

Di Gregorio v MTA Metro-N. R.R.

2014 NY Slip Op 31800(U)

July 10, 2014

Supreme Court, New York County

Docket Number: 159638/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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LISA DI GREGORIO,

Plaintiff,

- against -

MTA METRO-NORTH RAILROAD, a public
benefit corporation; VALENTINA KRAVTSOV,

Defendants.
-----X

Index No.
159638/2013

**DECISION
and ORDER**

Mot. Seq.
002

HON. EILEEN A. RAKOWER, J.S.C.

This action was commenced with the filing of the Summons and Complaint on October 18, 2013. In the Complaint, Plaintiff, Lisa Di Gregorio ("Plaintiff" or "DiGregorio"), asserts claims of assault and battery against defendant, Valentina Kravtsov ("Defendant" or "Kravstov"). With respect to defendant, MTA Metro-North Railroad ("Metro-North"), Di Gregorio alleges that Metro-North retaliated against her after Plaintiff reported the assault and battery.

On February 27, 2014, Kravtsov interposed an Answer and Counterclaims for malicious abuse of legal process, intentional infliction of emotional distress, prima facie tort, and defamation. Kravtsov now withdraws her counterclaim for prima facie tort.

Plaintiff moves to dismiss defendant Kravtsov's Counterclaims, pursuant to CPLR § 3211(a)(7). Kravtsov opposes.

CPLR § 3211 provides, in relevant part:

(a) a party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

(7) the pleading fails to state a cause of action.

In determining whether dismissal is warranted for failure to state a cause of action, the court must “accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory.” (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91 [1st Dept. 2003]) (internal citations omitted) (*see* CPLR § 3211[a][7]).

The first Counterclaim asserts a claim for malicious abuse of legal process based on Plaintiff’s filing of the Complaint in this action. Specifically, the Complaint alleges, “On or about October 18, 2013, Di Gregorio, with ill will and merely in an attempt to bolster her claim of retaliation against Metro-North Railroad, filed a civil complaint against Counterclaimant. As a result of this false complaint, Counterclaimant has spent a considerable amount of time and energy to defend against Di Gregorio’s frivolous complaint.”

“Abuse of process has three essential elements: (1) regularly issued process, either civil or criminal, (2) an intent to do harm without excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective.” *Curiano v. Suozzi*, 63 N.Y. 2d 113, 116 [1984]. However, the mere commencement of a civil action by summons and complaint does not constitute abuse of process and a malicious motive alone does not give rise to a cause of action to recover damages for abuse of process. (*Id.*).

Here, as Plaintiff’s commencement of this action and alleged malicious motive alone does not give rise to a cause of action for abuse of process, Defendant’s first Counterclaim fails to state a claim.

Furthermore, to the extent that Defendant alleges in its opposition that Defendant’s abuse of process claim is also predicated on Plaintiff’s “malicious filing of a police report targeting Defendant,” there are no allegations that that Plaintiff used “process in a perverted manner to obtain a collateral objective.” *Curiano*, 63 N.Y. 2d at 116. Moreover, “There is no liability for merely giving information to legal authorities, who are left entirely free to use their own judgment in effecting an arrest, or in swearing out a criminal complaint so that an arrest is legally authorized.” *Chapo v. Premier Liquor Corp.*, 688 N.Y.S. 2d 342, 343 [4th Dept. 1999].

The second Counterclaim asserts a claim for intentional infliction of

emotional distress. The tort of “intentional infliction of emotional distress” has the following four elements: (i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress. (*Howell v. New York Post Co.*, 81 N.Y.2d 115, 121 (N.Y. 1993))

The Counterclaim alleges:

36. Starting in October 2012, Di Gregorio maliciously spread a lie to the police, Counterclaimant’s employer and fellow co-workers that Counterclaimant threatened to hit and then hit her.
37. Di Gregorio did this to embarrass and professional harm Counterclaimant.
38. Di Gregorio’s conduct was malicious and intentional.
39. Di Gregorio’s conduct was extreme and outrageous and is utterly intolerable in a civilized community.
40. Di Gregorio’s conduct was calculated to and did cause emotional distress to Counterclaimant.
41. As a direct result of Di Gregorio’s malicious abuse of process, Counterclaimant has suffered and continues to suffer non-economic damages, including mental health and emotional injury and detrimental psychological trauma in an amount to be determined at trial.

Defendant’s second cause of action fails to allege facts sufficient to state a cause of action for intentional infliction of emotional distress. The complained of conduct, i.e. that Plaintiff “spread a lie to the police, Counterclaimant’s employer, and fellow co-workers that Counterclaimant threatened to hit her and then hit her,” as alleged, “is neither sufficiently extreme nor outrageous to support a claim for intentional infliction of emotional distress.” *See Como v. Riley*, 287 A.D. 2d 416, 416-17 [1st Dept 2001].

The third Counterclaim asserts a claim for intentional or malicious harm to another-prima facie tort. Kravtsov withdraws the claim.

The fourth Counterclaim asserts a claim for defamation.

“The elements [of a defamation claim] are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation *per se*.” (*Dillon v. City of New York*, 261 A.D.2d 34, 38 [1st Dep’t 1999]).

Additionally, “[i]n an action for libel or slander, the particular words complained of shall be set forth in the complaint.” CPLR § 3016(a). The complaint in an action for defamation must allege the time, place and manner of the defamatory statement, and specify to whom the statement was made. (*Dillon*, 261 A.D.2d at 38).

Defamation *per se* “consist[s] of statements (i) charging plaintiff with a serious crime; (ii) that tend to injure another in his or her trade, business or profession; (iii) that plaintiff has a loathsome disease; or (iv) imputing unchastity to a woman.” *Lieberman v. Gelstein*, 80 N.Y.2d 429, 435 (1992).

In the fourth Counterclaim, Kravtsov alleges, “In and after October 2012 Di Gregorio made false statements to Counterclaimant’s co-workers and employer about her” that were “published to third parties without privilege or authorization,” which were “true when made and were made maliciously with the intent to damage Counterclaimant’s reputation,” “have had a negative effect on Counterclaimant’s career” and constitute “slander *per se*.” Kravtsov also alleges that on the day after the alleged incident, Kravtsov “was approached by Andre Mazurek, who informed [her] that Di Gregorio had made a report to the police, asked [her] what happened between [them], and asked [her] if [she] had been physical with [Di Gregorio]. Kravtsov also alleges that she has “since learned that Di Gregorio has told a number of people that [she] threatened to hit her and that [she] did hit her, and she spread lies around the company to damage [her] reputation and cause [her] harm.”

Kravtsov fails to allege sufficient facts to state a cause of action for defamation against Plaintiff. Kravtsov’s fourth Counterclaim fails on its faces to assert sufficient facts regarding the alleged defamatory statements, including failing to specify the alleged defamatory statements made to Defendant’s “co-workers and employer” and failing to specify the time, place, and manner, and to whom Plaintiff made the statements that “Defendant intended to hit her and that [she] did hit her.”

Furthermore, to the extent that Kravtsov also alleges that "Andre Mazurek informed Kravtsov that Plaintiff had made a report to the police," this allegation is also conclusory and not sufficient to state a cause of action for defamation. See also *Chapo*, 688 N.Y.S. 2d at 34 ("Defendant is entitled to a qualified privilege for communications made in good faith to the police regarding the commission of a crime, and plaintiff failed to establish that defendant acted with malice in filing the reports.").

Wherefore, it is hereby,

ORDERED that Plaintiff's motion to dismiss defendant, Valentina Kravtsov's Counterclaims is granted.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated:

7/10/14



Eileen A. Rakower, J.S.C.