

Moorhouse v Standard, New York
2013 NY Slip Op 30131(U)
January 17, 2013
Supreme Court, New York County
Docket Number: 112956/10
Judge: Joan M. Kenney
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JOAN M. KENNEY
J.S.C. Justice

PART 8

Index Number : 112956/2010
MOORHOUSE, MATTHEW
vs.
STANDARD NEW YORK
SEQUENCE NUMBER : 008
SUMMARY JUDGMENT

INDEX NO. 112956/10
MOTION DATE 10/1/12
MOTION SEQ. NO. 008

The following papers, numbered 1 to 35, were read on this motion to/for sj motion

Notice of Motion/Order to Show Cause — Affidavits — Exhibits	No(s). <u>1-23</u>
Answering Affidavits — Exhibits <u>x motion</u>	No(s). <u>24-34</u>
Replying Affidavits	No(s). <u>35</u>

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

**MOTION IS DECIDED IN ACCORDANCE
WITH THE ATTACHED MEMORANDUM DECISION**

FILED

JAN 25 2013

NEW YORK
COUNTY CLERK'S OFFICE

Dated: January 17, 2013

Joan M. Kenney, J.S.C.
JOAN M. KENNEY
J.S.C.

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

THIS 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 8

-----X
MATTHEW MOORHOUSE,

Plaintiff,

DECISION & ORDER
Index No. 112956/10

-against-

THE STANDARD, NEW YORK, ANDRE BALAZS
PROPERTIES, GUIYAN PENG a/k/a ANNA PENG,
and KIMBERLY RUSSEL,
Defendants.

-----X
JOAN M. KENNEY, J.S.C.:

Motion sequence nos. 008 and 009 are consolidated
disposition.

In motion seq. no. 008, defendants The Standard New York
(Standard), Andre Balazs Properties (Properties), and Kimberly
Russell s/h/a Kimberly Russel move, pursuant to CPLR 3212 (a) for
summary judgment dismissing the complaint against them.

In motion sequence no. 009, defendant Guiyan Peng a/k/a Anna
Peng similarly moves to dismiss the complaint as against her.
Standard and Properties are alleged to own and operate certain
hotels and residences in New York City, including The Standard
(Hotel). At all relevant times, Peng was a housekeeper employed at
Hotel, and Russell was Peng's immediate supervisor.

Plaintiff cross-moves, pursuant to CPLR 305 (c), for leave to
amend the complaint by adding Hotels AB Gansevoort Employees, LLC
as a defendant in this action, and to have this court take judicial
notice of the "not guilty" verdict rendered by the jury in *People
v Moorhouse*, indictment no. 5682/09, Sup Ct, NY County.

This case arises from the arrest, indictment, trial, and
acquittal of plaintiff, who was charged in the above-referenced
action with the attempted rape of Peng, and with four related

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charges of sexual abuse. The complaint, which is not a model of drafting, purports to allege the following six causes of action: (1) defamation; (2) intentional infliction of emotional distress; (3) false imprisonment; (4) malicious prosecution; (5) respondeat superior; and (6) conversion.

At the outset, the court notes that plaintiff's theory of his case, as presented in his complaint and in his memorandum of law in opposition to defendants' motions for summary judgment, is that Hotel personnel falsely accused him of attempting to rape Peng, and had him arrested, in order to cover up a theft, or an attempted theft of plaintiff's property, by Peng. That theory is undercut by plaintiff's acknowledgment that, prior to testifying at his criminal trial, he did not tell anyone working for Hotel, or the police officers who arrested him on the premises of Hotel, that Peng had stolen, or had tried to steal, anything from him.

In addition, plaintiff contends that Hotel personnel must have orchestrated his arrest, because Peng does not speak English, and because she testified at her deposition that she told Hotel personnel only that plaintiff was "crazy," and that he had pushed her. However, Paolo Moratin, Director of Housekeeping at Hotel, testified at plaintiff's trial that, as soon as Peng told him that Moorhouse had touched her, he told her to stop speaking and took her to the Hotel's security office, where, at first, she said only that plaintiff had pushed her onto the bed and had kissed her neck. He further testified that two police officers arrived within 15 minutes, and that, when they questioned Peng, she told them that

plaintiff had tried to remove her stockings and had touched her vagina with his hand. Police officer Frank Bellotti, one of the two officers who had come to Hotel, testified that Peng told him that plaintiff was holding her down on the bed and touching her vagina with his hand. Officer Bellotti testified that Peng was speaking to him in English, but that she didn't say the word "vagina," pointing, instead. Accordingly, plaintiff's supposition that Hotel personnel, other than Peng, caused him to be arrested, is baseless.

The court now turns to the specific causes of action alleged in the complaint. The first cause of action states that:

Plaintiff's injuries occurred due to the false and defamatory statements made by [an unspecified] defendant, unprivileged communication to a third party, recklessness on her part in knowing the falsity of the statement, and caused special harm to the plaintiff as a result of the communication[.] His injuries were directly and proximately caused by defendants [sic] conduct. Defendants, and each of them, in sum and substance, [stated] that Plaintiff had "raped" defendant Peng, that he "frightened and shocked" defendant Peng, that Moorhouse "attacked" defendant Peng and "threw himself" and other statements and accusations which were false when made, known to be false and made maliciously.

Emphasis added.

CPLR 3016 (a) requires a complaint alleging defamation to set forth the specific words complained of. A paraphrase of the words complained of is insufficient. *Mañas v VMS Assoc., LLC*, 53 AD3d 451 (1st Dept 2008); *Murganti v Weber*, 248 AD2d 208 (1st Dept 1998). Here, the complaint expressly acknowledges that the words in quotation marks are a paraphrase. A claim of slander must also provide the dates, times, and places where the words complained of

were said, and identify the persons to whom they were said. *BDCM Fund Adviser, L.L.C. v Zenni*, 98 AD3d 915 (1st Dept 2012); *Dillon v City of New York*, 261 AD2d 34 (1st Dept 1999). The complaint fails to allege any of that information, and plaintiff's two responses to defendants' demand for particulars fail to remedy that defect. Accordingly, the first cause of action must be dismissed.

The second cause of action, which is labeled "Intentional Infliction of Emotional Distress," alleges not a single fact to support such a claim. Instead, it alleges that:

At all relevant times herein, it was the duty of the Standard defendants to supervise and entrust the use, control, and operation of their said hotel cleaning staff to suitable, competent, qualified, trained, diligent and adequate persons. It was further their duty to properly and adequately supervise and ensure that their said cleaning staff was not entrusted to persons who constituted a potential menace, hazard or danger to the public or Plaintiff, those with unsuitable propensities and those with emotional, physical, psychological and/or physiological traits or characteristics unsuitable or contraindicated to safely operate such a staff.

The Standard defendants were negligent in their entrustment of the aforesaid job to Peng. It was their duty to ensure the safety and satisfaction of their guests, and ensure that their staff was well qualified to perform their duties, which they failed.

The necessary basis for a claim of negligent supervision, or negligent hiring, is that the employee who is claimed to have been negligently supervised, or hired, have committed a tort for which the plaintiff seeks to hold the employer liable. See e.g. *Rodriguez v United Transp. Co.*, 246 AD2d 178 (1st Dept 1998). Accordingly, the court turns to the remaining torts alleged against Peng, to wit, malicious prosecution and false imprisonment.

A plaintiff claiming malicious prosecution must show, among

other things, that the defendant took an active part in the plaintiff's arrest, beyond merely making a complaint, or giving the officer information. *Narvaez v City of New York*, 83 AD3d 516 (1st Dept 2011); *Mesiti v Wegman*, 307 AD2d 339 (2d Dept 2003). Here, Officer Bellotti states in his affidavit that he and the other officer decided to make the arrest after speaking with Peng and observing her demeanor, and on the basis of subsequently speaking with and observing plaintiff. Officer Bellotti also states that neither Peng, nor any other Hotel employee, directed or demanded that plaintiff be arrested, or in any way participated in that arrest.

Moreover, a claim of malicious prosecution requires a showing that the criminal proceeding in question has been brought without probable cause. *Cantalino v Danner*, 96 NY2d 391 (2001); *Norment v Interfaith Ctr. of N.Y.*, 98 AD3d 955 (2d Dept 2012). Here, a grand jury indicted plaintiff on all the charges on which he was tried. There is, accordingly, a presumption, here unrebutted, that there was probable cause for plaintiff's arrest. *Narvaez v City of New York*, 83 AD3d at 517.

A private person who provides information to the police, who are then free to exercise their own judgment as to whether to make an arrest, will not be held liable for false imprisonment. *Petrychenko v Solovey*, 99 AD3d 777 (2d Dept 2012); *Oszustowicz v Admiral Ins. Brokerage Corp.*, 49 AD3d 515 (2d Dept 2008). As discussed above, neither Peng, nor any other Hotel employee, directed or demanded that plaintiff be arrested, or in any way

participated in that arrest. Accordingly, the third and fourth causes of action must be dismissed as against Peng, and, consequently, the second cause of action must be dismissed, as against the other defendants.

The fifth cause of action alleges both that Standard and Properties were negligent in hiring Peng and Russell, and that they are vicariously liable for Peng's and Russell's tortious acts. As discussed above, plaintiff has no viable tort claim against Peng. As for Russell, the complaint makes no statement connecting her to any alleged tort, other than the conclusory statement that Peng defamed plaintiff "under permission and consent of Russel[l] ..., express or implied." Nor has plaintiff submitted even a shred of evidence that Russell has committed a tort. Accordingly, the fifth cause of action is also dismissed.

Plaintiff's claim of conversion is alleged solely against Hotel and Properties, and is based upon plaintiff's deposition testimony that, when he was released from jail, prior to his trial, Hotel personnel returned to him some, but not all of the property that he had had in his room at the time of his arrest.

"If possession of property is originally lawful, conversion occurs when defendant refuses to return property after demand or sooner disposes of the property." *In the Matter of James White v City of Mount Vernon*, 221 AD2d 345 92nd Dept, 1995).

Here it is undisputed that when plaintiff was arrested, Hotel staff removed all of plaintiff's property from his room and placed it elsewhere for safekeeping. Plaintiff does not contend that

Hotel acted improperly in taking that action. Nor does plaintiff dispute the fact that his items were lawfully within the Hotel's possession. Consequently, plaintiff's claim of conversion, based upon his claim that some of his property was not returned to him, could accrue only after a demand for that property and a failure on the part of Hotel to return it. *TeeVee Tunes, Inc. v Prudential Sec. Credit Corp., L.L.C.*, 8 AD3d 134 (1st Dept 2004). Neither in his complaint, nor in his deposition testimony, does plaintiff state that he made a demand for the property that he contends was missing. Accordingly, the sixth cause of action, is dismissed.

That branch of plaintiff's cross motion which seeks to add a party defendant based upon plaintiff's recent discovery that the proposed party defendant, Hotels AB Ganesvoort Employees, LLC, rather than Hotel or Properties, employed Peng, is denied, as moot inasmuch as all of plaintiff's claims herein are being dismissed. That branch of the cross motion which seeks to have this court take judicial notice that a jury found plaintiff "not guilty" in a criminal trial, is also being denied. It is noted, however, that the fact that plaintiff was found not guilty of the crimes with which he had been charged is not proof that the information that Peng gave the police was false. "[A]quittal on criminal charges does not prove that a defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." *United States v Watts*, 519 US 148, 155 (1997), quoting *United States v One Assortment of 89 Firearms*, 465 US 354, 361 (1984).

Accordingly, it is hereby

ORDERED defendants The Standard New York, Andre Balazs Properties, and Kimberly Russell s/h/a Kimberly Russel's motion to dismiss, is granted and the Clerk of the Court shall enter judgment in favor of The Standard New York, Andre Balazs Properties, and Kimberly Russell s/h/a Kimberly Russel and against plaintiff, dismissing the complaint against them; and it is further

ORDERED that defendant Guiyan Peng a/k/a Anna Peng's motion to dismiss, is granted and the Clerk of the Court shall enter judgment in favor of defendant Guiyan Peng a/k/a Anna Peng and against plaintiff, dismissing the complaint against her; and it is further

ORDERED that plaintiff's cross motion for leave to amend the complaint to add party defendant(s) to this action and for judicial notice regarding a "not guilty" verdict in a criminal court matter, is denied, as moot, since the matter is now dismissed as against all named defendants herein.

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: January 17, 2013

ENTER:

JOAN M. KENNEY
J.S.C.
J.S.C.

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