

Goel v Thakur

2014 NY Slip Op 33014(U)

June 30, 2014

Sup Ct, Westchester County

Docket Number: 59531/2013

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.

-----X
ASHOL GOEL and POOJA GOEL,

Plaintiffs,

DECISION & ORDER
Seq # 2
Index No.: 59531/2013

-against-

AMAN THAKUR, TUSHAR PANDYA, BHARAT JASWAL,
VISHAL JASWAL, and SUDHA R. JASWAL,

Defendants.
-----X

Defendants move this court for dismissal of the plaintiffs' claims, pursuant to CPLR §3211 (a) (7), for failure to state a cause of action. The following papers were received and considered in deciding the present motion:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Affirmation/ Exhibits A-D	1-6
Memorandum of Law in Support	7
Affirmation In Opposition/Affidavit/ Exhibits 1-4	8-13
Reply Memorandum of Law in Support/ Exhibits	1-1

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs brought this action seeking monetary damages and an order of protection against the defendants. The complaint generally alleges that plaintiff, Pooja Goel (hereinafter “Pooja”) met defendant Aman Thakur (hereinafter “Thakur”) through an online dating site. They were engaged then married. Thakur encouraged Pooja to conduct the religious ceremony ahead of the legal ceremony. This allowed them to engage in a cultural, religious ceremony commemorating the union with family, relatives and friends before they obtained the marriage license from the state.

The ceremony was held and the couple agreed to obtain a marriage license thereafter. The expenses for the ceremony and over three hundred guests were covered by the bride’s father and co-plaintiff, Ashok Goel (hereinafter “Ashok”). Thakur delayed the marriage license and continually demanded money from Ashok. It is alleged that Thakur defrauded Ashok and his family into leasing a car for his purposes, clearing his debts and forwarding other monies to him. When Pooja refused to request any more monies from her father on Thakur’s behalf, he assaulted her. Five weeks following the ceremony Thakur abandoned Pooja. Plaintiffs later discovered that prior to their union Thakur had been in a marriage that lasted for approximately one month.

Plaintiffs contend that this was an extortion conspiracy by Thakur and the named defendants to prey on their family for money and to try to gain legal immigration status within the US. The defendants collectively made false representations on the dating website and to plaintiffs about Thakur’s character to encourage the union for their personal benefit. When the relationship soured, defendants contacted Pooja’s family and harassed and threatened them for monies.

Originally eight causes of action were brought in the complaint. However, plaintiffs conceded to the dismissal of seven of those claims following defendants’ motion pursuant to 3211

(a)(7). (par. 4-7 affirmation in opposition). In the affirmation of opposition, plaintiffs contend that their sixth cause of action is sufficiently stated and asks this court to issue an order of protection along with \$500,000 in monetary damages for battery and assault inflicted upon Pooja by defendant Thakur. These events occurred between February and March, 2013 when the couple resided together. Defendants' motion and memorandum of law seeks dismissal in its entirety for failure to state a cause of action, for failure to show supporting authority and on grounds that plaintiff's opposing papers did not oppose the arguments and authorities raised in the motion.

The court grants the dismissal of plaintiffs' claims numbered one, two, three, four, five, seven, and eight based upon plaintiffs' concession (par. 4-7 affirmation in opposition).

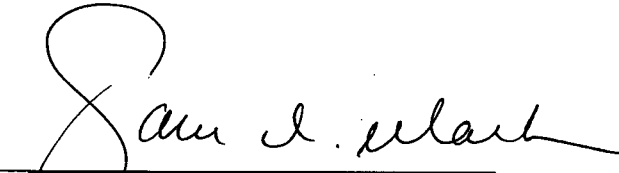
The court also grants dismissal on the sixth cause of action. The Supreme Court does not have the legal basis to grant an order of protection outside of an action for divorce, separation or annulment. DRL § 252. Plaintiffs are directed to file a petition with the family court seeking this remedy.

Further, plaintiffs' have failed to plead the sixth cause of action with the level of specificity outlined in CPLR § 3013. While plaintiffs may have a cause of action for assault and battery, there needs to be a more detailed versus conclusory allegations, such as, description of time, place and the nature of the acts alleged in this claim. A pleading cannot simply be a label but must afford notice in accordance with C.P.L.R. § 3013. *Huntington Utilities Fuel Corp. v. McLoughlin*, 45 Misc. 2d 79, 255 N.Y.S.2d 679, (1965). Also, while pleadings are to be liberally construed, they must include essential elements of a cause of action or be subject to dismissal. *Kutik v. Taylor*, 80 Misc.2d 839, 364 N.Y.S.2d 387 (1975).

To the extent any relief requested was not addressed by the Court, it is hereby deemed denied.

The foregoing shall constitute the decision and order of the Court.

Dated: White Plains, New York
June 30, 2014



HON. SAM D. WALKER, J.S.C.