

Matter of Cohen v CSC Holdings, LLC-Cablevision
2015 NY Slip Op 32005(U)
June 19, 2015
Supreme Court, Nassau County
Docket Number: 603037/15
Judge: F. Dana Winslow
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**SHORT FORM ORDER
SUPREME COURT – STATE OF NEW YORK**

**Present:
HON. F. DANA WINSLOW,**

**Justice
TRIAL/JAS PART 3
NASSAU COUNTY**

**In the Matter of the Application of
GERALD L. COHEN, D.D.S., LLC,**

Petitioner,

PETITION DATE: 6/16/15

**MOTION SEQ. NO.: 001
INDEX NO.: 603037/15**

CSC HOLDINGS, LLC – CABLEVISION

Respondent,

**For an Order, Pursuant to CPLR 3102(c), to
Compel Pre-Action Disclosure of the Identity of
A Customer of Respondent who was Assigned the
Internet Protocol Address 69.113.85.121 at
12:19:32 PDT on January 13, 2015, and who is a
Prospective Defendant in an Action to be
Commenced by Petitioner.**

The following papers read on this motion (numbered 1):

Order to Show Cause.....1

Pursuant to this Part’s Rule, namely I(B), the Court automatically adjourns all motions that are submitted without opposition for one month, to determine whether or not there was either an administrative delay or excusable neglect. Such adjournment is made without prejudice to the moving party to have the merits of such an adjournment considered in the event that there is a subsequent submission.

Petitioner’s application for pre-action disclosure pursuant to **CPLR §3102(c)** is determined as follows.

Petitioner GERALD L. COHEN D.D.S., LLC seeks pre-action disclosure pursuant to **CPLR §3102(c)** to compel Respondent to provide the identity of the individual who allegedly defamed and libeled Petitioner by means of a review posted on Yelp.com. Petitioner intends to commence an action for defamation and libel against the anonymous individual who posted under the pseudonym “Thomas J.” Without this further information Petitioner maintains he will not be able to sufficiently identify the defendant and thus adequately frame a complaint.

The Supreme Court, New York County, previously granted a petition for pre-action disclosure from Yelp.com seeking the Internet Protocol address (“IP address”) of the prospective defendant who posted the review. An IP address refers to the code that identifies a particular computer or device on the Internet. Pre-discovery that was provided by Yelp.com pursuant to March 11, 2015 short-form order, was confined to the prospective defendant’s email address, username, name on the profile, IP address, the review time stamp, and the review text which had already been obtained. The IP address itself is not determinative of the name of the defendant and other necessary identifying features sufficient to commence an action.

Petitioner therefore now requests that this Court order Respondent CSC HOLDINGS, LLC – Cablevision (“Cablevision”) to disclose the identity of the individual who was assigned the IP address at the date and time that the Review was posted. Pursuant to 47 U.S.C. § 551(c)(2)(B), Cablevision asserts that it may not disclose personally identifiable subscriber information except pursuant to a court order authorizing such disclosure. In accordance with such requirements, a Court order is necessary for the information needed for pre-action disclosure.

The Court finds that Petitioner is entitled to the relief sought. Pursuant to **CPLR §3102(c)**, Petitioner must demonstrate the existence of a meritorious cause of action. *See generally Sandals Resorts International Ltd. v. Google Inc.*, 86 A.D.3d 32 (2011). In the present proceeding Petitioner has asserted a meritorious cause of action under a theory of libel

per se. “The elements of libel are: [1] a false and defamatory statement of fact; [2] regarding the plaintiff; [3] which are published to a third party and which [4] result in injury to the plaintiff.” **Penn Warranty Corp. v. DiGiovanni**, 10 Misc.3d 998, 1002 (2005). A statement that tends to injure plaintiff in its business, trade, or profession constitutes a statement that is libelous *per se*. **Id.** In order to determine whether there is a cause of action, the inquiry is “whether a reasonable listener or reader could have concluded that the statements were conveying facts about the plaintiff.” **Goldberg v. Levine**, 97 A.D.3d 725, 725 (2012). Statements of opinion are protected under the Constitution, Article § 1, and therefore are non-actionable. **10 Misc.3d** at 1003-1004. In order to determine whether a statement is a protected opinion or an unprotected factual assertion, the Court should consider the following factors: “[1] whether the language used has a precise meaning or whether it is indefinite or ambiguous; [2] whether the statement is capable of objectively being true or false, and [3] the full context of the entire communication or the broader social context surrounding the communication.” **Id.** at 1005.

A reasonable reader could conclude that the review conveyed facts about the Petitioner. The review alleged that Petitioner had “drilled out a tiny piece” of the reviewer’s tongue and independently caused an infection. This statement has a precise meaning, and is capable of being objectively true or false, and therefore constitutes an alleged actionable fact regarding Petitioner. The statement was published on Yelp.com, a public webpage available to any member of the public. The statement is allegedly injurious to Petitioner’s business, and consequently is actionable under a theory of libel *per se*.

This Court holds, seemingly for the first time, that Petitioner is entitled to such order in light of Cablevision’s response which did not object to the issuance of such order and the Court’s finding that it was appropriate under the circumstances. The Court concludes that the dissemination by both plaintiff and defendant of this information is consistent with present societal and legal precepts, but must be appropriately circumscribed so as to permit a

party who may have been publicly affected by adversely published information to address such information.


The real question in the presence of the burgeoning use of electronic speech requires a balancing of the two interests, namely free expression versus the right to respond to such expression. Free speech in the electronic age is not unfettered.

Accordingly, it is

ORDERED, that Petitioner's application for pre-action disclosure is **granted** and Cablevision is directed to provide the information requested by the plaintiff.

This constitutes the Order of the Court.

Dated: June 19, 2015



J.S.C

ENTERED

JUN 23 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE