

Udeogalanya v Kiho

2014 NY Slip Op 33841(U)

June 26, 2014

Supreme Court, Nassau County

Docket Number: 601712-13

Judge: Arthur M. Diamond

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

-----x
VERONICA UDEOGALANYA,

Plaintiff,

-against-

**KIM KIHO, NATHANIEL EZUMA AND EVELYN
MAGGIO,**

Defendants.
-----x

TRIAL PART: 10

NASSAU COUNTY

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MOTION SEQ:# 2

SUBMIT DATE:5/20/14

The following papers having been read on this motion:

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Defendant’s motion to preclude the emails dated February 24, 2011 and February 15, 2012, pursuant to CPLR §215(3), is granted with respect to the defamation claim. Defendant’s motion to dismiss Plaintiff’s cause of action for intentional infliction of emotional distress, pursuant to CPLR §3211(a)(7), is granted.

Plaintiff Udeogalanya is a professor at Medgar Evers College. Plaintiff obtained her Doctorate Degree from Warnborough College in United Kingdom in 2006. Defendants Ki-Ho, Ezuma and Maggio are also professors at Medgar Evers College. Defendants sent out five emails during the time period of February 2011 to May 2013 to members of the Medgar Evers College faculty indicating that Plaintiff fraudulently obtained her doctorate degree. Two of the five emails were sent over one-year prior to the filing of the complaint. This complaint was filed on July 3, 2013. The remaining three emails fall within the one-year statute of limitations.

Plaintiff claims that she was defamed in the five emails sent by Defendants and that the

Defendants are trying to hurt her professional and personal reputation. Plaintiff avers that the two emails in question must be read in conjunction with the other three emails, which occurred within one-year of commencing this action, in order to understand the emails in their entirety. In addition, Plaintiff asserts that these two emails were part of a single continuing course of conduct and that under the continuing tort doctrine, the statute of limitations would not begin to run until after the conduct ceased. Conversely, Defendants assert that the emails dated February 24, 2011 and February 15, 2012 are barred by the one-year statute of limitations because Plaintiff did not file the complaint until July 3, 2013.

The two emails in question are barred by the one-year statute of limitations regarding the defamation claim. According to CPLR §3211(a)(5), a party may move for judgment dismissing a cause of action asserted against him on the ground that the cause of action may not be maintained because of the statute of limitations. Pursuant to CPLR §215(3), the statute of limitations for a defamation claim is one-year. Generally, the statute of limitations is measured from the date of publication of the allegedly defamatory statement. (*Blair v. Meth*, 112 AD3d 769 [2nd Dept. 2013]). A cause of action may not be barred by the one-year statute of limitations under the continuing tort doctrine, which may under certain circumstances permit the plaintiff to rely on wrongful conduct occurring more than one year prior to commencement of the action, so long as the final actionable event occurred within one year of the suit. (*Shannon v. MTA Metro*, 269 AD2d 218 [1st Dept. 2000]). However, the continuing tort exception is inapplicable for a defamation claim. (*Cheves v. Columbia University*, 89 AD3d 463 [1st Dept. 2011]).

The two emails in question sent to the Medgar Evers College faculty prior to July 3, 2012, are barred by the statute of limitations applicable to the defamation claim. In the situation at bar, the two emails were sent by Defendants on February 24, 2011 and February 15, 2012. Since the Complaint was not filed until July 3, 2013, over a year from the date that these two emails were published, the two emails are barred by the one-year statute of limitations. Therefore, Defendant's motion to preclude the emails dated February 24, 2011 and February 15, 2012 is granted.

The two emails dated February 24, 2011 and February 15, 2012 are not barred by the statute of limitations for the intentional infliction of emotional distress claim. There is a one-year statute of limitations for an intentional infliction of emotional distress claim. (*Kwarren v. Am. Airlines*, 303

AD2d 722 [2d Dept. 2003]). However, the cause of action for intentional infliction of emotional distress is not barred by the one-year statute of limitations when there are concrete factual allegations of a continuing course of conduct that terminated within one year of plaintiff's commencing this action. (*Drury v. Tucker*, 210 AD2d 891 [4th Dept. 1994]).

The two emails in question are not time-barred with respect to the intentional infliction of emotional distress claim. There are concrete factual allegations supporting a continuing course of conduct regarding the letters sent out by the Defendants to the Medgar Evers College faculty. In the case at bar, there are three additional emails that were sent out within one-year of Plaintiff filing this complaint, and therefore, the two emails in question are not precluded.

Defendant's motion to dismiss Plaintiff's cause of action for intentional infliction of emotional distress for failure to state a cause of action is granted. Defendant claims that although the Defendants are critical of Plaintiff's degree, the phrases in the emails do not amount to a valid intentional infliction of emotional distress claim. On the other hand, Plaintiff asserts that the statements attack Plaintiff's ability to perform her profession and that these emails have hindered her ability to advance in her professional career. Plaintiff believes that the statements also question her moral character based on an email indicating that Plaintiff obtained her Doctorate Degree fraudulently.

The elements of intentional infliction of emotional distress are (1) extreme and outrageous conduct; (2) the intent to cause, or the disregard of a substantial likelihood of causing, severe emotional distress; (3) causation; and (4) severe emotional distress. (*Klein v. Metropolitan Child Services*, 100 AD3d 708 [2nd Dept. 2012]). Pursuant to CPLR §3211(a)(7), a party may move for judgment dismissing a cause of action asserted against him on the ground that the pleading fails to state a cause of action. On such a motion, we "accept the facts as alleged in the pleading as true, confer on the plaintiff[s] the benefit of every possible inference and determine whether the facts as alleged fit within any cognizable legal theory. (*Torok v. Moore's Flatwork & Foundations*, 106 AD3d 1421 [3d Dept. 2013]). Bare legal conclusions are not presumed to be true and are not accorded every favorable inference. (*Kupersmith v. Winged Foot Golf Club*, 38 AD3d 847 [2nd Dept. 2007]). In order to survive a motion to dismiss, a cause of action for intentional infliction of

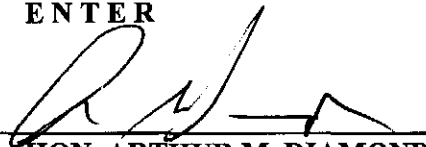
emotional distress must allege conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. (*164 Mulberry St. Corp. v. Columbia Univ.*, 4 AD3d 49 [1st Dept. 2004]).

In order to survive a motion to dismiss for failure to state a cause of action, there needs to be factual allegations that are non-conclusory. Plaintiff indicates that she has suffered and continued to suffer from embarrassment, humiliation, harm to her professional reputation, anxiety and emotional upset. Plaintiff claims severe emotional distress, however, there are not any facts alleged to support this claim other than these conclusory statements. Since Plaintiff's complaint lacks detailed allegations such as lost pay or verified therapy visits, the complaint is legally insufficient. Therefore, Defendant's motion to dismiss Plaintiff's cause of action for intentional infliction of emotional distress is granted.

This constitutes the decision and order of this Court.

DATED: June 26, 2014

ENTER



HON. ARTHUR M. DIAMOND
J.S.C.

ENTERED

JUN 30 2014

NASSAU COUNTY
COUNTY CLERK'S OFFICE