

Karol v Errico

2008 NY Slip Op 33386(U)

December 5, 2008

Supreme Court, Nassau County

Docket Number: 2741/07

Judge: Roy S. Mahon

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SCAW

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON
Justice

EUGENE KAROL,

Plaintiff(s),

- against -

LUIGI GINO ERRICO,

Defendant(s).

TRIAL/IAS PART 9

INDEX NO. 2741/07

MOTION SEQUENCE
NO. 4

MOTION SUBMISSION
DATE: September 25, 2008

The following papers read on this motion:

Notice of Motion	X
Affirmation	X

Upon the foregoing papers, the motion by defendant for an Order for renewal of summary judgment, is determined as hereinafter provided:

In pertinent part, the Court in its July 29, 2008 Order set forth:

"In support of the defendant's application for an Order pursuant to CPLR §3212, the defendant has not submitted an affidavit from a person with knowledge as required by CPLR §3212(b). As such, the defendant's application for an Order pursuant to CPLR §3212, is **denied** without prejudice to renew upon proper papers."

Based upon the submission of an affidavit from the defendant, the Court **grants** that portion of the defendant's application which seeks renewal.

The rule in motions for summary judgment has been succinctly re-stated by the Appellate Division, Second Dept., in **Stewart Title Insurance Company, Inc. v. Equitable Land Services, Inc., 207 AD2d 880, 616 NYS2d 650, 651 (Second Dept., 1994):**

"It is well established that a party moving for summary judgment must make a prima facie showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d

316, 476 N.E.2d 642; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). Of course, summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*State Bank of Albany v. McAuliffe*, 97 A.D.2d 607, 467 N.Y.S.2d 944), but once a prima facie showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572; *Zuckerman v. City of New York*, *supra*, 49 N.Y.2d at 562, 427 N.Y.S.2d 595, 404 N.E.2d 718)."

This action for slander, tortious interference with contract and tortious interference with business arises out of certain alleged statements made by the defendant regarding the plaintiff. In this regard, the Pro Se plaintiff's Complaint in Paragraph XVI through XXXV sets forth:

"

XVI

Herein for the record lays chronologically some of the alleged defaming actions and events and ensuing events.

DEFORMATION OF CHARACTER - ERRICO PRE-TRIAL CONFERENCE
COURT APPEARANCE OF 5/16/08
(All Timing is on or about)

Ending months of 2004 Errico started to tell my wife Robin Karol, Michael Poller, Michael Rosedale, among other persons known and unknown how I was having an adulterous affair with Miss Jessica Morton. His actions were verbal (and by telephone) and showing a fabricated picture that was obtained by a breaking and entry to my office and desk.

[Supportive Affidavits are attached indicating sworn statements that plaintiff and Miss Jessica Morton never had any sexual or lovemaking affairs.]

XVII

May 2005 Errico convinced my wife I was a thief, stealing from him. He continued to tell my wife (as I was going to sell my half of the company to his friend John Burns), that if I did not sign the sales purchase agreement he would have me arrested and sent to jail. He stated he had copies of all the checks cashed and showed my wife what he wanted her to believe as a matter of fact. For the court to note, all of these so called stolen monies in checks were gone over with Michael Rosedale, Certified Public Account, (and our corporate account) who reviewed same. He told Errico to his face he was out of his mind, and that we worked together for years doing business in a certain way and there was nothing wrong with any of the transactions and what they represent. However, Errico has a never at wrong attitude, never says he is sorry and continued with his deformation of thievery against this Plaintiff talking and having telephone conversations with whomever would listen.

XVIII

May 11, 2005 Forced to sell my half of business under much duress. This execution was done at contract signing within the presence of buyer, Errico's friend and future partner, John Burns. Here Errico advised Burns that a Wells Fargo payment due, was solely mine alone, and took the clause out so I would have to bear the full burden. Stating in front of Burns that I was a thief, and if I gave them a hard time he would go to the District Attorney and have me arrested for theft. This caused me to absorb his half of the \$45,000 debit, which was the company's responsibility, as the funds were deposited to the company account and utilized for the company's sole benefit.

XIX

May 19, 2005 Errico's libelous remarks cause me to receive divorce papers from my spouse. These documents generated harm to my personal and corporate company life. Irreparable harm to my children and my relationship with my children due to the fabrication of adulterous stories has caused myself and others unbearable pain, suffering, and alienation of both affections and friendship to many others.

XX

Subsequently with ongoing aiding and abetting and conspiracy to defame amongst named Mr. John Burns and Mr. Gino Errico and unnamed others, the ten (10) day post dated check for my initial US\$1000,000 payment for the business sale "Bounced".

XXI

June 2005 Errico's defaming remarks of theft, comments of incapability and adultery caused him to conspire with and convince his new partner, Burns, not to pay me the \$4,500 past due for the consulting activities provided the company to keep Errico's poor management in good order.

XXII

September 2005 A purported court acceptance well justified and deserved law suit brought against Errico and the firm for liable, slander, deformation of character, sexual harassment and failure to pay individual monies owed was instituted by Miss Jessica Morton. Errico conspired and convinced his partner John Burns that I was instrumental in causing this law suit. Accordingly, predicated on my thievery and ongoing adulterous affair they would not pay me the monies due for the sale of my business causing me to lose everything I worked for my whole life, putting me in debt for over \$275,000. At sixty-five years old I am currently facing the welfare rolls.

XXIII

October 2005 Errico threatened owner Thomas Mulligan of CBIP

Management Systems Inc. to sever his relationship with me or he was going to call the insurance department in and ruin a business opportunity being created for Mulligan. This caused the owner to sever his relationship with me causing a loss of a job opportunity and badly needed income to process suit against John Burns et. al. for breach of contract in the purchase of my business.

XXIV

October 2005 Errico had his girl friend Nadi Palaico call the office and state slanderous remarks of how I was fornicating with Miss Jessica Morton and her performing fellatio with me. These along with many other verbal defamatory remarks were reported to the Nassau County Precinct Police Department, and the Suffolk County Police Department. The detectives in charge did investigate, and the calls promptly stopped. This caused major distress within the office any my overall well being.

XXV

December 2005 I tried to open an insurance market to place business with that I had dealt with for years, only to find that the market (AIG) would not open me up as there was too much deformation of character against me from the theft issue to being a liar and incapable insurance person. Both Errico and Burns were at meetings with Timothy Horgan and others discussing this situation causing doubt of who was right in the situation. Being open with my former company they refused to open me up to do business causing a major loss of at least \$200,000 in income. This situation is still ongoing today as the company opens most every broker and refuses to open myself, a good well experienced and seasoned professional individual.

XXVI

January 2006 I was faced with the same situation with Fred Jefts of Swett & Crawford in Maine. This caused more than \$200,000 in loss of income over the past two years. This is still an ongoing situation today.

XXVII

January 2006 Errico told my Daughter that her Father could not be trusted, stole money from him. He continued stating I did not care about her, and never cared about her, only Jessica Morton.

XXVIII

January 2007 Errico told William DeMaio that I stole \$200,000 from him.

XXVIX

January 2006 KRL employee, Margaret Garcia, heard Errico speaking to Randy Trinko of Discovery Seafood stating defamatory remarks about me.

XXX

February 2006 Joseph Gatti met with AIG personal in Atlanta, GA and was given directory information concerning myself as told to the by Errico.

XXXI

March 2006 I received authorization to take over an account, Pier Trucking Corporation from the owner, John Collins. The authorization was rescinded when Errico called him and told him how I stole from him (Errico)_and that I was incapable and unable to handle his account. Errico further threatened Collins to ruin any changes he had of getting insurance anywhere if he did not rescind his authorization. Collins is still scared to this day as he will not even ask Errico back for the \$8,000 due Pier Trucking from an audit.

XXXII

June 2006 Errico told some individual friend of his that I stole from him, was in collusion with another party and had an affair with an employee. These statements were to facilitate a beating from his sources, to both myself and Miss Jessica Morton. Fortunately his friends would not take any action on his behalf, stating that this was a matter for a court of equity. Your Honor, at this instance we, both Miss Jessica Morton and myself respectfully request your Orders of Protection for us against he violent motivations of Gino Errico. Attestation is in the two report filings of The Nassau Police department with their two separate responses. First Response was to my office, the later to my Daughter's home.

XXXIII

July 2006 Utilization of another wholesale, a firm that will place business for me with insurance companies unavailable to me, brought us AIG that would not open us up directly. This firm Southern Insurance Managers Inc (SIM), Phil Fisher, was told not to do business with us by AIG once Errico notified AIG we were doing business with SIM.

XXXIII

February 2007 Errico, while working for and within The Treiber Group LLC situate: 377 Oak Street, Garden City, New York 11530 Telephone: 516-745-0800 has continued with both named and unnamed individuals, in consort to defame in concert with others my character to additional clients that were leaving his company and underwriters within the insurance industry.

XXXV

**Exhibits Attached

Affidavit from Eugene Karol
Affidavit from Jessica Morton

re: Adulteress actions
re: Adulteress actions

Listing of individuals hearing libelous remarks
 Letters attesting to libelous remarks from:

Jimmy Balgobin
 William DeMaio
 Laura Dinunzo
 Tracey Espey
 John Ferro
 Margaret Garcia
 Jessica Morton
 Tricia Morton

DIAGRAM

CONCLUSION

Most conclusions in briefs essentially say no more than "we win, they lose." This is phrased slightly more elegantly as : "For the reasons given, plaintiff's motions should be granted." Such bare-bone conclusions are missed opportunities. Therefore we have again included the Recapitulated Pyramid to successful Justice within this herein litigation, because: Plaintiff has proven with preponderance defendants defaming myself. Reiterated: Slander is a false and unprivileged publication, orally uttered including telephonic transmission or other means which:

1. Charges any person with crime, or with having been indicated, convicted, or punished for crime;
2. Imputes in him to the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade or business, wither by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profits;
4. Imputes to him impotence or a want of chastity; or
5. Which, by natural consequence, causes actual damage.

Wherefore, Plaintiff Eugene H. Karol request this honorable court enter judgment in his favor against the defendant Luigi Gino Errico and all others, determined defendants by your Honor. This for all damages cited within plus of course future damages, punitive and special damages to include mental stress to be added, assessed and to be determined shortly hereafter."

The Court notes that the defendant states that the plaintiff's Complaint was filed in the Nassau County Clerk's Office on February 14, 2007. The Court further notes that the plaintiff does not contest this date as to filing.

In pertinent part, CPLR §215(3) provides:

"3. an action to recover damages for assault, battery false imprisonment, malicious prosecution, libel, slander, false words causing special damages, or a violation of the right of privacy under section fifty-one of the civil rights

[* 7]
law;"

A review of the plaintiff's complaint to the extent that the plaintiff's contentions in Paragraphs XVI, XVII, XVIII, XIX, XXI, XXII, XXIV, XXVII, XXVIII and XXVIX sound in slander, said contentions are time barred pursuant to the provisions of CPLR §215(3). As such, to the extent that the defendant seeks summary judgment dismissing these causes of action, said application is granted.

In examining the issue of tortious interference with contract, the Court in **Bayside Carting, Inc. v Chic Cleaners**, 240 AD2d 687, 660 NYS2d 23 (Second Dept., 1997) stated:

"The elements of tortious interference with contractual relations are (1) the existence of a contract between the plaintiff and a third party, (2) the defendant's knowledge of the contract; (3) the defendant's intentional inducement of the third party to breach or otherwise render performance impossible and (4) damages to the plaintiff (*see Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 94, 595 NYS2d 931, 612 NE2d 289; *M.J. & K Co. v Matthew Bender & Co.*, 220 AD2d 488, 490, 631 NYS2d 938.)"

Bayside Carting, Inc. v Chic Cleaners, supra at 24

Similarly, in examining the issue of tortious interference with business, the Court in **Advanced Global Technology, LLC v Sirius Satellite Radio, Inc.**, 15 Misc3d 776 stated:

"The required elements of a cause of action for tortious interference with prospective business relations are as follows: (a) business relations with a third party; (b) the defendant's interference with those business relations' (c) the defendant acting with the sole purpose of harming the plaintiff or using wrongful means; and (d) injury to the business relationship (*see Guard-Life Corp. v Parker Hardware Mfg. Corp.*, 50 NY2d 183 [1980]; *Carvel Corp. v Noonan*, 3 NY3d 182, 190 [2004]; *NBT Bancorp v Fleet/Norstar Fin. Group*, 87 NY2d 614 [1996]).

"To state a cause of action for tortious interference with prospective business advantage, it must be alleged that the conduct by defendant that allegedly interfered with plaintiff's prospects either was undertaken for the sole purpose of harming plaintiff, or that such conduct was wrongful or improper independent of the interference allegedly caused thereby." (*Jacobs v Continuum Health Partners*, 7 AD3d 312, 313 [1st Dept., 2004], *citing Alexander & Alexander of NY v Fritzen*, 68 NY2d 968, 969 [1986]).

"Wrongful means" include "physical violence, fraud or misrepresentation, civil suits and criminal prosecutions and some degree of economic pressure; they do not, however, include persuasion alone although it is knowingly directed at interference with the contract." (*Guard-Life Corp. v Parker Hardware Mfg, Cor.*, *supra*, 50 NY2d at 191). Because simple economic "persuasion" does not qualify as wrongful means (*id*), for economic pressure to be wrongful, it must be "extreme and unfair" (*Carvel Corp. v Noonan, supra at 192*)."

Advanced Global Technology, LLC v Sirius Satellite Radio, Inc.

The Court notes that the Statute of Limitations for tortious interference with contract is three years (see, **Spinap Corp. Inc. v Cafagno**, 302 AD2d 588, 756 NYS2d 86 (Second Dept., 2003).

A review of the plaintiff's Complaints paragraphs XIX, XXIII, XXV, XXVI and XXXIII sets forth allegations sounding in tortious interference with contract and tortious interference with business. As stated heretofore, the burden in seeking the requested relief of summary judgment lies with the party seeking such relief (see, **Stewart Title Insurance Company v Equitable Land Services, Inc.**, supra). In the instant application, while the defendant Luigi Gino Errico's affidavit in substance sets forth a general denial to the plaintiff's contentions in the foregoing paragraphs and the remaining other paragraphs XXX, XXXI, XXXII and XXXIV, the defendant has not set forth a prima facie case for the requested relief addressed to each of the plaintiff's contention in the numbered paragraphs. As such, the defendants application is denied without prejudice to renew upon proper papers addressed to the plaintiff's specific contentions.

SO ORDERED.

DATED: 12/5/2008

.....*Ray S. Malton*.....
J.S.C.

ENTERED
DEC 12 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE