

<b>Jennings v Wall St. Journal, Ncew Corp.</b>
2013 NY Slip Op 31059(U)
May 13, 2013
Supreme Court, New York County
Docket Number: 103559/12
Judge: Donna M. Mills
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts ( <a href="http://www.nycourts.gov/ecourts">http://www.nycourts.gov/ecourts</a> ) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

ALLAN JENNINGS,

INDEX No. 103559/12

Plaintiff,

**FILED**

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

-v-

THE WALL STREET JOURNAL, NEWS CORP.

MAY 15 2013

MOTION SEQ. NO. 001

Defendants.

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION CAL No. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for \_\_\_\_\_.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

7-4

Answering Affidavits- Exhibits \_\_\_\_\_

5

Replying Affidavits \_\_\_\_\_

6

CROSS-MOTION: \_\_\_\_\_ YES  NO

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

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 5/13/13

*Donna M. Mills*

**DONNA M. MILLS, J.S.C.**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

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

-----  
ALLAN JENNINGS,

INDEX NO.  
103559/12

Plaintiff,

- against -

THE WALL STREET JOURNAL; NEWS  
CORPORATION,

**FILED**

DECISION/ORDER

Defendants.

MAY 15 2013

-----  
DONNA M. MILLS, J:

NEW YORK  
COUNTY CLERK'S OFFICE

In this defamation action brought by plaintiff, former New York City Councilman, Allan Jennings against The Wall Street Journal and News Corporation (collectively "defendants"), defendants now move for an order, pursuant to CPLR 3211 (a) (1) and (7), dismissing the verified complaint of plaintiff in its entirety.

BACKGROUND

Plaintiff claims that he was defamed by one phrase in an article in The Wall Street Journal, dated August 18, 2011. The Article written by Michael Howard Saul, focused on the career of Ruben Wills, the then-incumbent candidate for the Queens 28<sup>th</sup> District City Council seat. The article chronicled Councilman Wills's various legal issues. The Article also noted that Wills's primary opponent, Jennings, had seized on Councilman Wills's legal problems and was attempting to use them for his advantage in the, then upcoming election.

Almost ten years before the publication of the article, on or about March 16, 2003, plaintiff placed an advertisement in two local Chinese-language newspapers, the World Journal and Sing Tao Daily. This advertisement, proclaimed that Jennings was a "Councilman with a Chinese Heart:" and included several photographs of plaintiff with a female companion of Chinese descent. The advertisement, a translation of which is

annexed to one of the defendants' affidavit, discusses the failure of plaintiff's marriage to a Taiwanese woman with whom he was "very much in love" and his new relationship with a "new love" named Li Yiling from Yunnan, China. In the ad, Jennings thanks the Chinese community for accepting him and declares that "[b]eing with Yiling has enriched my life. I would do anything for her. Anything that she needs, as long as she asks, I will try my best to provide for her, because her love is so wonderful. I am grateful for her understanding, patience and love."

On or about August 16, 2012, plaintiff commenced this action by filing a Summons and Complaint in the Supreme Court for the State of New York, County of New York. The Complaint purports to assert a single cause of action for defamation against both the Journal and News Corp. because the article "claimed that Allan Jennings placed an advertisement in a Chinese language newspaper declaring his love for Asian Women." According to plaintiff, this statement was defamatory because it was "intended to turn voters against Allan Jennings in his district" and "intended to ruin and destroy Allan Jennings's future in politics and turn all New Yorkers, the people of America and the World against him."

#### APPLICABLE LAW AND DISCUSSION

A defamation action is subject to an absolute defense that the alleged defamatory statements are substantially true ( see Ingber v. Lagarenne, 299 A.D.2d 608, 609, 750 N.Y.S.2d 172 [2002], lv. denied 99 N.Y.2d 507, 757 N.Y.S.2d 817, 787 N.E.2d 1163 [2003]; Smith v. United Church Ministry, 212 A.D.2d 1038, 1039, 623 N.Y.S.2d 46 [1995], lv. denied 85 N.Y.2d 806, 627 N.Y.S.2d 322, 650 N.E.2d 1324 [1995]; Han v. State of New York, 186 A.D.2d 536, 537, 588 N.Y.S.2d 358 [1992]). Plaintiff bears the burden of proving that the statement is false, and the inquiry only advances to the issues of whether the statement is defamatory or published with malice after their falsity is established ( see

Rinaldi v. Holt, Rinehart & Winston, 42 N.Y.2d 369, 380, 397 N.Y.S.2d 943, 366 N.E.2d 1299 [1977] ). Plaintiff attempts to paint the article as false because, he claims, the advertisement he admittedly placed in the Chinese language newspaper was about racial harmony not a declaration of love for Asian women.

Contrary to the plaintiff's contention, the fact that the article omitted certain information that was contained in his advertisement did not alter the substantially accurate character of the article. The advertisement is specifically about plaintiff's romantic relationships with two Asian women. In it, plaintiff expresses his love and affection (past and present) for the two Asian women: (1) his former wife who is apparently Taiwanese; and (2) his "new love" from China. "Courts will not strain to find defamation where none exists" ( Dillon v. City of New York, 261 A.D.2d 34, 38, 704 N.Y.S.2d 1 [1st Dept 1999]).

To the extent that plaintiff alleges that he lost votes with the black community because the article says he loved Asian women, his argument is unavailing. The article does not say that plaintiff only loved Asian women or that he did not like women of other races. It would serve no useful purpose in this case to analyze and then to controvert the innuendos that plaintiff asserts can be read into the gossipy tale which was retailed in the challenged article.

When evaluating a defendant's motion to dismiss, pursuant to CPLR 3211 (a) (7), the test "is not whether the plaintiff has artfully drafted the complaint but whether, deeming the complaint to allege whatever can be reasonably implied from its statements, a cause of action can be sustained." Jones Lang Wootton USA v LeBoeuf, Lamb, Greene & McRae, 243 AD2d 168, 176 (1<sup>st</sup> Dept 1998), quoting Stendig, Inc. v Thom Rock Realty Co., 163 AD2d 46, 48 (1<sup>st</sup> Dept 1990). To this end, the court must accept all of the facts alleged in the complaint as true, and determine whether they fit within any "cognizable legal theory." Arnav Indus., Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner, L.L.P.,

96 NY2d 300, 303 (2001). However, where the allegation in the complaint consist only of bare legal conclusions, or of factual claims which are inherently incredible or are flatly contradicted by documentary evidence, the foregoing considerations do not apply. See e.g. Tectrade Intl. Ltd. v Fertilizer Dev. and Inv., B.V., 258 AD2d 349 (1<sup>st</sup> Dept 1999).

Applying these legal principles, I find that the documentary evidence submitted by the defendants demonstrated that the subject statement published in its paper was substantially true. As previously mentioned herein, "[T]ruth is an absolute defense to an action based on defamation" ( Heins v. Board of Trustees of Inc. Vil. of Greenport, 237 A.D.2d 570, 571, 655 N.Y.S.2d 996; see Kamalian v. Reader's Digest Assn., Inc., 29 A.D.3d 527, 528, 814 N.Y.S.2d 261). Thus, the documentary evidence submitted by the defendants conclusively establishes a defense to the claim as a matter of law ( see Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326, 746 N.Y.S.2d 858, 774 N.E.2d 1190). Substantively, the complaint must also be dismissed because the plaintiff has presented no grounds for which relief can be granted. There is no showing that the plaintiff has been defamed. The objectionable words must be libelous on their face and they cannot be made to do so by innuendo. Where defamation is charged that can only be found through tortured readings, the Court will dismiss the complaint ( Hays v. American Defense Soc., 252 N.Y. 266, 169 N.E. 380).

The plaintiff's remaining contentions are without merit.

Accordingly, it is

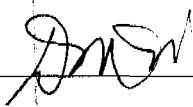
ORDERED that defendants' motion to dismiss the complaint is granted in its entirety, and the Clerk is directed to enter judgment accordingly in favor of the defendants.

Dated:

5/13/13

**FILED**

So Ordered



MAY 15 2013

NEW YORK  
COUNTY CLERK'S OFFICE

Donna M. Mills, J.S.C.

DONNA M. MILLS, J.S.C.