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

Present: Hon. Shlomo S. Hagler
Justice

IAS Part: 17

ANNA PEZHMAN,

Plaintiff,

- against -

CHANEL, INC., *et al*,

Defendants.

INDEX NO.: 104778/2011

MOTION SEQ. NO.: 004

DECISION and ORDER

Motion by defendant Chanel and Lord & Taylor to dismiss complaint against Chanel and denying plaintiff's attempt to amend the action to add Lord & Taylor as a defendant

	Papers Numbered
Defendant Chanel and Lord & Taylor's Notice of Motion	1
Affirmation of Defendants' Counsel in Support of the Motion with Exhibits 1 through 6	2
Defendant Chanel's and Lord & Taylor's Memorandum of Law in Support of the Motion	3
Affirmation of Plaintiff in Opposition to the Motion with Exhibits "A" through "H"	4
Plaintiff's Memorandum of Law in Opposition to the Motion	5
Defendant Chanel's and Lord & Taylor's Reply Memorandum of Law in Further Support of the Motion	6
Transcript of Oral Argument of April 8, 2013	7
Transcript of Oral Argument of May 13, 2013	8

Cross-Motion: ☑ No ☐ Yes **Number of Cross Motion:**

FILED

MAY 07 2014

NEW YORK COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is hereby ordered that this Motion is granted in part to the extent of denying plaintiff 's attempt to amend this action to add Lord & Taylor as a defendant in this action and is otherwise denied as set forth in the attached separate written Decision and Order.

Dated: May 1, 2014
New York, New York

Hon. Shlomo S. Hagler, J.S.C.

Check one: ☐ **Final Disposition** ☑ **Non-Final Disposition**

Motion is: ☐ Granted ☑ Granted in Part ☐ Denied ☑ Denied in Part

Check if Appropriate: ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS Part 17

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ANNA PEZHMAN,

Plaintiff,

- against -

CHANEL, INC., DEBBIE DAYTON, DALINDA GRANELLI, ANTONETTE DEBLASE, and ROZ DEROSA, individually as well as employees of CHANEL,

Defendants.

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Index No.: 104778/2011

Motion Seq. No.: 004

DECISION & ORDER

HON. SHLOMO S. HAGLER, J.S.C.

Defendant Chanel, Inc. ("Chanel") and proposed defendant Lord & Taylor (collectively "defendants") move to dismiss plaintiff Anna Pezhman's ("plaintiff" or "Pezhman") second amended complaint for failure to state a cause of action pursuant to New York Civil Practice Law and Rules ("CPLR") § 3211(a)(7) and denying plaintiff's attempt to amend the complaint to add Lord & Taylor as a defendant for untimely service of the summons and complaint upon Lord & Taylor. Plaintiff opposes the motion.

Factual and Procedural Background

Retailer Lord & Taylor retained Pezhman as a seasonal employee of its store in Scarsdale, New York ("Scarsdale store") from in or about June 2010 to September 10, 2010. Plaintiff worked in the cosmetics department at various counters as needed.

On or about June 1, 2010, plaintiff was tasked with assisting in the planning of Chanel's "OP event," an annual sales and marketing event. Dalinda Granelli ("Granelli"), the manager of the Chanel cosmetics counter at which plaintiff was working, asked plaintiff to recruit twenty persons to attend the event. Pezhman allegedly recruited twenty customers. Granelli informed Pezhman that she was displeased with the clients Pezhman had recruited. When Granelli made a finalized list of

attendees for the event, none of plaintiff's recruits were included, and plaintiff was informed that she was no longer invited to the event.

Pezhman then took the list of customers she had generated for the OP event to the staff at the Yves Saint Laurent ("YSL") counter to see if they were interested in planning an event with those customers. The manager of the YSL counter allegedly expressed interest and plaintiff began to plan an event.

After hearing that plaintiff had brought the list of twenty customers she had recruited for the OP event to the YSL counter, Granelli allegedly requested that plaintiff return the list of customers to her. Plaintiff alleges that Granelli further stated that she would inform Deborah Dayton ("Dayton"), a Chanel representative whose territory included the Scarsdale store, that plaintiff had "run off with all [of] Chanel's clients." Plaintiff claims Granelli did, in fact, tell Dayton that plaintiff had run off with all of Chanel's clients and then, along with Roz DeRosa ("DeRosa") and Antonette DeBlase ("DeBlase"), other Lord & Taylor employees, allegedly informed "Blair," a "top executive" at Lord & Taylor, that plaintiff had misappropriated Chanel's book of clients. Plaintiff further alleges that Granelli, DeRosa, and DeBlase told other employees of the cosmetics department, as well as an outside vendor, that plaintiff had taken Chanel's client list.

Plaintiff then worked at the Clarins and Estee Lauder counters before terminating her summer employment. Plaintiff alleges that while working at the Clarins counter, the manager of that counter told plaintiff she had heard that "plaintiff ran off with Chanel's customers" and downloaded Chanel's customer database. Plaintiff also claims that several other co-employees confirmed to plaintiff that the individual defendants had repeated to them the story about plaintiff "running off" with Chanel's customers and with the information contained in the client database. Plaintiff

returned to work during the winter intersession, but was denied employment by Lord & Taylor for the summer of 2011.

On or about April 11, 2011, plaintiff filed her original complaint against Chanel, and named Dayton, Granelli, DeRosa, and DeBlase both individually and as employees of Chanel. However, Pezhman only served her original complaint on Chanel, which answered on or about May 17, 2011. Plaintiff did **not** serve Dayton, Granelli, DeRosa, DeBlase, or Lord & Taylor with the original complaint. On or about September 29, 2011 and June 29, 2012, plaintiff requested leave to serve a first and second amended complaint on Chanel within thirty days, which leave was granted on or about October 18, 2012. On or about November 3, 2012, plaintiff filed her "Second Amended Complaint" which amended the caption of this action but also added defendants Lord & Taylor and Joanne Stathos as defendants without permission of the court. Plaintiff's attempted addition of Lord & Taylor as a defendant in this action and her claim against Chanel for tortious interference with prospective contract were dismissed after oral argument on April 8, 2013. Plaintiff moved to renew and reargue the April 8, 2013 decision on or about April 15, 2013 [1] under motion sequence number 005. Oral argument on this motion and plaintiff's motion to renew and reargue were held on May 13, 2013. Plaintiff's motion to renew and reargue the Court's April 8, 2013 decision (motion sequence number 005) was denied in a separate written Decision and Order dated April 28, 2014.

Discussion

CPLR §3211(a)(7) states, "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . the pleading fails to state a cause of action."

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1. Although plaintiff's Notice of Motion to renew or reargue was dated April 25, 2013, it was stamped as received and fee paid on April 15, 2013 and was made returnable on April 25, 2013.

Defendants contend that the allegedly slanderous statements presently at issue are insufficient to serve as the basis for the slander claims, because the statements fall under the purview of the qualified common interest privilege, and thus the pleading fails to state a cause of action. Defendants further contend that neither the common law nor constitutional malice necessary to pierce the privilege exists in this case. Plaintiff concedes that the qualified common interest privilege does apply to the allegedly slanderous statements. However, plaintiff argues that both common law and constitutional malice are present and, therefore, the statements may serve as the basis for slander claims.

Defamatory communications may not serve as the basis for the imposition of liability in a defamation action if they are subject to an absolute or a qualified privilege (*Rosenberg v MetLife, Inc.*, 8 NYS2d 359, 365 [2007]). There exists an absolute privilege, and thus immunity from liability in a defamation action, "when the challenged communication was made by an individual participating in a public function, such as executive, legislative, judicial or quasi-judicial proceedings" (*Frechtman v Gutterman*, 115AD3d 102, [1st Dept 2014] *citing Rosenberg v Metlife, Inc.*, 8 NY3d 359, 365 [2007]). The allegedly slanderous statements presently at issue were not made in such a setting and thus are not absolutely privileged. Defendants do not contend otherwise.

A qualified common interest privilege exists where the communications relevant to a slander or defamation claim concern a subject matter in which both parties have an interest (*Frechtman*, 115 AD3d at 107, *citing Shapiro v Health Ins. Plan of Greater N.Y.*, 7 NY2d 56, 60 [1959]). The qualified common interest privilege has been applied to employees of an organization (*see, e.g., Liberman v Gelstein*, 80 NY2d 429, 437 [1992]; *Loughry v Lincoln First Bank*, 67 NY2d 369, 376 [1986] ["Statements among employees in furtherance of the common interest of the employer, made at a confidential meeting, may well fall within the ambit of qualified or conditional privilege"];

O'Neill v N.Y. Univ., 97 AD3d 199, 213 [1st Dept 2012]; *Present v Avon Products, Inc.*, 253 AD2d 183, 187 [1st Dept 1999]; *Yao Jin Gong v Metropolitan Life Ins. Co.* 20 Misc 3d 129(A) [App Term 1st Dept 2008] ["the qualified 'common interest' privilege . . . protects good faith communications between employees and management regarding the employer's business"]). However, the defense of a qualified privilege will be defeated by a demonstration that defendant's "motivation for making such statements was spite or ill will (common-law malice) or where the 'statements [were] made with [a] high degree of awareness of their probable falsity (constitutional malice)' " (*Foster v Churchill*, 87 NY2d 744, 752 [1996]). *(See also Loughry*, 67 NY2d at 376; *Liberman v Gelstein*, 80 NY2d at 437-438.)

Defendant contends, and plaintiff has conceded, that the allegedly slanderous statements are subject to the qualified common interest privilege. Thus, the question remaining is whether or not plaintiff has borne the burden of proving, to a degree sufficient to survive a motion to dismiss her claims, that the statements were made with either common-law malice, *i.e.*, spite or ill will, or constitutional malice, *i.e.*, a high degree of awareness of probable falsity, or a reckless disregard for the truth (*Sborgi v Green*, 281 AD2d 230, 230 [1st Dept 2001]).

In review of a motion to dismiss pursuant to CPLR § 3211, a complaint "is deemed to allege whatever can reasonably be implied from its statements and not whether the allegations can be established, considering the complaint as a whole" (*Terry v Orleans County*, 72 AD2d 925, 926 [4th Dept]). Furthermore, plaintiff is self-represented and, as such, the complaint should be construed liberally in her favor (*Rosen v Raum,* 164 AD2d 809, 810 [1990]). "Although allegations of malice may not rest on mere surmise and conjecture, on a motion to dismiss a plaintiff is not obligated to show evidentiary facts to support her allegations of malice" (*Pezhman v City of New York,* 29 AD3d 164, 169 [2006]).

Taking the allegations contained in plaintiff's complaint as true, regardless of any evidentiary support provided or not provided by plaintiff, and in light of the content of the statements and the frequency with which they were made, this court holds that plaintiff's allegations are sufficient to allege common law malice, *i.e.* spite or ill will, so as to satisfy plaintiff's burden of proof on the motion to dismiss (*id.*; *Sborgi,* 281 AD2d at 230).

While plaintiff's assertions that the allegedly slanderous statements were false and that she had had personal conflicts with the individual defendants previously may be, by themselves, insufficient to permit an inference of malice (*Sborgi,* 281 AD2d at 230), the number of statements and speakers alleged by plaintiff could support a finding that the statements were part of a campaign of harassment, evidence of which may support a contention that the speakers were motivated solely by ill will (*Pezhman,* 29 AD3d at 169).

Defendants contend that plaintiff's allegations are inadequate to show there was a campaign of harassment of the type necessary to show malice. To that end defendants cite to *O'Neill v N.Y. Univ.* (97 AD3d 199 [1st Dept 2012]), as well as *Ferraro v Seamen's Church Inst. of N.Y. & N.J.* (18 Misc 3d 1108[A] [Sup Ct, NY County 2007]). Neither case is persuasive. In *O'Neill*, the alleged defamation consisted of one letter given by the alleged defamer to the plaintiff, one telephone call between the parties, and the alleged defamer handing the plaintiff a termination letter in which she stated the plaintiff behaved unprofessionally, was argumentative, and raised his voice in anger in their earlier phone call (97 AD3d at 203-205). In *Ferraro*, the plaintiff did not claim malice and neither the original complaint nor the amended complaint specifically alleged that the defamer knew that the defamatory statements were false and strongly suggested that he believed the information was true (18 Misc 3d at *2).

In contrast to both *O'Neill* and *Ferraro*, assuming the allegations in the complaint are true, as we must on a motion to dismiss pursuant to CPLR § 3211, plaintiff was alleged to be the subject of numerous knowingly false accusations, made with malice to multiple people with varying levels of authority at both Chanel and Lord & Taylor. While the statements could also have been "a legitimate means of advancing defendant's interests," a determination of whether they were or were not is not amenable to resolution as a matter of law (*id.*). All of the plaintiff's allegations taken together are, therefore, enough to permit an inference of malice to overcome the qualified common interest privilege, at least on a motion to dismiss pursuant to CPLR § 3211. As a result, her slander claim against Chanel is sufficient to survive the motion to dismiss for failure to state a cause of action (*id.*).

CONCLUSION

Accordingly, it is hereby

ORDERED that the portion of the motion to dismiss plaintiff's claims against proposed defendant Lord & Taylor is granted, and it is further

ORDERED that the portion of the motion to dismiss the slander claims against defendant Chanel, Inc., pursuant to CPLR §3211(a)(7) is denied.

The foregoing constitutes the decision and order of this court. Copies of this decision and order have been sent to the self-represented plaintiff and counsel for defendant Chanel.

ENTER:

Dated: May 1, 2014
New York, New York

Hon Shlomo S. Hagler, J.S.C.