

Seldon v Crow

2014 NY Slip Op 30135(U)

January 17, 2014

Supreme Court, New York County

Docket Number: 103760/12

Judge: Doris Ling-Cohan

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Doris Ling-Cohan, Justice

Part 36

PHILIP SELDON

Plaintiff,

-against-

INDEX NO. 103760/12

MOTION SEQ. NO. 007

CHEYENNE CROW and IRINA BORISENKO
Defendants.

The following papers, numbered 1-9 were considered on this motion to dismiss/cross-motions to compel:

PAPERS

NUMBERED

Notice of Motion/Order to Show Cause, — Affidavits — Exhibits **FILED**
Answering Affidavits — Exhibits _____
Interim Order dated July 15, 2013 _____
Responses to Interim Order _____ **JAN 22 2014**

1, 2
3
8
9, 10, 11
4, 5, 6, 7

Cross-Motions: Yes No

NEW YORK

Upon the foregoing papers, defendants' motion to ~~dismiss this case~~ County Court, plaintiff's cross-motion to compel party depositions and plaintiff's cross-motions to, *inter alia*, "compel the return 36,000 photographs and an Easy Boy recliner" are decided as indicated below.

It is noted that, while "[c]ourts can deal appropriately with broken contracts and broken legs...[i]t cannot give remedy for unrequited love and broken hearts". *Sanders v. Rosen*, 159 Misc 2d 563 (Sup Court, New York County 1993). Here, it is strongly suggested that the plaintiff and defendants move forward with their separate lives and terminate all contact with each other from this point forward, and not use precious court resources to relive the drama of a broken relationship. The New York State Courts have suffered a 175 million dollar budget cut in 2011¹, from which it still has not recovered; cases such as this one, tax its resources severely.

As provided in the summons with notice dated September 12, 2012, plaintiff commenced this case (without the assistance of counsel²), against defendants (who also have appeared without the assistance of counsel), seeking \$30 million in damages and asserting claims for defamation, libel, slander, invasion of privacy, intentional infliction of emotional distress, alienation of affection and friendship, criminal trespass, computer trespass, destruction of intellectual property, theft of 36,000 photographs, grand larceny, criminal mischief, theft of intellectual property, perjury, false arrest, filing of a false instrument,

¹ See New York County Lawyers' Association report, approved on August 11, 2011.
https://www.nycla.org/siteFiles/Publications/Publications1475_0.pdf

² It is noted that plaintiff is represented by counsel on defendants' counterclaims.

fraud, and fraud upon the court. While plaintiff sues for \$30 million in damages, he also asserts to the court that “defendants are basically indigent and if I were awarded the millions of dollars by a jury...the likelihood of ever collecting is unlikely”. Letter of Philip Seldon, August 10, 2013, at 3.

This case is one of at least four (4) actions commenced by plaintiff against the within defendants, all seeking virtually identical relief. The case of *Philip Seldon v. Cheyenne Crow*, “John ‘Mike’ Doe” “John ‘Doctor’ Doe”, John ‘Irina’ Doe”, index number 105200/11, was dismissed by this court, by order dated April 9, 2013, as plaintiff failed to prove that this court had personal jurisdiction over defendant Crow. The case of *Philip Seldon v. Cheyenne Crow*, index number 101656/2012, was dismissed by order dated July 31, 2012, by the Hon. Eileen Rakower, after a hearing, based upon improper service of the pleadings. By order dated December 12, 2013, Justice Rakower’s order was affirmed by the Appellate Division, First Department. *Seldon v. Crow*, ___ AD3d ___, 2013WL6500696 (1st Dept 2013). The case of *Philip Seldon v. Irina Borisenko*, index number 106093/2011, was also dismissed, after a traverse hearing before a Special Referee; a motion to reinstate such case after dismissal, was denied by the Honorable Manuel J. Mendez, by order dated May 6, 2013. According to defendants, plaintiff recently commenced a new Federal Court action against them in Phoenix, Arizona, for the exact claims previously dismissed in this court. See July 25, 2013 Letter from Defendants.

Additionally, this case is one of more than 100 lawsuits in this court, commenced by plaintiff Philip Seldon, against over 160 defendants, as reflected in the court’s computer records. Recently, by decision/order dated October 11, 2012, in the case of *Seldon v. Lewis, Brisbois, Bisgaard & Smith, LLP*, index number 1119156/2010, the Hon. Paul Wooten determined that plaintiff was “a vexatious litigator”. While Justice Wooten denied the defendants’ request to enjoin plaintiff “from commencing any further litigations against anyone within the State of New York without first obtaining leave of the Court”, Justice Wooten did enjoin plaintiff “from filing and serving any litigation papers on the defendants in [such] matter [Lewis, Brisbois Bisgaard & Smith LLP and Wilson, Elser, Moskowitz, Edelman & Dicker]”.³ Apparently, plaintiff has taught a course entitled “Getting Even”, to exact revenge. See *Revenge 101: Don’t Get Mad, Get to Class: New York: Night school offers instruction on striking bac. But don’t forget libel insurance. You might want to get a lawyer lined up now, Los*

³ There may be other lawsuits, initiated by plaintiff in this State’s courts. As it is undisputed that plaintiff recently sued defendants in Arizona Federal Court, his many lawsuits are hardly restricted to the Supreme Court, New York County.

Angeles Times, October 1, 1995,

http://articles.latimes.com/1995-10-01/news/mn-51957_1_night-school.

Prior to the commencement of this lawsuit, it appears that plaintiff and defendant Irina Borisenko were in an intimate relationship. Defendant Cheyenne Crow is defendant Irina Borisenko's current fiancé. According to defendants, and not disputed by plaintiff, defendant Cheyenne Crow currently resides in Washington DC and defendant Irina Borisenko currently lives in Europe, and has lived there since April 2010.

Before this court is *pro se* defendants' motion to enjoin plaintiff from harassing defendants and to dismiss this case, as well as to quash the notice of depositions served upon defendants. Specifically, along with dismissal, defendants seek that plaintiff be ordered to "stop harassment to defendants via telephone, email, Internet postings and 800# solicitation...[and] to stop all stalking and menacing harassments against the defendants". [Order to Show Cause, at 2]. In response, plaintiff, by his counsel on the counterclaims, has cross-moved to, *inter alia*, compel the depositions of defendants. Plaintiff, *pro se*, has also filed a cross-motion, which seeks to compel "the return of 36,000 photographs and an Easy Boy recliner" and for sanctions against defendants for alleged frivolous conduct, pursuant to Rule 130.1.1.

In seeking dismissal, defendants argue that this case is baseless and frivolous. In essence, defendants are moving to dismiss pursuant to CPLR §3211(a)(7), based upon the failure to state a cause of action.

On a motion to dismiss pursuant to CPLR §3211(a)(7) for failure to state a cause of action, the movant has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action. *Leon v Martinez*, 84 NY2d 83, 87-88 (1994). However, CPLR §3013 provides that "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." Factual allegations that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration (see *Caniglia v. Chicago Tribune-New York News Syndicate, Inc.*, 204 AD2d 233 [1st Dept 1994]). If the allegations are not "sufficiently particular to give the court and parties notice of the transactions intended to be proved and the material element of each cause of action", the cause of action will be dismissed. See *Catli*, 40

AD2d at 715. Based upon such standard, as explained below, plaintiff's claims for defamation, libel, slander, invasion of privacy, intentional infliction of emotional distress, alienation of affection and friendship, criminal trespass, computer trespass, destruction of intellectual property, theft of 36,000 photographs, grand larceny, criminal mischief, theft of intellectual property, perjury, false arrest, filing of a false instrument, fraud, and fraud upon the court, are defective on their face and, therefore, dismissal is warranted.

Plaintiff's claims for defamation, libel and slander are deficient as the complaint fails to contain the "particular words complained of", as required by CPLR §3016(a). Similarly, plaintiff's claims for fraud and fraud upon the court are dismissed, as "the circumstances constituting the wrong [are not] stated in detail", as required. *See* CPLR §3016(b). Plaintiff's claim for intentional infliction of emotional distress must be dismissed, as plaintiff has failed to set forth in the complaint allegations of extreme and outrageous conduct which intentionally or recklessly caused him severe emotional distress. *See Howell v. New York Post Co.*, 81 NY2d 115 (1993); *Dillon v. City of New York*, 261 AD2d 34, 41 (1st Dept 1999). Additionally, pursuant to New York Civil Rights Act §80-A, causes of action for alienation of affection have been abolished; thus, plaintiff's claim for alienation of affection and friendship must be dismissed.

As to plaintiff's claim for "invasion of privacy", there is no such actionable cause of action in New York. Moreover, plaintiff's claims for criminal trespass, computer trespass, destruction of intellectual property, theft of 36,000 photographs from his computer, grand larceny, criminal mischief, theft of intellectual property, perjury, false arrest, and the filing of a false instrument are all criminal in nature, and may not be pursued in this court. Thus, as plaintiff's complaint fails to state a viable cause of action against defendants, defendants' motion to dismiss is granted and plaintiff's motion to compel is deemed moot.

Additionally, defendants' counterclaims are deemed dismissed as defendants have specifically asked that this court sever and dismiss their counterclaims [¶2a, Attachment to Affidavit in Support]; admittedly, defendants are unable to pursue such claims, without defendant Irina Borisenko, who resides in Europe.

Plaintiff's cross-motion which seeks the return of 36,000 photographs stolen from his computer and an Easy Boy recliner and sanctions for frivolous conduct pursuant to Rule 130.1.1 is denied. As to the

return of the Easy Boy recliner, such relief is not sought in the complaint. Further, as to the return of the photographs, no legal basis is supplied for the return of the photographs and, significantly, the summons with notice does not seek *the return of photographs*, rather, merely asserts "theft of 36,000 photographs". The court notes that, as stated by defendant Irina Borisenko, in her affidavit dated January 19, 2012, in support of the issuance of a Family Court Temporary Order of Protection, which was granted, "Seldon was never authorized to have these photos", which were of Irina Borisenko, "and doesn't own any of [her] photos". According to defendant Irina Borisenko, she "asked Seldon to delete all of [her] photos from his camera and computer. Seldon told [her] he had already deleted them". Iris Borisenko further asserted that "Seldon is causing me mental pain and suffering due to his stalking, harassment, emails, internet postings, and illegal use of my photos".

That portion of plaintiff's motion which seeks sanctions based upon defendants' alleged frivolous conduct is denied, in this court's discretion. However, given Judge Wooten's previous finding that plaintiff is a "vexatious litigator", his litigation history, and continued frivolous action, plaintiff is barred from commencing any lawsuits against the within defendants, in any court, without permission of the Administrative Judge. Plaintiff is ordered to provide a copy of this order to the Clerk's Office on any filing of a complaint, petition, motion, order to show cause, or any application as to the within defendants, and must attach this order to all submissions, as the first exhibit.

Accordingly, it is

ORDERED that defendants' motion to dismiss is granted and the Clerk of this Court is directed to enter a judgment of dismissal of the complaint and counterclaims, *without costs*, upon proof of service of a copy of this order upon plaintiff, with notice of entry; and it is further

ORDERED that defendants counterclaims are severed and dismissed, without prejudice; it is further

ORDERED that based upon the within dismissal, plaintiff's motion to compel is deemed moot and plaintiff's cross-motion is denied; and it is further

ORDERED that within 30 days of entry, defendants shall serve a copy of this decision/order upon plaintiff with notice of entry.

Dated: 1/17/14


DORIS LING-COHAN, J.S.C. **FILED**

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION JAN 22 2014
Check if Appropriate: DO NOT POST