

Copp v Ramirez

2007 NY Slip Op 34404(U)

October 9, 2007

Supreme Court, New York County

Docket Number: 109122/06

Judge: Richard F. Braun

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

PRESENTED BY HON. RICHARD F. BRAUN

PART 23

J.S.C.

Index Number : 109122/2006

COPP, DOUG, et al

vs
RAMIREZ, RAYNER, et al

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE 4/26/07

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

Pages 2 were read on this motion to Dismiss the Complaint

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

1
2

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is granted to the extent of dismissing the Complaint as against defendants Rayner Ramirez, John Hochenderry, Steve Phillips, and NBC - Universal Inc. and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of this Court, see separate Opinion.

FILED
OCT 16 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: New York, New York, October 5, 2007 EWJEA [Signature]
J.S.C.

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):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 23**

----- X
DOUG COPP and AMERICAN RESCUE TEAM
INTERNATIONAL,

Index No. 109122/06

Plaintiffs,

OPINION

-v.-

RAYNER RAMIREZ, JOHN HOCKENBERRY,
STONE PHILLIPS, NBC-UNIVERSAL INC.,
LESLIE LINTHICUM, JOHN GRACE, MIKE
MILLER and JOHN & JANE DOES 1-100,

Defendants.

-----X

RICHARD F. BRAUN, J.:

This is an action for damages for defamation, intentional infliction of emotional distress, and fraud. There are three separate motions to dismiss the complaint in this action: one by defendants Rayner Ramirez, NBC Universal Inc., John Hockenberry, and Stone Phillips (the NBC defendants), pursuant to CPLR 3211 (a) (7); one by defendant Leslie Linthicum (Linthicum), pursuant to CPLR 3211 (a) (7) and (8); and one by defendants John Grace (Grace) and Mike Miller (Miller), pursuant to CPLR 3211 (a) (7) and (8).

Plaintiffs specify in their opposition papers to the motions what statements in the complaint are allegedly defamatory. None of the specified statements are. In deciding a motion to dismiss a defamation cause of action, the court must determine as a matter of law whether the alleged defamatory statements are “reasonably susceptible of a defamatory connotation (citation omitted). In making this determination, the court must give the disputed language a fair reading in the context of the publication as a whole (citation omitted)” (*Armstrong v Simon & Schuster*, 85 NY2d 373, 380 [1995]). Statements of opinion are not actionable (*Gross v New York Times Co.*, 82 NY2d 146, 150

[1993]; *Locke v Aston*, 1 AD3d 160 [1st Dept 2003]). The determination of whether a statement is opinion must be made by the court as a question of law (*Rinaldi v Holt, Rinehart & Winston*, 42 NY2d 369, 381 [1977]). The press does not have to report all sides to a story, and unbalanced reporting is a matter of editorial judgment, not actionable defamation (*Sprecher v Dow Jones & Co.*, 88 AD2d 550, 551 [1st Dept 1982], *aff'd for reasons stated below*, 58 NY2d 862 [1983]). The burden is on the plaintiff to demonstrate that factual assertions upon which defamation is based are false (*Immuno AG. v Moor-Jankowski*, 77 NY2d 235, 245 [1991]). Plaintiffs have not sustained their burden of proof on the first cause of action.

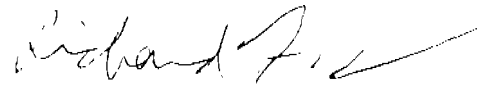
The second and third causes of action are largely duplicative of the first (*cf. Themed Rests., Inc. v Zagat Survey, LLC*, 21 AD3d 826, 827 [1st Dept 2005] [the plaintiff's negligence cause of action was dismissed as duplicative of the defamation claim]). Furthermore, the intentional infliction of emotional distress cause of action does not come close to sufficiently pleading the elements of such a claim (*see Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]). The fraud cause of action is not pled with the specificity required by CPLR 3016 (b) (*see LaSalle Nat. Bank v Ernst & Young*, 285 AD2d 101, 109 [1st Dept 2001]). Finally, the second and third causes of action improperly only seek punitive damages (*All-Boro Air Conditioning Corp. v Dunham-Bush, Inc.*, 92 AD2d 486, 487 [1st Dept 1983]).

Jurisdiction over defendants Linthicum, Grace, and Miller for the defamation cause of action cannot be based on CPLR 302 (a) (2) or (3) under their own terms (*Findlay v Duthuit*, 86 AD2d 789, 790 [1st Dept 1982]; *Strelsin v Barrett [Strelsin]*, 36 AD2d 923 [1st Dept 1971]). Although those defendants came to New York State right after September 11, 2001, the events relied upon against those defendants for the alleged defamation occurred outside of New York State. Thus, this court

has no basis for personal jurisdiction over any of those defendants under CPLR 301 (a) (1) (*see Johnson v Ward*, 4 NY3d 516, 519 [2005]; *Yanni v Variety, Inc.*, 48 NY2d 803 [1st Dept 1975]; *Strelsin*, 36 AD2d at 923).

Thus, the causes of action cannot stand. Therefore, by this court's decisions and orders, dated October 2 and 5, 2007, the motions have been granted to the extent of dismissing the complaint against all of the moving defendants.

Dated: New York, New York
October 9, 2007



RICHARD F. BRAUN, J.S.C.

FILED
OCT 16 2007
NEW YORK
COUNTY CLERK'S OFFICE