

Wong v Shiu Lun Lee
2008 NY Slip Op 30044(U)
January 2, 2008
Supreme Court, New York County
Docket Number: 0107913/2004
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

RAYMOND H. WONG, and RAYMOND H. WONG, P.C.,
Plaintiffs,
- v -
SHIU LUN LEE,
Defendant.

Index No.: 107913/04
Motion Date: 06/05/07
Motion Seq. No.: 07
Motion Cal. No.: _____

The following papers, numbered 1 to 4 were read on this motion for summary judgment.

- Notice of Motion/Order to Show Cause - Affidavits - Exhibits _____
- Answering Affidavits - Exhibits _____
- Replying Affidavits - Exhibits _____

PAPERS NUMBERED	
1, 2	_____
3, 4	_____

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1415).

Cross-Motion: Yes No

Upon the foregoing papers,

Plaintiffs move for summary judgment on the complaint in this defamation action by an attorney and his law firm against a former client. Defendant appears pro se in this action.

As previously stated by the court, this action is arises out of conduct by defendant that was the subject of a prior action between these same parties (Wong v Lee, Sup Ct, NY County, Dec. 16, 2003, Wilkins, J., Index No. 108369/2002) (the "prior action"). Plaintiffs here as in the prior action are suing defendant, a former client, for defamation alleging that defendant is distributing printed flyers that defame the

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

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

plaintiffs by accusing them of conspiring to forge accounting books, withholding evidence, violating the law and misleading the court.

In this action, the court by Order dated June 23, 2004, granted plaintiffs a preliminary injunction and plaintiffs posted the required bond. By further Order dated March 17, 2005, the court dismissed this action upon non-compliance with a prior order of the court (see this court's Order dated April 13, 2006, denying plaintiffs' motion sequence number 3). By further Order dated September 29, 2006, the March 17, 2005, Order was vacated and this case was restored to the court's calendar.

The court shall grant plaintiffs' summary judgment on the complaint to the extent plaintiffs seek a permanent injunction against defendant from posting and distributing defamatory flyers in front of plaintiff Raymond H. Wong's office and home. The court shall also direct the return of the undertaking set as a condition of the preliminary injunction.

Summary judgment is appropriate here for the reasons this court set forth in its Order of June 23, 2004, granting plaintiffs' application for a preliminary injunction. The court finds that defendant has continued to engage in the same conduct that Justice Wilkins found defamatory per se in rendering judgment for the plaintiffs in the prior action.

Plaintiff alleges that defendant has carried out his threat to continue distributing defamatory flyers. It is alleged that plaintiffs sought relief under the index number of the prior action, but that request was denied because the flyers were not identical to those previously distributed by defendant.

Defamation has long been recognized to arise from the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society. The elements are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se. CPLR 3016 (a) requires that in a defamation action, "the particular words complained of ... be set forth in the complaint." The complaint also must allege the time, place and manner of the false statement and specify to whom it was made. In evaluating whether a cause of action for defamation is successfully pleaded, the words must be construed in the context of the entire statement or publication as a whole, tested against the understanding of the average reader, and if not reasonably susceptible of a defamatory meaning, they are not actionable and cannot be made so by a strained or artificial construction.

Dillon v City of New York, 261 AD2d 34, 37 -38 (1st Dept 1999) (citations and internal quotations omitted). The exceptions to the requirement of special damages, that is defamation per se, "consist of statements (i) charging plaintiff with a serious crime; (ii) that tend to injure another in his or her trade, business or profession; (iii) that plaintiff has a loathsome disease; or (iv) imputing unchastity to a woman." Lieberman v Gelstein, 80 NY2d 429, 435 (1992).

In this case as in the prior action, the fliers distributed by plaintiff state that Bing Li, an attorney with plaintiffs' law office "lied to the Plaintiff and took advantage of the fact that the Plaintiff does not know English. He also lied to the court and protected the defendant and caused a great los[s] to Shun Lun Lee, the Plaintiff." "These facts, if true, would constitute violations of the attorney ethics rules and of criminal laws of subornation of perjury" and therefore constitute defamation per se. Armstrong v Simon & Schuster, Inc., 197 AD2d 87, 91 (1st Dept 1994) affd 85 NY2d 373 (1995).

The statements and their publication by the defendant constitute defamation under any standard of liability. The defendant was placed on notice by the court in the prior action that statements such as these were defamatory and the defendant here has conceded that he has continued to publish the defamatory material.

Injunctive relief in the form a restraint on speech is disfavored as it creates "a confrontation between the constitutional guarantee of freedom of speech and its restraint in the face of an offensive intrusion as part of coercive action upon a captive audience in a private dispute. While the guarantees of freedom of expression are not absolute barriers to prior restraint of speech under all circumstances, a heavy burden is imposed to justify any infringement. Moreover, expressions of

pure opinion are especially protected. While equity will not intervene to restrain the publication of words on a mere showing of falsity, it may intervene where restraint becomes essential to the preservation of a business or other property rights threatened by tortious conduct in which the words are merely an instrument of and incidental to the conduct. An injunction will lie to restrain libel when the publication is made as part and parcel of a course of conduct deliberately carried on to further a fraudulent or unlawful purpose. Trojan Elec. & Mach. Co., Inc. v Heusinger, 162 AD2d 859, 860 (3d Dept 1990) (citations omitted, emphasis added). Furthermore, "[e]quity will . . . restrain tortious acts where it is essential to preserve a business or property interests and also restrain the publication of false and defamatory words where it is the means or an incident of such tortious conduct. Defamatory words uttered in aid of another tort are verbal acts, which, with the aided tort, are subject to restraint, if equitable grounds therefor are present." Wolf v Gold, 9 AD2d 257, 259 -260 (1st Dept 1959) (citations omitted); see also Bingham v Struve, 184 AD2d 85, 90 (1st Dept 1992) (injunctive relief granted where "potential harm caused by defendant's continued communications and the picketing of plaintiffs' home is irreparable, as it is capable of injuring plaintiff['s] standing and reputation in all aspects of his personal and professional life").

Injunctive relief to restrain the defendant from further defamatory communications with respect to plaintiffs' actions in representing defendant is warranted here to the extent that defendant continues to accuse plaintiffs of violating their ethical responsibilities. As stated in the decision and judgment in the prior action, "The Court is aware, however, that defendant holds an unusually strong belief in the righteousness of his cause and has vowed to continue publishing flyers until he receives full satisfaction. However, defendant must understand that continued wrongful attacks on plaintiffs' reputation will expose him to continued liability. The court has concluded that defendant was wrong to accuse plaintiffs of criminal and unethical activity and, if defendant continues to do so, he will be flouting the judgment of this Court. The consideration and leniency that has been shown to defendant on this occasion will not be so freely given should he continue to defame the plaintiffs."

Defendant's continued defiance of the Court's judgment in the prior action and the preliminary injunction in this action is the type of behavior that may be enjoined without running afoul of constitutional prerogatives. No order or judgment of this court has or will prevent the defendant from expressing his opinion as to plaintiffs' conduct. Rather, what is being restrained is the publication and distribution of false factual

information that accuses the plaintiffs' of committing and suborning perjury before the court. Defendant has actual knowledge of the impermissibility of his acts based upon the orders and findings made by this court in this action and the prior action that resulted in a judgment. Defendant's continuing disobedience is no longer a private matter and now implicates a disrespect for the legal process that should be remedied by equitable relief.

Based upon the foregoing, the court shall grant plaintiffs summary judgment and shall discharge the undertaking pursuant to CPLR 2606.

Accordingly, it is

ORDERED and ADJUDGED that the plaintiffs' motion for summary judgment is GRANTED; and it is further

ORDERED, ADJUDGED and DECLARED that the defendant, SHIU LUN LEE and his agents, are permanently enjoined and restrained from posting and distributing fliers and other literature containing false and defamatory statements regarding the handling of his legal action by plaintiffs or anyone presently or previously affiliated with plaintiffs; and it is further

ORDERED, ADJUDGED and DECLARED that the defendant, SHIU LUN LEE and his agents, are permanently enjoined and restrained from demonstrating or otherwise protesting, regarding the handling of his legal action by plaintiffs or anyone presently or previously

affiliated with plaintiffs, within 100 feet of the offices or homes of plaintiffs' and plaintiffs' current and former employees or in anyway harassing, threatening or intimidating plaintiffs' current and former employees; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 2606 (a) the undertaking of \$5,000.00 paid into court by the plaintiffs' pursuant to this court's Order of June 23, 2004, conditioned that plaintiffs is hereby DISCHARGED; and it is further

ORDERED and ADJUDGED that the Department of Finance of the City of New York, upon the delivery of a certified copy of this order and judgment and a copy of the New York County - County Clerk Court and Trust Fund Receipt No. 4002, Index No. 107913-04 dated July 8, 2004, pay and release to the plaintiffs the sum of \$5,000.00 together with accrued interest and less any applicable fees and commissions of the Department.

This is the decision and order of the court.

Dated: January 2, 2008

ENTER:

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

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).