

**Cheung v Chan**

2009 NY Slip Op 32527(U)

October 19, 2009

Supreme Court, New York County

Docket Number: 110261/09

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

WALTER B. TOLUB

PRESENT: \_\_\_\_\_

PART 15

Index Number : 110261/2009

CHEUNG, JOSEPH

vs.

CHAN, PETER

SEQUENCE NUMBER : 001

DISMISS ACTION

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

In this 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

**IS DECIDED**

**IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION**

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

**FILED**  
OCT 22 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 10/19/09

**WALTER B. TOLUB** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

[\* 2]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

-----x  
JOSEPH CHEUNG and HO YAN MERRY

Plaintiffs,

-against-

PETER CHAN

Defendant.  
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Index No.110261/09  
Mtn. Seq.001

WALTER B. TOLUB, J.:

This is Defendant's motion to dismiss Plaintiffs' Complaint alleging libel per se and seeking punitive damages (CPLR §3211).

Facts

Plaintiffs Joseph Cheung (Joseph) and Ho Yan Merry Cheung (Merry) are married. Joseph owns a company called Glory International Trading, Inc. (Glory) where Merry also works. Joseph was formally married to Rowena Cheung (Rowena) and they maintain a friendship.

Rowena and the Defendant Peter Chan (Peter) are members of Baronee's Accessories LLC and are involved in a business dispute.

Peter and Joseph are also involved in a dispute as to the appropriate rent to be charged for inventory Peter stores are Joseph's business warehouse<sup>1</sup>.

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<sup>1</sup>The business disputes are currently before J.H.O. Gammerman in the Supreme Court of the State of New York, County of New York, under index numbers 061231/2009, 601232/2009 and 601923/2009.

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Plaintiffs claim that Defendant sent defamatory emails for the purpose of camaging their reputations and inflicting emotional distress.

Plaintiffs claim that on April 3, 2009, Peter sent an email to Joseph at work and to Glory employees and Joseph's sister. The email states, *inter alia*, that:

Anyways, as of yesterday, I admired you so much that you could have a good relationship with ex wife [sic] and have no problem with your current wife. This is already a miracle for not having jealousy between each other. We also feel so please [sic] that after we want to separate the business relationship with Rowena, this incident made you guys together again. This is priceless [sic] incident for Rowena because she did not even talk to you for a long time. I thought I had so much thing [sic] to learn from you regarding to [sic] balance your business, ex-wife and current wife relationship. But, one more question, are you really happy about what you deal [sic] with right now?

(Complaint, Ex A p.2)

Additionally, on May 26, 2009, Peter sent an email to Rowena. This email was sent to Rowena with copies to Glory employees. The email stated:

Hello Rowena:  
I noted that you just had a super long weekend. How was it?  
Did you ger a chance to go to church to get confession from a priest??  
By the way, I used Google to search the Ten Commandments, and I believe it is imperative for Catholic people to obey the 10 Commandments throughout their lives.  
In my opinion, you should especially pay attention and obey commandment #8, commandment #9 and commandment #10.

By the way, your life time fan and supporter  
and his current wife, they should especially  
pay attention and obey the commandment #7.  
Later.  
Peter

(Complaint Ex. A p. 3).

Additionally, Defendant provided a segment listing each of  
the ten commandments, including "SEVEN: You shall not commit  
adultery." (Id.).

Plaintiffs claim that these statements collectively  
constitute libel *per se* and that Plaintiffs are entitled to  
punitive damages.

By this motion, Defendant seeks to dismiss the Complaint  
arguing that Plaintiffs have failed to state a cause of action  
for libel and punitive damages.

#### Discussion

Defamation is a false statement resulting in injury to  
reputation. (Rinaldi v. Holt, Rinehart & Winston, Inc., 42 NY2d  
369 [1977]). Acts of defamation which are published in printed  
form are viewed as libel. Success on a defamation claim requires  
the showing that: (1) the defendant made a false and injurious  
statement of fact concerning the plaintiff that exposes a person  
to hatred, contempt or aversion or causes an unsavory opinion of  
him or her in the minds of a substantial number of people in the  
community; (2) publication of that statement to a third-party;  
and (3) a showing that plaintiff suffered special damages. (Golub

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v. Enquirer/Star Group, 89 NY2d 1074 [1997]). A plaintiff suing in libel need not plead or prove special damages if the defamatory language 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" ((Rinaldi v. Holt, Rinehart & Winston, Inc., 42 NY2d 369, 379 [1977] citing Snyder v. McFadden Newspaper Pub. Corp., 242 NY 208, 211-212).

"We recognize that summary judgment has particular value, where appropriate, in libel cases, so as not to protract litigation through discovery and trial thereby chill [sic] the exercise of constitutionally protected freedoms (see e.g. Immuno AG v. Moor-Jankowski, 77 NY2d 235, 256; Karaduman v. Newsday, Inc., 51 NY2d 531, 543). But we recognize as well a plaintiff's right to seek redress, and not have the courthouse doors closed at the very inception of an action, where the pleading meets a minimal standard necessary to resist dismissal of a complaint." (Armstrong v. Simon Schuster, Inc., et al., 85 NY2d 373, 379-380 [1995]).

Where, as here, Plaintiffs claim that the statements are false and defamatory, the legal question on a motion to dismiss is whether the contested statements are reasonably susceptible of a defamatory connotation (Id. citing Weiner v. Doubleday & Co., 74 NY2d 586,592). In making this determination, the court must

give the disputed language a fair reading in the context of the publication as a whole (Id.).

Plaintiff claims that the statement "[b]y the way, your life time fan and supporter and his current wife, they should especially pay attention and obey the commandment #7. . .SEVEN: You shall not commit adultery" is false and susceptible of a defamatory meaning, that the statement was published to third-parties [namely Glory employees] and that Plaintiffs were injured [personal and business reputations and marital distress] (Complaint ¶¶ 22-28). Viewing the statements most favorably to the Plaintiffs, as we must on a motion to dismiss, we conclude the statements are collectively susceptible of a defamatory meaning; that Joseph and Merry are adulterers. Notwithstanding the sea of change regarding sexual attitudes in this country, the opprobrium of adultery remains, at least as far as the law is concerned. As such, Defendant's motion to dismiss must be and is denied.

Defendant's remaining arguments have been considered by the Court and are unavailing.

Accordingly, it is

ORDERED that Defendant's motion to dismiss is denied.

Counsel for the parties are directed to appear for a preliminary conference on November 20, 2009 at 11:00AM in room 335 at 60 Centre Street.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 10/19/09

  
\_\_\_\_\_  
HON. WALTER B. TOLUB, J.S.C.

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