady, 280 AD2d 417, 418 (1st Dept 2001) (citations omitted). There is no allegation that the statements allegedly made by the plaintiffs' are unrelated to this action and the allegations made herein. Therefore, even if the court was to overlook the other pleading

deficiencies of defendants' counterclaims, the court must still dismiss those claims because the statements alleged were privileged.

Accordingly, it is

ORDERED that the plaintiffs' motion is GRANTED; and it is further

ORDERED that the defendants' first, second, fourth, fifth, sixth and seventh counterclaims are hereby DISMISSED; and it is further

ORDERED that the parties are directed to attend a preliminary conference on June 26, 2007, at 9:30 A.M., in IAS Part 59, Room 1254, 111 Centre Street, New York, New York 10013.

This is the decision and order of the court.

Dated: May 30, 2007

ENTER:

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JUN 04 2007

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~~Debra A. James~~
DEBRA A. JAMES J.S.C.
J.S.C.