Peters v Coutsodontis
2016 NY Slip Op 32951(U)
July 11, 2016
Supreme Court, New York County
Docket Number: 600482/2007
Judge: Saliann Scarpulla
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: SCARPULLA, SALIANN **PART** 39

Justice

PETERS, GEORGE

INDEX NO. 600482/2007

MOTION DATE 05/05/2016

- v -

COUTSODONTIS, STELIO **MOTION SEQ. NO.** 010, 011

The following papers, numbered 1 to ______, were read on this application to/for ______

Notice of Motion/ Petition/ OSC - Affidavits - Exhibits .... No(s) ______

Answering Affidavits - Exhibits .... No(s) ______

Replying .... No(s) ______

Upon the foregoing papers, it is

Motions no. 10 and 11 are decided in accordance with the accompanying memorandum decision.

DATE : 7/11/2016

SCARPULLA, SALIANN , JSC

1. CHECK ONE : [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION

2. APPLICATION : [X] GRANTED [ ] DENIED [ ] GRANTED IN PART [ ] OTHER

3. CHECK IF APPROPRIATE : [ ] SETTLE ORDER [ ] SUBMIT ORDER

[ ] DO NOT POST [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

600482/2007 PETERS, GEORGE VS. COUTSODONTIS, STELIO Motion No. 010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

---X
GEORGE PETERS,

Plaintiff,

DECISION/ORDER
Index No. 600482/200

-against-

STELIOS COUTSODONTIS, GENERAL MARITIME ENTERPRISES CORPORATION, ATTIKA INTERNATIONAL NAVIGATION SA, JASON SHIPPING LTD., PINTO SHIPPING LTD, KARTERIA SHIPPING LTD

Defendants.

---X

HON. SALIANN SCARPULLA, J.:

In this action to recover damages for libel per se, defendant Stelios Coutsodontis ("Coutsodontis") and defendants Attika International Navigation SA, Iason Shipping Ltd., Pinto Shipping Ltd. and Karteria Shipping Ltd. (collectively, the "Shipping Defendants"[1] move (in motion sequence number 010) for summary judgment, pursuant to CPLR § 3212 (b), against plaintiff George Peters ("Peters"). They also seek leave to amend their affirmative defenses. Peters moves (in motion sequence number 011) for

[1] Peter's original complaint also named General Maritime Enterprises Corporation ("General Maritime") as a defendant. General Maritime, however, brought a motion to dismiss based on lack of personal jurisdiction which was granted on September 28, 2011.

summary judgment on the complaint. Motion sequence numbers 010 and 011 are consolidated for disposition.

Background

This action is one of many lawsuits brought by family members of Athena Eliades. Since 2005, Peters and Coutsodontis have been litigating over the estate of Athena Eliades (Peters' aunt and Coutsodontis' sister) in a number of cases in several courts.[2] At the time of her death, Athena Eliades was the owner of Sea Trade Maritime Corporation ("Sea Trade"). The underlying dispute between Peters and Coutsodontis concerns how many shares each of Athena's family members own of Sea Trade, their percentages of ownership and which member should be in control of its operations. In this complaint, which was filed on February 15, 2007, Peters alleges that Coutsodontis and Peters, who are uncle and nephew, are in direct competition with one another in the shipping industry. Peters controls Sea Trade and its vessel "the Athena" while Coutsodontis operates the Shipping Defendants.

---

[2] Defendant filed an action against Plaintiff in this court on February 9, 2005. *See Coutsodontis v. Peters*, No. 600511/05, 2006 WL 721255 (N.Y. Sup. Feb. 1, 2006). Peters moved to dismiss that action on the grounds that it failed to state a claim that Coutsodontis is a shareholder of Sea Trade and thus entitled to benefits. Judge Cahn granted Peter's motion to dismiss, on February 1, 2006, finding that the writings that Coutsodontis said demonstrated an inter vivos gift were actually holographic wills and therefore "Coutsodontis' allegations are contradicted by the documentary evidence presented." *Id.* at *3. In a Southern District of New York action, Peters sought an injunction prohibiting Coutsodontis from arresting Sea Trade's vessel (the Athena). That action was dismissed by Judge Buchwald, on March 26, 2009, because "by virtue of the sale of the Athena, there is no longer a justiciable case or controversy here." In addition, the parties brought actions in Louisiana, Spain and Greece.

[* 4]

Peters' claim for libel per se in this action is based on two allegedly defamatory statements made by Coutsodontis in a 2005 case (the "2005 Action") which, Peters argues, was maliciously brought by Coutsodontis solely to defame Peters. The first statement is contained in the complaint from the 2005 Action and the second statement is from an affidavit that Defendant filed in the 2005 Action. Specifically, Peters contends that the following statements by Coutsodontis were defamatory:

1) "Peters 'did improperly, knowingly and fraudulently award himself an employment contract...'"
2) "I have reviewed different purported Powers of Attorney, each of which contains what I believe is an erroneous and forged signature of my sister."

Peters claims that the allegedly defamatory statements were published by Coutsodontis to Colonial Navigation Co, Inc. ("Colonial") because Colonial was named as a party in the 2005 Action. Colonial is a management company that has a business relationship with Peters. Peters also states that Defendant published the statements to the Hellenic Mutual War Risk Association ("Hellenic"), a Greek war risk insurance company, by furnishing Hellenic's directors with the litigation papers from the 2005 Action.

In his complaint, Peters alleges a cause of action for libel per se and common law unfair competition. Both causes of action were dismissed by this court (J. Kapnick) by decision and order dated November 26, 2008. The libel per se claim was dismissed on the grounds that: 1) the allegedly defamatory statements were privileged because they were relevant to Coutsodontis' claims in the 2005 Action; 2) Peters' allegations that

Coutsodontis made the allegedly defamatory statements with malice were conclusory; and 3) even in the absence of privilege, Peters did not establish that Coutsodontis published the statements to Hellenic. The claim for common law unfair competition was dismissed because the court found that Peters failed to state any of the claim's elements.

Subsequently, this court (J. Kapnick), by decision and order dated August 26, 2009, granted Peters' motion to renew and reargue the libel per se claim based on Peters' proffer of statements by Coutsodontis that post-dated the submission of Coutsodontis' motion to dismiss.[3] Peters alleged that these statements (the "Alleged Admissions Statements") – a) from a Coutsodontis Affidavit in a different action, b) by Coutsodontis' attorney on oral argument before Hon. Naomi Reice Buchwald, and c) by Coutsodontis in a Greek action – were admissions by Coutsodontis that he deliberately lied in the 2005 action when he alleged that Peters committed fraud and forgery. Justice Kapnick held that "plaintiff has raised an issue of fact as to whether the allegedly defamatory statements in the [2005 Action] were made 'in good faith and without malice,' and whether they were published to Hellenic by Coutsodontis."

At the close of discovery, both parties now move for summary judgment on the libel per se claim.

Discussion

To prevail on a motion for summary judgment, "the moving party must make a prima facie showing of entitlement to judgment as a matter of law, through admissible

---

[3] Justice Kapnick denied Peter's motion to renew and reargue the dismissal of the common law unfair competition claim.

evidence eliminating all material issues of fact." *Velasquez v. Biltmore Constr. Corp.*, 2006 WL 2882351 at *1 (N.Y. Sup. June 16, 2006). After the initial showing is made, the burden shifts to the non-moving party "to rebut the prima facie showing by producing evidentiary proof in admissible form sufficient to require a trial of material fact." *Certain Underwriters at Lloyd's v. BDO Seidman LLP*, 2012 WL 3115581 at *2 (N.Y. Sup. Jul. 27, 2012). In other words, "[to defeat summary judgment, the party opposing the motion must show that there is a question(s) of fact that requires a trial." *Carter-Clark v. Random House, Inc.*, 768 N.Y.S.2d 290, 293 (2003).

"Summary judgment should be granted, where appropriate, to defendants in libel actions in order to prevent harassment and coercion in the open arena of ideas, and to end meritless libel actions as early as possible in order to limit the waste of resources of both the defendants and the courts." *Carter-Clark v. Random House, Inc.*, 768 N.Y.S.2d 290, 293 (2003). Moreover, "bald, conclusory assertions or speculation and 'a shadowy semblance of an issue' are insufficient to defeat a summary judgment motion." *Certain Underwriters at Lloyd's,* 2012 WL 3115581 at *2 (citation omitted).

Defamation arises from "the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society." *Dillon v. City of New York*, 261 A.D.2d 34, 37-38, (1st Dept. 1999) (internal citations omitted). 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." *Id.* at 38.

Coutsodontis argues that Peter's defamation claim must be dismissed on the grounds of statute of limitations; absolute privilege; because the statements are true or are opinions; and because Coutsodontis did not publish the statements.

In libel actions, statements made in the course of judicial proceedings that are "pertinent" to that litigation are absolutely privileged and cannot be the basis for a defamation claim. *Lacher v. Engel*, 33 A.D. 3d 10, 13 (1st Dept. 2006). The rationale for this absolute privilege is that "[a]s a matter of public policy the possible harm to individuals barred from recovering for defamatory statements made in connection with judicial proceedings is deemed to be 'far outweighed by the need... to encourage parties to litigation, as well as counsel and witnesses, to speak freely in the course of judicial proceedings.'" *Sexter & Warmflash, P.C. v. Margrabe*, 38 A.D.3d 163, 171-172 (1st Dept. 2007) (citation omitted). Furthermore, pertinence is "a question of law for the court" and the test for determining whether a statement is "at all pertinent to the litigation" is extremely liberal and "any doubts are to be resolved in favor of pertinence." *Id.* at 173.

If the absolute privilege is abused, it may be lost. *Lacher*, 33 A.D. 3d at 13. However, "[m]alice and bad faith simply do not destroy the privilege if the statements meet the minimal standard for pertinence." *Pandozy v. Tobey*, No. 06 Civ. 12885 CM, 2007 WL 3010333 at *1 (S.D.N.Y Oct. 11, 2007). Indeed, "New York's highest court

ruled that minimal pertinence to litigation required application of the privilege, irrespective of the motive of the speaker." *Id.*

According to Peters, Coutsodontis' sole reason for filing the complaint in the 2005 action was to defame Peters. In New York cases with similar allegations of the use of "sham" actions to defame, courts have nonetheless applied the litigation privilege. *See, e.g., Lacher*, 33 A.D. 3d at 11 (plaintiff's allegation that the defendant filed a "sham" complaint for legal malpractice "solely for the purpose of allowing defendant to defame plaintiff while claiming the benefit of privilege," did not defeat the privilege); *Pandozy*, 2007 WL 3010333 at *2 (despite plaintiff's claim that the alleged defamatory statements should not be shielded by privilege "because the lawsuits in which defendant made the statements were 'sham' actions, which were filed solely for the purpose of defaming [plaintiff]", the court held that defendant failed to show abuse so the privilege was still applicable).

Moreover, the privilege is not defeated by either the defendant's use of epithets[4] or the fact that the complaint which contained the alleged defamatory statements was dismissed for failure to state a claim. *Lacher*, 33 A.D. 3d at 14 (stating that "[i]f the privilege existed only in cases that were ultimately sustained, none of the persons whose candor is protected by the rule – parties, counsel or witnesses – would feel free to express themselves.).

---

[4] The plaintiff in *Lacher* called defendant a "thief" and "liar" and the court found that the context – that defendant had allegedly agreed to cooperate and then reneged and that the bills for which defendant demanded payment were allegedly fraudulent – showed that the words were "directly pertinent" to the claims in the underlying complaint. *Id.* at 16.

The 2005 action included claims that Peters breached his duties as operator of Sea Trade by wasting the company's money and assets and by fraudulently acting in his own interests instead of in the best interests of Sea Trade. The allegedly defamatory statements concerned the authenticity of the signatures on the Powers of Attorney and Peters' employment contract and are clearly pertinent to these claims.

Peters' argument that Coutsodontis' failure to investigate the legitimacy of Athena Eliades' signature on the powers of attorney illustrates malice and thus defeats the privilege is erroneous. First, "there is a genuine and critical distinction between lacking knowledge of a statement's falsity and being aware that it is probably false or entertaining serious doubts about its truth." *Sweeney v. Prisoner's Legal Servs. of NY*, 84 N.Y.2d 786, 793(1995). Second, the failure to investigate, in and of itself, does not constitute malice. *See Sweeney,* 84 N.Y.2d 786, 793 (the privilege is sustainable "if the speaker is genuinely unaware that a statement is false because the failure to investigate its truth, standing alone, is not enough to prove actual malice even if the prudent person would have investigated before publishing the statement"); *Freeman v. Johnston*, 84 N.Y.2d 52, 58 (1994) (finding that the evidence of malice was insufficient absent a showing that defendant wrote the allegedly defamatory statement about a public figure with "reckless disregard for the truth," and that the defendant was not "required to interview either the alleged maker of the statement or all of the persons allegedly present at the meeting" prior to her publication of the statement); *Bulow v. Women in Need, Inc.*, 89 A.D.3d 525, 526 (1st Dept. 2011) (where plaintiff brought defamation case against former employer that terminated her after her supervisor made allegedly defamatory

statements that plaintiff engaged in inappropriate behavior, the court found that the privilege was "not overcome by the claimed insufficiency of the investigation of the charges against plaintiff"); *Sanderson v. Bellevue Maternity Hosp., Inc.*, 259 A.D.2d 888, 890 (3d Dept. 1999) (holding that the defendant's failure to investigate the truth of her remarks prior to publishing the statement, by itself, was insufficient "to warrant submission of the issue of malice to a jury and defeat defendants' summary judgment motion."). In this case, I find that even if a prudent person would have conducted further investigation into the authenticity of Athena's signature prior to filing the complaint, Coutsodontis' failure to do so does not amount to malice.

In addition, Peters argues that the Alleged Admissions Statements, in which Coutsodontis "admitted that Athena gave Peters the POA," prove that Coutsodontis acted with malice. The Alleged Admissions Statements, that Peters presented to the Court on his motion to renew and reargue, state:

(1) "[b]ased on a power of attorney signed by Athena on August 18, 1992, as President of Sea Trade, [Peters] was authorized to manage [Sea Trade's] assets."

(2) [w]hen the owner of the ship was alive, she had given her nephew powers to operate the ship... George Peters has proceeded under a power of attorney..."

(3) [Peters] administers de facto [Sea Trade] by virtue of a general power of attorney which seems to have been given to him by my late sister Athena Illiadis [sic]"

Coutsodontis' statements (1) and (3) are excerpted from an affidavit and a complaint in separate litigations that did not involve the same claims as the 2005 Action. Statements (1) and (3) do not contradict Coutsodontis' position in the 2005 Action because in that action, Coutsodontis' allegation is not that Peters is without a POA, but rather that the POA itself lacks validity (due to the alleged forged signature). Statement (2) is an excerpt from an oral argument made by Coutsodontis' attorney in the federal action which involved the Athena and did not include the charges from the 2005 Action. This statement, which Peters claims was provided as background for the federal court, does not affirmatively state that the POA was valid and therefore fails to show malice.

On this motion for summary judgment, Peters contends that Coutsodontis made additional statements (the "Second Set of Alleged Admissions Statements") which show that Defendant made the alleged defamatory statements with malice. The Second Set of Alleged Admissions Statements are culled from Coutsodontis' November 11, 2014 deposition in this action and from Coutsodontis' September 21, 2007 deposition in a family action in which he is a non-party.[5] Some of this deposition testimony again acknowledges that Peters has a POA but it does not state that the POA contained a valid signature. In fact, on p. 199 of the November 11, 2014 deposition, Coutsodontis was asked,

[5] The case is *Frances C. Peters v. George Christy Peters and Anna C. Peters*, Index No. 600482/2007, and is also pending before me.

"Did there ever come a time after you – after this affidavit where you believed that George Peters, in fact, had a legitimate power of attorney?" Defendant responded, "If the signature was not authentic, then he would not have any power."

In sum, neither the Alleged Admissions Statements nor the Second Set of Alleged Admissions Statements prove malice. Significantly, even if these statements can be viewed as proof of malice, the privilege is not destroyed by "malice and bad faith" if the "minimal standard for pertinence" is met. *Pandozy*, 2007 WL 3010333 at *1; see *also Levin v. Epshteyn*, 43 Misc.3d 1211(A), 2014 N.Y. Slip. Op., *9 (Sup. Ct., Kings County 2014). Having already decided that the pertinence standard was met here, Plaintiff's argument that the Alleged Admissions Statements and the Second Set of Alleged Admissions Statements destroy any privilege is unavailing.

In sum, I find that the absolute privilege applies to the allegedly defamatory statements and that Peters has failed to raise an issue of fact with respect to abuse of the absolute privilege. I therefore grant defendants' motion for summary judgment dismissing Peters' defamation claim, and deny Peters' motion for summary judgment on the claim. *See also Casa de Meadows Inc. (Cayman Islands) v. Zaman*, 76 A.D.3d 917, 920 (1st Dept. 2010) (finding that "[s]ince the complained of statements were pertinent, the [] plaintiffs did not abuse the judicial proceedings privilege").

Because I find the allegedly defamatory statements are privileged, I do not address whether the statements were published to Hellenic by Coutsodontis. Further, defendants'

request for leave to assert a statute of limitation defense is moot in light of my decision granting them summary judgment dismissing the complaint.[6]

In accordance with the foregoing, it is

ORDERED that the motion by defendants for leave to file an amended answer is denied as moot; and it is further

ORDERED that the motion for summary judgment, pursuant to CPLR § 3212 (b), by plaintiff Peters (motion seq. no. 011) is denied; and it is further

ORDERED that the motion for summary judgment, pursuant to CPLR § 3212 (b), by defendant Stelios Coutsodontis and defendants Attika International Navigation SA, Iason Shipping Ltd., Pinto Shipping Ltd. and Karteria Shipping Ltd. (motion sequence number 010), is granted and the complaint is dismissed with prejudice and with costs and

---

[6] I note that the statute of limitations for defamation claims is one year and "accrues on the date of the first publication." *Hoesten v. Best*, 34 A.D.3d 143, 150 (1st Dept. 2006). "Under the 'single publication rule', a reading of libelous material by additional individuals after the original publication date does not change the accrual date for a defamation cause of action but, rather, the accrual date remains the time of the original publication." *Gelbard v. Bodary*, 270 A.D.2d 866, 866 (4th Dep't 2000) (citations omitted).

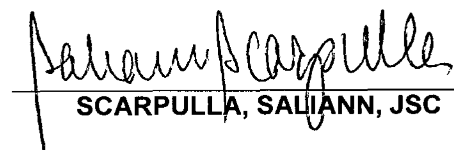
Here, the complaint was originally filed on February 15, 2007. The first statement upon which Plaintiff bases his defamation claim was made in a complaint filed by Defendant on February 9, 2005. The second statement that the defamation claim is based on is contained in an affidavit by Defendant that was filed on June 13, 2005. Both statements were made more than one year before Peters' filed this complaint. Thus, Peters' claims are also time barred.

disbursements to defendants as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

DATE : **7/11/2016**



SCARPULLA, SALIANN, JSC