

Peterson v Crespo
2012 NY Slip Op 33953(U)
May 1, 2012
Supreme Court, New York County
Docket Number: 150501/11
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
ROD PETERSON a/k/a IMAM FAHIEM H. HAQQ,

Plaintiff,

DECISION AND
ORDER

-against-

Index No.
150501/11

EDDIE CRESPO and ALBERT MELENDEZ,

Defendants.
-----X

HON. ANIL C. SINGH, J.:

Plaintiff moves pursuant to CPLR 3211(a)(7), 3211(b) and 3016(a) to strike defendant's first, eighth, ninth and fourteenth affirmative defenses and to dismiss all three of defendant's amended counterclaims, contending that defendant fails to plead defamation with sufficient specificity. Defendant opposes the motion.

Plaintiff Rod Peterson a/k/a Imam Fahiem H. Haqq commenced this action by filing a summons and complaint on November 10, 2011. Plaintiff, who is an imam of the Al Muhamin Islamic Cultural Center, alleges that defendants Eddie Crespo and Albert Melendez confronted him while he was riding the subway from Long Island Hospital University to his home in Queens on December 9, 2010, at 3:15 a.m.

Defendants allegedly insulted and directed ethnic slurs at plaintiff, threw

him against a wall at a subway station, and punched him in the face, neck and back. At some point, Melendez allegedly grabbed a Muslim prayer cap off plaintiff's head and destroyed it. The complaint asserts causes of action for assault, battery, conversion, and intentional infliction of emotional distress.

Compensatory and punitive damages are sought.

On January 20, 2012, defendant Eddie Crespo filed a verified amended answer, asserting fifteen affirmative defenses and three counterclaims.

The counterclaims allege that plaintiff defamed Crespo when plaintiff reported the alleged assault and battery to police officers and the media, including the New York Post.

Discussion

Plaintiff moves to strike Crespo's first, eighth, ninth and fourteenth affirmative defenses.

The first affirmative defense asserts that the Court lacks personal jurisdiction based on improper service of the complaint.

Plaintiff exhibits an affidavit of service to demonstrate that the complaint was properly served (Affirmation of Justine V. Beyda, exhibit B). According to the affidavit of service, the complaint was served upon Crespo's adult co-tenant at Crespo's actual place of residence and last known residence, and the summons

was mailed, by first class mail, to Crespo at his actual place of residence within four days of the above service.

A process server's affidavit constitutes prima facie evidence of proper service (Chemical Bank v. Darnley, 300 A.D.2d 613 [2d Dept., 2002]).

The Court finds that the documentary evidence demonstrates that Crespo was, in fact, properly served pursuant to CPLR 308(2). Crespo has not asserted any specific facts sufficient to rebut plaintiff's prima facie showing. Accordingly, the Court finds that the first affirmative defense alleging lack of personal jurisdiction is completely meritless.

Next, plaintiff moves to strike Crespo's eighth affirmative defense, which asserts that plaintiff has failed to properly state a claim for punitive damages.

"No separate cause of action exists for punitive damages, and an action brought solely to recover such damages will be dismissed" (36 N.Y. Jur.2d Damages section 181). "Punitive damages are appropriate where the wrong complained of is actuated by evil and reprehensible motives, and where defendant's wrongdoing has been intentional and deliberate" (6A N.Y. Jur.2d Assault section 33).

On its face, the complaint alleges intentional torts, and the claim for punitive damages is not plaintiff's sole cause of action. Accordingly, Crespo's

eight affirmative defense has no merit.

Plaintiff moves next to strike the ninth affirmative defense, which asserts that plaintiff's claims are barred by the statute of limitations.

The complaint asserts causes of action sounding in assault, battery, conversion, and intentional infliction of emotional distress based upon events that allegedly occurred on or about December 9, 2010. The complaint was filed on November 10, 2011, less than one year after the alleged confrontation.

A one-year statute of limitations governs causes of action sounding in intentional infliction of emotional distress, assault and battery (CPLR 215[3]; Wilson v. Erra, 2012 WL 1109158 [2d Dept., 2012]). A three-year statute of limitations governs a cause of action sounding in conversion (CPLR 214).

In short, it is clear that plaintiff's causes of action are not time-barred.

Next, plaintiff moves to strike Crespo's fourteenth affirmative defense, which asserts that plaintiff's action is frivolous.

An affirmative defense that a lawsuit is "frivolous" is improper as it is more akin to a denial or to an assertion that the complaint fails to state a cause of action (Charnis v. Shohet, 195 Misc.2d 188, 189 [2d Dept., 2002]).

Finally, we turn to the branch of plaintiff's motion which seeks to dismiss the amended counterclaims pursuant to CPLR 3016(a).

A cause of action for defamation must be dismissed for lack of specificity where the claimed defamatory remarks were alleged to have been made “to certain unspecified individuals, at dates, times and places left unspecified” (Bell v. Alden Owners, Inc., 299 A.D.2d 207, 208 [1st Dept., 2002]).

Defendant’s first counterclaim for slander states that on or about December 8 and December 9, 2010, “and at times thereafter,” at the location referred to in plaintiff’s complaint “and at other locations,” plaintiff told police officers and personnel including, “but not limited to,” Serice Vaughan, that defendant Crespo made defamatory statements (Verified Amended Answer With Amended Counterclaims, paras. 26-31).

Likewise, defendant’s second counterclaim for slander alleges that on or about December 8, December 9 and December 10, 2010, “and at times subsequent thereto,” plaintiff made defamatory statements to reporters for the New York Post “including, but not limited to” David K. Li, Len Maniace and Larry Celona (Id., paras. 46-51).

The Court finds that the counterclaims fail to satisfy the requirements of CPLR 3016(a) when the pleading asserts that plaintiff made statements on additional unidentified dates at unidentified places to unidentified people. The counterclaims must include specific dates, specific locations, and specific names.

Otherwise, the counterclaims must be amended to remove such vague allegations.

For the above reasons, it is hereby

ORDERED that plaintiff's motion is granted, and the first, eighth, ninth, and fourteenth affirmative defenses are dismissed; and it is further


ORDERED that defendant Eddie Crespo's first, second and third amended counterclaims are dismissed; and it is further

ORDERED that defendant Eddie Crespo is granted leave to serve amended counterclaims so as to replead with particularity the allegedly libelous statements within 20 days after service on defendant's attorney of a copy of this order with notice of entry; and it is further

ORDERED that, in the event defendant fails to serve and file amended counterclaims in conformity herewith within such time, leave to replead shall be deemed denied.

The foregoing constitutes the decision and order of the court.

Date: 5/1/12
New York, New York


Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE