

**Vadney v Ross**

2008 NY Slip Op 30970(U)

April 3, 2008

Supreme Court, Greene County

Docket Number: 0020072/3310

Judge: Joseph C. Teresi

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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF GREENE

HAROLD W. VADNEY III,

Plaintiff,

-against-

**DECISION and ORDER**

**Index No.: 07-233**

**RJI No.: 19-06-2450**

JOAN ROSS, JOHN LUCKACOVIC, BLEEZARDE  
PUBLISHING CO. INC., RICHARD BLEEZARDE,  
UNKNOWN DEFENDANTS JOHN AND MARY DOE  
a/k/a VOTERS4JUSTICE, and UNKNOWN  
DEFENDANTS JOHN AND MARY DOE a/k/a  
CONCERNED RESIDENTS OF NEW BALTIMORE

Defendant.

Supreme Court of Greene All Purpose Term, March 19, 2008  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

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**TERESI, J**

Defendants John Luckacovic (“Luckacovic”), Joan Ross (“Ross”), Richard Bleezarde, and Bleezarde Publishing Company (collectively “Bleezarde”), by notice of motion, separately seek orders pursuant to CPLR §3212 granting summary judgment. Plaintiff (“Vadney”) opposes the motions.

This action arises primarily from “letters to the editor,” published by the *Ravena News Herald*, entitled “Judge With a Grudge?” (“Grudge”), “What won’t Harold Vadney do to get attention,” (“Attention”) and “He was refused, not rebuffed” (“Rebuffed”), regarding Mr. Vadney’s 2005 campaign for Town Justice of New Baltimore. Grudge was written by Mr. Luckacovic, under the pseudonym “Voters4Justice.” Rebuffed and Attention were written by Ms. Ross. Mr. Vadney also claims that Ms. Ross made a defamatory telephone call (“Call”) to a neighbor, Ms. Helga Baldwin, about Mr. Vadney. Mr. Bleezarde is the owner of the *Ravena News Herald*.

Ultimately, Mr. Vadney lost the 2005 election, garnering approximately 3% of the total vote. Mr. Vadney claims that he lost the election, and suffered injury to his reputation, because of defamatory statements made in Grudge, Attention, and Rebuffed. Mr. Vadney also claims that “Voters4Justice” infringes upon “Vadney4Justice,” a pseudonym used by Mr. Vadney.

“Summary judgment is a drastic remedy and ‘should not be granted where there is any doubt as to the existence of a triable issue.’” Napierski v. Finn 229 A.D.2d 869, 870 (3d Dep’t 1996) (quoting Moskowitz v Garlock, 23 A.D.2d 943, 944 (3d Dep’t 1965)). In deciding

whether summary judgment is warranted, the court's primary function is issue identification, not issue determination. See Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395, 404 (1957). The moving party has the burden of establishing its entitlement thereto as a matter of law by establishing the nonexistence of material issues of fact. See Winegrad v. New York Univ. Med. Ctr., 64 N.Y. 2d 851, 853 (1985). The evidence must be construed in a light most favorable to the party opposing the motion. See Dykstra v. Winridge Condominium One, 175 A.D.2d 482, 483 (3d Dep't 1991). To defeat a motion for summary judgment, the party opposing the motion must produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact requiring a trial of the action. See Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986).

To claim defamation, a public figure must demonstrate that "the statement was made with 'actual malice . . . ' with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times Co. v. Sullivan, 376 U.S. 254, 279-280 (1964). "Plaintiffs bear the burden of proving that the statements are false, and the inquiry only advances . . . after their falsity is established." Proskin v. Hearst Corp., 14 A.D.3d 782, 783 (3d Dep't 2005). "False opinions" are not actionable. Gross v. New York Times Co., 82 N.Y.2d 146, 153 (1993). Defamation *per se* is limited to statements that impute 1) commission of a crime, 2) loathsome disease, 3) unchaste behavior in a woman, 4) homosexual behavior, or 5) other traits that affect plaintiff's trade, occupation, or profession. Tourge v. City of Albany, 285 A.D.2d 785, 786 (3d Dep't 2001).

It is well settled that "a mere conspiracy to commit a [tort] is never of itself a cause of action." Alexander & Alexander, Inc. v. Fritzen, 68 N.Y.2d 968, 969 (1986) (quoting Brackett

v. Griswold, 112 N.Y. 454, 467 (1889)). New York courts have “refus[ed] to countenance an action for invasion of privacy.” Arrington v. New York Times Co., 55 N.Y.2d 433, 440 (1982). To claim trademark infringement, the plaintiff must demonstrate both “a trade name so associated in the public’s mind with the plaintiff,” and that “the public is likely to confuse the defendant . . . with the plaintiff.” Camelot Assocs. Corp. v. Camelot Design & Dev. LLC, 298 A.D.2d 799, 800 (3d Dep’t 2002). To claim tortious interference, the plaintiff must demonstrate that a specific existing or prospective contract was terminated because of defendant’s wrongful interference. Guard-Life Corp. v. Parker Hardware Mfg. Corp., 50 N.Y.2d 183, 190-193 (1980).

After a full review of the record, this court grants summary judgment to Defendant Bleezarde and Ross, with costs, and grants partial summary judgment to Defendant Luckacovic.

Based on Liberman v. Gelstein, and this Court’s decision in Kowalczyk v. McCullough, the statements in the “Call”, “Grudge”, “Rebuffed”, and “Attention” are insufficient for the business exception of defamation *per se*. The tortious interference claim also fails, as Mr. Vadney’s campaign for Town Justice does not meet the criteria of a prospective contract. Mr. Vadney has not demonstrated that “Vadney4Justice” rose to the level of trademark, and that Mr. Luckacovic’s use of “Voters4Justice” constituted an appropriation with a likelihood to cause confusion. There is no independent claim for tort conspiracy, intentional negligence, or invasion of privacy. Thus, summary judgment is granted on all the above claims; all remaining claims are subsumed under defamation.

Concerning defamation, Mr. Vadney is a public figure; he purposefully campaigned for public office, and is thus held to the standard established in New York Times v. Sullivan.

Mr. Vadney claims that Defendant Bleezarde is liable for defamation for publishing

Grudge, Rebuffed, and Attention. However, Mr. Vadney fails to provide any evidence that Defendant Bleezarde acted with intentional malice or reckless disregard for the truth in publishing these “letters to the editor.” Thus, all claims against Defendant Bleezarde are dismissed with costs.

Mr. Vadney claims Defendant Ross is liable for defamation for “Attention”, “Rebuffed”, and the “Call”. However, there is insufficient evidence to support a finding that the “ Call” constituted defamation. Further, there is insufficient evidence to demonstrate that either “Attention” or “Rebuffed” constitute actionable defamation under Gross v. New York Times Co. and New York Times Co. v. Sullivan. Thus, all claims against Defendant Ross are dismissed with costs.

Mr. Vadney also claims Defendant Luckacovic is liable for defamation for writing “Grudge”. Viewing the evidence in a light most favorable to Mr. Vadney, there exist factual issues concerning the defamatory content of “Grudge”. For that reason, this Court grants summary judgment to Defendant Luckacovic regarding all claims except defamation.

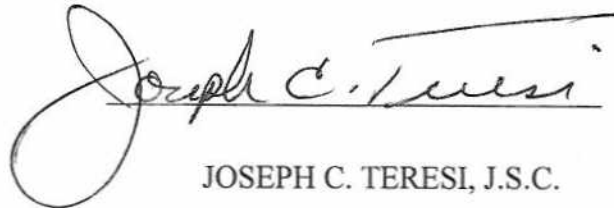
This Court notes counsels’ arguments regarding untimely submission of papers, and as an act of discretion, will consider all papers.

All papers, including this Decision and Order, are being returned to the attorney for Defendant Bleezarde. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So ordered.

Dated: April 3, 2008

Albany, NY



JOSEPH C. TERESI, J.S.C.

**PAPERS CONSIDERED:**

1. Notice of Motion for Summary Judgment, of Luckacovic, dated February 5, 2008.
2. Affidavit of Kevin A. Luibrand, Esq., dated February 5, 2008, with Attached Exhibits A-L.
3. Affidavit of John Luckacovic, dated February 5, 2008, with Attached Exhibits A-C.
4. Notice of Motion for Summary Judgment, of Ross, dated February 28, 2008, with Attached Exhibits A-N.
5. Affidavit of Joan Ross, dated February 28, 2008, with Attached Exhibits A-B.
6. Affidavit of Harold W. Vadney III, dated February 28, 2008.
7. Plaintiff's Memorandum of Law and Answer, dated February 29, 2008.
8. Notice of Motion for Summary Judgment, of Bleezarde, dated March 5, 2008.
9. Affirmation of Thomas P. McQuade, Esq., dated March 5, 2008, with Attached Exhibits A-H.
10. Plaintiff's Memorandum of Law and Answer, dated March 19, 2008.
11. Affidavit of Harold W. Vadney III, dated March 19, 2008.