

Peters v Coutsodontis
2009 NY Slip Op 31980(U)
August 26, 2009
Supreme Court, New York County
Docket Number: 600482/07
Judge: Barbara R. Kapnick
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

BARBARA R. KAPNICK

PART 29

Index Number : 600482/2007

PETERS GEORGE

vs.

COUTSODONTIS, STELIO

SEQUENCE NUMBER : 002

REARGUE/RECONSIDER

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

Motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

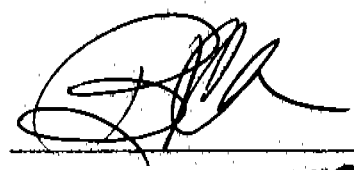
Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED
SEP - 1 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/26/09



BARBARA R. KAPNICK
J.S.C.

J.S.C.

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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 39

-----X
GEORGE PETERS,

Plaintiff,

- against -

DECISION/ORDER
Index No. 600482/07
Motion Seq. No. 002

STELIOS COUTSODONTIS, GENERAL MARITIME
ENTERPRISES CORPORATION, ATTIKA
INTERNATIONAL NAVIGATION SA, IASON
SHIPPING LTD., PINTO SHIPPING LTD,
AND KARTERIA SHIPPING LTD,

Defendants.

-----X
BARBARA R. KAPNICK, J.:

This action for libel per se (first cause of action) and common law unfair competition (second cause of action) stems from allegedly defamatory statements made by defendant Stelios Coutsodontis ("Coutsodontis"), against plaintiff George Peters ("Peters"), in the context of a prior litigation (the "Prior Action") between the parties.

The Complaint essentially alleges that Coutsodontis: (a) defamed Peters by accusing him of forging the signature of his aunt Athena Eliades on a power of attorney conferring upon him the authority to operate Sea Trade Maritime Corporation ("Sea Trade") and its vessel "Athena;" and (b) fraudulently awarded himself an employment contract to manage the affairs of Sea Trade.

By Decision/Order dated November 26, 2008 (the "Prior

Decision"), this Court granted defendants' motion to dismiss the Complaint. The Court dismissed the libel per se claim on the grounds that the allegedly defamatory statements were privileged as they were pertinent to Coutsodontis' claims in the Prior Action and that plaintiff's assertions that the allegedly defamatory statements were made maliciously were merely conclusory. This Court further found that even if the statements were not privileged, plaintiff had failed to establish that Coutsodontis had published the papers in the Prior Action to Hellenic Mutual War Risk Association ("Hellenic"), the largest Greek war risk insurance company, who was not a party to the Prior Action.

The Court also dismissed the claim for common law unfair competition on the grounds that plaintiff failed to state any of the required elements of that claim.

However, after the defendants had made their motion to dismiss, Coutsodontis submitted an Affidavit dated September 30, 2008 in an action entitled *Sea Trade Maritime Corp. v. Stelios Coutsodontis*, 08 Civ. 8299 (NRB), brought in the United States District Court for the Southern District of New York, in which he stated under oath that

[b]ased on a power of attorney signed by Athena on August 18, 1992, as President of Sea Trade, [Peters] was authorized to manage [Sea Trade's] assets.

Further, during oral argument held on the record in the Federal Action on October 2, 2008, before the Hon. Naomi Reice Buchwald, Coutsodontis' counsel stated that

[w]hen the owner of the ship was alive, she had given her nephew powers to operate the ship ...

George Peters has proceeded under a power of attorney ...

In addition, in a lawsuit filed before the Multimember Court of First Instance of Piraeus in Greece, dated October 9, 2008, Coutsodontis stated

[Peters] administers de facto [Sea Trade] by virtue of a general power of attorney which seems to have been given to him by my late sister Athena Iliadis [sic].¹

Peters now moves, pursuant to CPLR § 2221, for an Order granting him leave to renew and reargue the Prior Decision, and upon reargument, denying the previous motion on the grounds that the above-referenced statements constitute admissions by Coutsodontis that he knowingly lied when he accused plaintiff of committing fraud and forgery in the Prior Action. Peters points out that Coutsodontis did not make those accusations in the Federal Action or before the Greek Court.

¹ Plaintiff has submitted an informal translation of the complaint in that proceeding.

In *Lacher v. Engel*, 33 A.D.3d 10, 13-14 (1st Dept't 2006), the Court held that

[i]t is true, as [plaintiff] asserts, that this absolute privilege may be "lost if abused." (*Halperin v Salvan*, 117 AD2d 544, 548 [1st Dept 1986].) More specifically, this Court held that the privilege is limited to statements which are not only pertinent to the subject matter of the lawsuit but are made "in good faith and without malice." (*Id.*, additional citation omitted.)

Based on the papers submitted and the oral argument held on the record on July 21, 2009, this Court finds that plaintiff has raised an issue of fact as to whether the allegedly defamatory statements in the Prior Action were made "in good faith and without malice," and whether they were published to Hellenic by Coutsodontis.

Accordingly, plaintiff's motion to renew and reargue is granted to the extent that the Prior Decision is modified so as to deny that portion of defendants' motion seeking to dismiss the libel per se claim.

That portion of the motion seeking to renew and reargue the dismissal of the claim for common law unfair competition is denied.

Defendants are directed to serve Answers to the libel per se cause of action in the Complaint within 20 days of service of a

copy of this Order with Notice of Entry.

The case shall be restored by the Clerk to the active calendar and assigned to Part 39. The parties are directed to appear for a status conference in IA Part 39, 60 Centre Street, Room 208 on October 21, 2009 at 10:00 a.m.

This constitutes the decision and order of this Court.

Dated: August 26 2009



Barbara R. Kapnick

J.S.C.

**BARBARA R. KAPNICK
J.S.C.**

FILED

SEP 1 2009

**COUNTY CLERKS OFFICE
NEW YORK**