Salim v Manczur

2012 NY Slip Op 32146(U)

August 13, 2012

Supreme Court, New York County

Docket Number: 402988/2010

Judge: Eileen A. Rakower

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SCANNED ON 8/15/2012

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER
Justice

PART 15

Index Number : 402988/2010
SALIM, JULIAM
vs.
MANCZUR, TEREZIA
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1, 2

Answering Affidavits — Exhibits _____ | No(s). 3

Replying Affidavits _____ | No(s). 4, 5

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

AUG 15 2012

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 8/13/12

_____, J.S.C.
HON. EILEEN A. RAKOWER

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE
OF NEW YORK COUNTY OF NEW YORK: PART 15

----------X

JULIAN SALIM AND GREZGORZ SAMBORSKI ,

Plaintiffs,

Index No.402988/10
DECISION and ORDER
Motion Seq. 002

-v-

TEREZIS MANCZUR,

Defendant.

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FILED
AUG 15 2012
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HON. EILEEN A. RAKOWER:

Plaintiffs, Julian Salim and Grzegorz Samborski, the owners of Big Apple Volkswagen, LLC (hereinafter referred to as "Big Apple") bring this action for libel, libel per se and tortious interference with business relations between Volkswagen of America Inc. and plaintiffs, against defendant, Terezia Manczur ("Manczur"). It is alleged that the defendant published and circulated a written letter containing false, and defamatory statements regarding the plaintiffs. Defendant now moves for summary judgment pursuant to CPLR §3212 to dismiss all libel and tortious interference claims.

It is alleged that in January 2006, Manczur's husband, John Koeppel ("Koeppel") and plaintiffs acquired a Volkswagen retail dealership in the Bronx and it was agreed that all three partners would have an ownership interest in the company, Big Apple. Plaintiffs allege that Koeppel diverted approximately $220,000 between June of 2006 and May of 2007 to other unrelated financial obligations out of Big Apple's bank account. When confronted with this information, Koeppel promised to repay these sums to the company. In addition, he borrowed $68,000 from the dealership, which the plaintiffs loaned to him. After being unable to pay back that loan, on February 18, 2010, Koeppel voluntarily signed a general release transferring his right, title and interest in the limited liability company of Big Apple to plaintiffs in front of a public notary. On March 5, 2010, Koeppel went to Wachovia Bank and withdrew $45,000 from the

company bank account without authorization. He reappeared at the dealership on March 22, 2010, and when he realized the locks had been changed, he forcibly broke a window to gain entry and remove corporate records of the company, which was all captured on surveillance video.

Plaintiffs argue that on June 20, 2010, Manczar published and circulated a written letter addressed and delivered to the President and CEO of Volkswagen, the parent company of Big Apple. In the letter, Manczur writes, "[t]hey [the plaintiffs] produced fake documents, which were supposed to prove my husband's resignation from his business. They sent him to Syria on a business trip so as to execute this fraud in his absence." In addition, the letter accuses the plaintiffs of, "being fraudsters and swindlers." Plaintiffs claim that as a result of the letter, they have experienced public contempt, ridicule, disgrace, and prejudice; have suffered great mental pain and anguish and have been irreparably injured in their good names, business reputation and social standing.

Manzcur admits that she wrote a letter dated June 20, 2010 in German to Stefan Jacoby, then the president and CEO of Volkswagen in response to her husbands' "illegal" ouster in March 2010 from Big Apple. However, she claims that the letter was never sent to Jacoby, and was never received or read by Jacoby. She includes as an exhibit the email with the letter she sent on June 20, 2010 to her husband's e-mail address as well as to herself at another e-mail address, but not to Jacoby.

Defamation is the injury to one's reputation, either by written expression (libel) or oral expression (slander). (*Morrison v. National Broadcasting Co.*, 19 NY2d 453, 227 NE2d 572, 280 NYS2d 641 [1967]). There are four elements of libel: (1) a false and defamatory statement of fact; (2) regarding the plaintiff; (3) which is published to a third party; and which (4) results in injury to plaintiff. (*Matter of Sandals Resort Intl Ltd v. Google,* 27 Misc. 3d 1207A, 910 NYS2d 408, 2010 NY Misc. LEXIS 717 [1st Dept 2010]). Certain statements are considered libelous per se. They are limited to four categories of statements that: (1) charge plaintiff with a serious crime; (2) tend to injure plaintiff in its business, trade or profession; (3) plaintiff has some loathsome disease; or (4) impute unchastity. (*Penn Warranty Corp v. DiGiovanni*, 10 Misc. 3d 998, 810 NYS2d 807 [1st Dept 2005]) Where statements are libelous per se, the law presumes that damages will result and they need not be separately proved.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*,145 A.D.2d 249, 251-252 [1st Dept. 1989]).

Defendant contends that the libel and libel per se claims should be dismissed due to insufficiency as a matter of law on the grounds that there was no publication of the alleged defamatory letter. Defendant cites to deposition testimony from both Claude Mastronardi and Michael Ruckert, employees of Volkswagen who both state that they never physically saw the letter that was allegedly sent to the CEO of Volkswagen, and therefore the letter was not "published or circulated." In deposition testimony from Mastronardi, the following question is asked:

> Q: Now in item number one of the subpoena it asks for the original letter from Dr. Manczur to Stefan Jacoby. You said you've never seen such a document, am I saying that right?
> A: Correct.
> Q: Have you ever seen a copy of the letter?
> A: No.

In deposition testimony from Ruckert, the following question is asked:

> Q: Have you ever seen the original letter from Doctor Manczur to Stefan Jacoby dated June 20, 2010?
> A: No.
> Q: Have you seen a copy of a letter from the defendant to Stefan Jacoby dated June 20, 2010?
> A: No.

Defendant also requests that the libel and libel per se claims be dismissed on the grounds that the alleged defamatory letter is protected by the common interest privilege. A common interest privilege is "[a] communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty" (*Coclin v. Lane Press, Inc.*, 210 A.D.2d 98, 99 [1st Dep't 1994]). Defendant argues that even if one were to assume the alleged statements were made, the statements are protected by a qualified privilege made within the duties as Koeppel's wife to advise Volkswagen that her husband was fraudulently ousted from Big Apple by plaintiffs.

Defendant moves to dismiss the third cause of action for tortious interference with business relations due to insufficiency as a matter of law (a) because the letter was never sent to any Volkswagen entity and (b) Volkswagen's two representatives who gave depositions testified that they never saw any letter from defendant to Volkswagen. Conduct constituting tortious interference with business relations is, by definition, conduct directed not at the plaintiff itself, but at the party with which the plaintiff has or seeks to have a relationship. (*see, Cari Weisberger v. Gary A. Rubinstein, 208 NY Slip Op 33513U; 208 NY Misc LEXIS 10663 [1st Dept 2008]*). Here, Volkswagen of America, Inc. provides deposition testimony given by Mastronardi where he states that in 2010, he visited plaintiffs at Big Apple, and when the plaintiffs asked him if he'd ever seen the alleged letter, he told them that he had not.

In opposition, plaintiffs state that the defendant has not set forth a prima facie case demonstrating it is entitled to summary judgment. Michael Rueckert, the region network development manager testified in a deposition on October 4, 2011 that the letter was discussed by high-level members of the Volkswagen of America management staff. In addition, on August 26, 2011, Claude Mastronardi, another employee of Volkswagen confirmed that the letter was discussed with his supervisors. Plaintiff's supplemental response to interrogatories, verified by both plaintiffs, provides that "the letter was delivered to Salim's office by an unknown individual and was left for him on his desk." Deposition testimony from Julian Salim, one of the plaintiffs, establishes the impact of the contents of the letter on the business relationship with Volkswagen as substantial and deleterious. Salim states in a deposition on December 28, 2011, "[Volkswagen] didn't have to say

anything about the letter. It was the way of doing business with us. It changed completely."

To grant summary judgment, it must clearly appear that no material and triable issue of fact are presented. This drastic remedy should not be granted where there is any doubt as to the existence of such issues. (*Wagner v. Zeh*, 45 Misc.2d 93, aff'd 26 A.D. 729). After discussing the letter with her husband, Ms. Manczur decided not to send it, although how the alleged letter appeared on Salim's desk or how high-level Volkswagen employees became aware of the letter remains unclear. While the Volkswagen of America employees did not discuss the specific content of the letter, the fact that the letter was delivered to Salim and the Volkswagen employees subsequently became aware of its existence, raise issues of fact as to whether defendant published the letter. Therefore, defendant's motion for summary judgment is denied.

Wherefore, it is hereby,

ORDERED that the motion for summary judgment is denied.

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

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Dated: August 13, 2012

EILEEN A. RAKOWER, J.S.C.