

Matter of Stewart v Google, Inc.

2009 NY Slip Op 33163(U)

December 30, 2009

Supreme Court, New York County

Docket Number: 116669/09

Judge: Eileen A. Rakower

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

PRESENT: RAKOWER
Justice

PART 5

STEWART, ADAM
- v -
GOOGLE, INC.

INDEX NO. 116669/09
MOTION DATE _____
MOTION SEQ. NO. 01
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits _____	<u>2</u>
Replying Affidavits _____	<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JAN 11 2010

NEW YORK
COUNTY CLERK'S OFFICE

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 12/30/09


HON. EILEEN A. RAKOWER^{C.}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
In the Matter of the Application Pursuant to CPLR
3102 of:

ADAM STEWART,

Index No.
116669/09

FILED
JAN 11 2010
NEW YORK
COUNTY CLERK'S OFFICE
-----X

DECISION
and ORDER

-against-

GOOGLE, INC.,

Mot. Seq.
001

-----X
HON. EILEEN A. RAKOWER:

Petitioner Adam Stewart brings this petition pursuant to CPLR §3102(c) to obtain pre-action discovery in aid of commencing a libel action against an individual that goes by the pseudonym “Long Bench” and maintains the e-mail address “longbench@gmail.com”. Petitioner states that he is a member of a company known as Felicitas Ltd. and that he currently resides in Jamaica (the nation, not the city). Stewart claims that Long Bench has libeled him by writing the following passage in an editorial in the *Jamaica Observer*:

Sand in our faces

Regarding the sand mining in Coral Springs, Trelawny¹:
Ol' time people seh tief from tief god laugh [*sic*]. Most assuredly, God is probably in tears, as she bears witness to the offspring of an unholy matrimony between developers and construction companies, sanctioned by privatization

¹As discerned from a search courtesy of none other than Respondent Google, it appears that, in the summer of 2008, approximately 6,000 cubic yards of sand were illegally mined from property owned by Felicitas. Felicitas, according to an online article, had planned to develop a “6-star” beach resort prior to the illegal mining (see <http://www.jamaicans.com/news/announcements/FelicitasFilesSandCase.shtml>).

ideology, and officiated by the national government. For the past two decades, both parties have ruthlessly acquired, exploited and overdeveloped the physical landscape, mining the beaches, polluting the ground waters and the ocean, running our already overburdened infrastructure into the ground, creating both substandard and exclusive developments, and contributing little to the standard of living of the people on whose backs such 'development' occurs: ours.

These entities have worked well together and will continue to do so, thanks to the enthusiastic support of our Prime Minister, and the stewardship of Karl Samuda, Minister of Industry, Investment and Commerce, whose personal and political interests are one and the same. I assume that we should be impressed by the stellar list of local millionaires involved and feel a measure of sympathy for them. Alas, Felicitas Ltd. is feeling anything but happy right now. I feel a tremendous sense of loss, but not for these actors.

Despite the flurry of activity of the high-level investigative team composed of geologists, police investigators, and other environmental specialists, the irony of this situation is not lost on most of us. Whether the sands of Coral Springs was stolen by a construction company or appropriated by privateers for their own exclusionary means, the result is the same as it has been for years now: once again, sand has been kicked in the faces of the majority of Jamaican people who have been rendered virtually powerless to stop these folks from taking the land from beneath our feet.

Based upon the foregoing, Petitioner seeks:

all information concerning the Google account designated as longbenchzz@gmail.com including but not limited to all email, instant messages, text messages, buddy lists, address

books, contact lists, account histories, account settings, profiles, mail boxes, folder structure, detailed billing, user activity records (log on and log off times), user identification records, phone number access records, ISP access records, and all information provided by the user at the time the account was created.

Respondent Google, Inc. (“Google”) submitted an affirmation in opposition; however, the parties have since come to an agreement and have submitted a joint proposed order, which the parties seek to have so-ordered by the court. The proposed order would provide that Google collect “all registration information” that it may have from the holder(s) of the Gmail account, as well as any “IP address” login information regularly maintained by Google in connection with the account. Google would then use the Gmail account to attempt to provide Long Bench with a copy of the proposed order. If Long Bench failed to appear to contest the production of this information by January 21, 2010, Google would then produce this information to Petitioner upon a determination by the court that Petitioner has made the necessary showing of (1) a meritorious cause of action; and (2) the necessity of the information sought.

The court rejects the proposed order and denies the petition because Petitioner fails to demonstrate that he has a meritorious cause of action (*see Matter of Uddin v. New York City Transit Auth.*, 27 A.D.3d 265, 266 [1st Dept. 2006]). As evident from the passage, recited in its entirety above, the allegedly libelous editorial makes no mention whatsoever of the individual Petitioner, and only cursory mention of Felicitas, the company of which Petitioner is a member.

Indeed, it is far from a certainty that even Felicitas would have a cause of action for libel based solely on the above editorial. The editorial appears to decry the general state of affairs in Jamaica as perceived by its author (*i.e.*, that developers (among whom Felicitas is but one) and the Jamaican government are working in concert to damage the Jamaican landscape and worsen the community - all to their benefit, and to the detriment of average Jamaicans). However, whether Felicitas might have a viable cause of action for libel based on the editorial is not a matter currently before the court. The First Department has held that a defamatory statement against a group, of which the plaintiff is a member, does not, without more, give rise to an action by that individual member (*see Lazore v. NYP Holdings, Inc.* 2009 NY Slip Op 2672, *1 [1st Dept. 2009]). Since there is simply no showing in the record of a statement that could reasonably be construed to be defamatory toward Stewart individually, it would

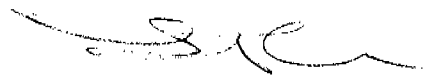
be error for this court to order the pre-action discovery Steward requests.

Wherefore, it is hereby

ORDERED that petitioner's application for an order pursuant to CPLR §3102(c) is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: December 30, 2009



EILEEN A. RAKOWER, J.S.C.

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