

Remsha v Rumafia.com
2015 NY Slip Op 32967(U)
May 4, 2015
Supreme Court, Nassau County
Docket Number: 600998/15
Judge: Jeffrey S. Brown
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT: HON. JEFFREY S. BROWN
JUSTICE

-----X TRIAL/IAS PART 15

VICTOR REMSHA,

Plaintiff(s),

INDEX # 600998/15

Mot. Seq. 1

-against-

Mot. Date 3.16.15

Submit Date 4.28.15

RUMAFIA.COM; ANDREJ KRAPIVKA; JOE DOES 1-10;
XYZ COMPANIES 1-10,

Defendant(s).

-----X

The following papers were read on this motion:

Papers Numbered

Table with 2 columns: Paper Name and Number. Rows include Notice of Motion, Affidavits (Affirmations), Exhibits Annexed (1), Memorandum of Law (2), and Summons (3).

Motion by the attorney for the plaintiff for an order requiring defendants to remove all defamatory statements of and concerning Victor Remsha and/or Victor Remsha's companies and businesses identified in the complaint and affirmation of Victor Remsha from the defendants' website www.rumafia.com and to notify all third-party website, internet service providers, and internet search engine operators to likewise remove such content; enjoining defendants from republishing or disseminating any further such defamatory statements of and concerning Victor Remsha or his companies and businesses; allowing plaintiff to serve defendants with summons, complaint and other litigation documents via available email addresses info@rumafia.com; and to obtain disclosure of defendants' identity from third-party websites, internet service providers, and internet search-engine operators is determined as hereinafter set forth.

By order to show cause dated February 25, 2015, plaintiff's attorney was given leave to serve pursuant to CPLR 308(5) defendant Rumafia.com and defendant Andrej Krapivka copies of the summons, complaint with index number and filing date endorsed thereon, the order to

show cause, and all supporting documents via overnight mail to web.com 708 Third Avenue, 65th floor, New York, NY 10017, and via email address info@rumafia.com on or before March 4, 2015.

In an affirmation dated March 13, 2015, the attorney for plaintiff states that: On March 2, 2014, pursuant to CPLR 308(5) and in accordance with the court order, dated February 25, 2015, in the manner indicated below, served upon defendant Andrej Krapivka and Rumafia.com a copy of the following documents: Summons and Complaint; Notice of Commencement of Action Subject to Mandatory Electronic Filing; Order to Show Cause signed by Hon. Jeffrey S. Brown, dated February 25, 2015; Affirmation of plaintiff Victor Remsha, dated February 3, 2015 with exhibits; Affirmation of Eugenie Voitkevich, Esq., dated February 13, 2015 with exhibits; Memorandum of Law in Support of Order to Show Cause; Request for Judicial Intervention; via email address info@rumafia.com (served documents were not returned to undersigned undeliverable); via overnight express mail to the mailing address of the third-party WEB.COM, indicated at the web page of WEB.COM: 708 Third Avenue, 6th Floor, New York, NY, 10017. Also, on March 2, 2015, a copy of the above-referenced documents was sent by overnight express mail to the WEB.COM headquarters at Jacksonville, Florida, specifically, to Web.com Group, Inc.; Attn: Legal Department, 12808 Gran Bay Parkway West, Jacksonville, FL 32258. On March 3, 2015, the same documents were emailed to Tom Lam, a WEB.COM Manager for Abuse and Fraud Department via email address Tlam@web.com. On March 4, 2015, Tom Lam of WEB.COM confirmed in his email communication that he forwarded a copy of the above-referenced documents to defendants. In another email communication, dated March 4, 2015, Tom Lam of WEB.COM confirmed that all correspondence to his company should be directed to 12808 Gran Bay Parkway West, Jacksonville, FL 32258. Mr. Lam did not provide a new address for WEB.COM in New York (a copy of the documents sent to the New York address of WEB.COM was returned as undeliverable).

The complaint alleges that defendant Andrej Krapivka created and/or authored the website www.rumafia.com. The complaint alleges plaintiff Victor Remsha is a businessman, investor and owner of a number of large corporations doing business in the United States, Russia and other countries. Remsha asserts that the website created by defendant Krapivka contains information that defames the plaintiff and his corporations. To the extent that none of these businesses or corporations are named as party plaintiffs, any relief granted is limited to the individual plaintiff, Victor Remsha. The alleged defamatory statement is that Victor Remsha is linked to "Russian organized crime (Russian mafia)." The www.rumafia.com website states that Victor Remsha is "linked to Russian criminal world." (Complaint, ¶¶ 24, 26). "He (Victor Remsha) "gambled on a stock exchange violating all rules." (¶ 27). Defendants have not answered or appeared in this action.

Furthermore, plaintiff alleges in his affidavit that around mid-October 2014, a number of his potential business partners contacted him and expressed their concerns regarding disturbing information published on the subject website.

Plaintiff further claims that

“[s]everal large potential institutional clients refused to do business with my companies because of the false and harmful information they found about me at www.rumafia.com. Upon information and belief, this has already resulted in loss of revenues to my companies in excess of \$10 million, through January 2015. Such losses will continue to increase in 2015, as false and defamatory information about me is readily available at www.rumafia.com via Google. The total economic losses that I and my companies have suffered and will suffer is inherently difficult to determine based on several circumstances. For instance, I do not know the business that I and my companies would have obtained but for the false statements published [on the website].”

It is the rule in this jurisdiction that “absent extraordinary circumstances, injunctive relief should not be issued in defamation cases” (*see Rombom v Weberman*, 309 AD2d 844; *see also Metro Opera Assoc.*, 239 F3d 172, 176, 177; *AM Malting Co. v Keitel*, 209 F. 351, 356).

“[I]njunctive relief is limited to rights that are without an adequate remedy at law, and because ordinarily libels may be remedied by damages, equity will not enjoin a libel absent extraordinary circumstances.” (*Metro Opera Assoc.*, 239 F3d at 177). In *Metro Opera*, the Second Circuit held “[n]o such extraordinary circumstances are present here, even if we were to adopt the ... finding that the leaflets and letters were false, as readers of the leaflets ‘may be deceived by false statements, but they are left free to form their own judgment and make their own choice’ about the Met’s involvement in the labor dispute.” (*Id.* at 177, quoting *AM Malting Co.*).

In *Gaming Marking Solutions, Inc. v Kein Cross*, 2008 U.S. Dist, LEXIS 25910; 2008 WL 858183 (S.D.N.Y.), the Court stated:

“ ‘[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.’ ‘To obtain a preliminary injunction a party must demonstrate: (1) that [he or she] will be irreparably harmed if an injunction is not granted, and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation, and a balance of the hardships tipping decidedly in its favor.’

“ ‘Irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction.’ Because of this, ‘the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be

considered.’ In order to show irreparable harm, a plaintiff must show an injury that is both ‘actual and imminent’ and ‘cannot be remedied by an award of monetary damages.’ (‘Where there is an adequate remedy at law, such as an award of money damages, injunctions are unavailable except in extraordinary circumstances.’); (holding that irreparable harm ‘must be imminent, not remote or speculative, and the alleged injury must be one incapable of being fully remedied by monetary damages’) (citations omitted). If the movant fails to make a showing of irreparable harm, the motion fails.

“Additionally, ‘for almost a century the Second Circuit has subscribed to the majority view that, absent extraordinary circumstances, injunctions should not ordinarily issue in defamation cases.’ (‘[W]e accept as black letter that an injunction is not available to suppress defamatory speech.’). Injunctions of this kind are disfavored because ‘injunctions are limited to rights that are without an adequate remedy at law, and because ordinarily libels may be remedied by damages, equity will not enjoin a libel absent extraordinary circumstances.’ (‘No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunction power of a court.’); (‘The fact that the false statements may injure the plaintiff in his business or as to his property does not alone constitute a sufficient ground for issuance of an injunction. The party wronged has an adequate remedy at law.’).

“Injunctions prohibiting speech are also disfavored because they impose a prior restraint on speech, and a prior restraint carries with it ‘a heavy presumption against its constitutional validity.’ ‘Prior restraints of future speech are particularly dangerous because of the difficulty courts face in designing an order that does not chill protected speech.’ (internal citations intentionally omitted).”

Additionally, a “movant must satisfy each requirement with ‘clear and convincing evidence’ (*County of Suffolk v Givens*, 106 AD3d 943 [2d Dept 2013], quoting *Apa Sec., Inc. v Apa*, 37 AD3d 502, 503 [2d Dept 2007]). . . . A preliminary injunction is thus not a proper remedy where it appears that the movant can be fully recompensed by a monetary award or other adequate remedy at law (see *Mar v. Liquid Mgrt Partners, LLC*, 62 AD3d 762, *supra*; *Dana Distrib., Inc. v. Crown Imports, LLC*, 48 AD3d 613, *supra*).

Nor is it appropriately issued where the irreparable harm claimed is remote or speculative or where it is economic in nature” (see *County of Suffolk v Givens*, 106 AD3d 943, *supra*; *Rowland v Dushin*, 82 AD3d 738 [2d Dept 2011]; *Family-Friendly Media, Inc. v Recorder Tel. Network*, 74 AD3d 738, [2d Dept 2010]). [Moreover, [a] “preliminary injunction is not warranted in cases where the movant cannot ‘demonstrate that its potential damages are not compensable in money capable of calculation and, thus, that it will suffer irreparable harm absent the requested injunction.’ ” *Long Island Ass’n for Aids Care, Inc v Jacinto*, 43 Misc 3d 1204(A) [Sup Ct Suf Cty 2014]).

Furthermore, destruction of an ongoing business concern, rather than its disruption is necessary to satisfy a claim of irreparable harm so as to warrant an injunction (see, *Reuschenberg v Town of Huntington*, 16 AD3d 568 [2d Dept 2005]; *North Shore Auto v Nassau Cty*, 18 Misc 3d 1108(A) [Sup Ct Nas Cty 2007]).

In the instant matter, plaintiff has not demonstrated, with clear and convincing evidence, that irreparable harm will be sustained absent the granting of a preliminary injunction. Moreover, as explained above, economic loss which is compensable by money damages does not constitute irreparable harm so as to warrant the granting of a preliminary injunction. In the eight causes of action in the complaint, the recovery of monetary damages are demanded by the plaintiff and there has been no adequate showing that the recovery of such money damages would be inadequate to fully compensate the plaintiff. In addition, while the plaintiff claims that the defendants’ conduct has harmed its business, its reputation and its relations with potential business partners and clients, and that such harm constitutes irreparable harm, there is no evidence of a destruction of any of the plaintiff’s ongoing business concerns in the absence of the granting of the requested preliminary injunction, or sufficient demonstration that the claimed economic losses are impossible to calculate.

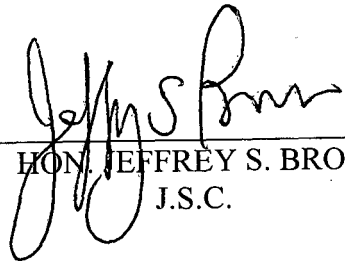
Nor do a balance of the equities weigh in favor of the plaintiff. As indicated above, the preliminary injunctive relief sought here is governed by special rules applicable whenever the restraint of speech or personal views or expressions are the object of such relief. The plaintiff failed to demonstrate the existence of “extraordinary circumstances.”

Accordingly, plaintiff's motion for a preliminary injunction is **DENIED**.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
May 4, 2015

ENTER:



HON. JEFFREY S. BROWN
J.S.C.

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ENTERED

MAY 05 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE