

Hoops v Sinram

2017 NY Slip Op 30016(U)

January 6, 2017

Supreme Court, Suffolk County

Docket Number: 14-14574

Judge: Joseph A. Santorelli

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SHORT FORM ORDER

INDEX No. 14-14574
CAL. No. 16-01192OT

PUBLISH

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

COPY

PRESENT:

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 9-15-16
ADJ. DATE 11-10-16
Mot. Seq. # 005 - MG

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CARL HOOPS,

Plaintiff,

- against -

WILLIAM SINRAM, RICHARD MEYER,
ANTON AUGUSTIN, EDWARD ZADIGAN,
PETER GUERNE, KEITH SABOE, HAROLD,
GRESLIN, JEFFREY WAUNSCH, VINCENT
FARINELLA, ROBERT BOLTREK, KENNETH
LAMOTTE, ROBERT KRETZMER, MIKE
OLSON, ADELE SANDERMANN, JOE
BATTACHIARI, LAWRENCE SAILOR,
EDWARD HARTMANN, and EDWIN
NARANJO,

Defendants.
-----X

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Upon the following papers numbered 1 to 47 read on this motion for summary judgment ; Notice of Motion/ Order to Show Cause and supporting papers 1 - 25 ; Notice of Cross Motion and supporting papers ; Answering Affidavits and supporting papers 26 - 41 ; Replying Affidavits and supporting papers 42 - 47 ; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motion by defendants for summary judgment in their favor dismissing the complaint is granted.

Plaintiff Carl Hoops commenced this action alleging defamation and prima facie tort against eighteen coworkers who allegedly signed a petition containing false and defamatory statements about him on or about August 1, 2013. The complaint alleges that the petition includes the following statement:

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Due to the past actions of Mr. Carl Hoops, including but not limited to the statement made to a co-worker; (if his doctor told him he had a short time to live he would come back to work and kill all that did him wrong). Mr. Hoops also had a similar out burst in the dispatcher's room where he stood in front (sic) of a t.v. screen and said he was surprised no one shot anyone in the room. The servicemen in Central Division are very uneasy with Mr. Hoops presence in the division. They feel that he might act on these threats and would like to have Mr. Hoops relocated to another division. [The servicemen] are fear[ful] of retaliation by Mr. Hoops. These threats should be taken seriously.

Issue has been joined, discovery is complete, and a note of issue has been filed. The action has been discontinued against Jeffrey Wansch and Kenneth LaMotte. Defendants Robert Kretzmer, Adele Sondermann, Lawrence Sailor, and Edward Hartmann have not been served with process.

The remaining defendants William Sinram, Richard Meyer, Anton Augustin, Edward Zadigan, Peter Guerne, Keith Saboe, Harold Greslin, Vincent Farinella, Robert Boltrek, Mike Olsen, Joe Battachiari, and Edwin Naranjo, now move for summary judgment in their favor dismissing the complaint. In support of the motion defendants submit, among other things, the pleadings; the petition; affidavits of William Sinram, Richard Meyer, Katherine Irizarry, Vincent Farinella, Jeffrey Waunsch, Adele Sondermann, Peter Guerne, Anton Augustin, Robert Boltrek, Edward Zadigan, Keith Saboe, and Edwin Naranjo; a National Grid letter dated August 1, 2013; a PSEG investigation report; and various confidential reports. In opposition, plaintiff submits his own affidavit, portions of his deposition transcript, and excerpts of the deposition transcripts of Keith Saboe, William Sinram, Peter Guerne, Robert Boltrek, Harold Greslin, Richard Meyer, Edward Zadigan, Anton Augustin, Edwin Naranjo, Jack Ruffino, Walter Sharp, and Michael Whalen.

Plaintiff avers that he was employed by National Grid and its predecessor companies, LILCO and Keyspan, since 1988 as an emergency service lineman. He avers it was his job to restore power to homes during times when power was lost through storms or otherwise, and he admits that "most times" he worked alone. He avers that in 2009 he was physically attacked by Jack Ruffino, a nonparty to this action. Plaintiff further avers that, in June of 2013, Ruffino tailgated him while he was driving to work. While stopped at a red light, he avers that Ruffino blocked his vehicle and threatened him with a knife. The police arrested both Ruffino, for the alleged threat with a knife, and plaintiff, for menacing with his vehicle. Both charges were eventually dismissed after adjournments in contemplation of dismissal were granted.

Plaintiff avers that Ruffino created and submitted the petition to National Grid "for no good reason." Plaintiff also avers that defendant William Sinram had personal animus against him because he criticized his performance as a shop steward. Plaintiff avers that as a result of the petition he lost overtime opportunities and was segregated from co-workers. He also avers that his reputation was tarnished and tainted for no good reason. Plaintiff testified, in the three pages of deposition transcript offered, that he did not make the statement, "if my doctor told me I had a short time to live, I would come to work and kill all that did me wrong." Plaintiff admits that while watching television his coworkers were discussing a shooting in another state and he "just referred to that, you know, when they don't treat people right in the

world, that's what it leads to, people doing things like that." He avers the statement was made in the presence of Dwight McKinney.

Each of the defendants acknowledge that they read and signed the petition. None of the defendant's heard the statements allegedly made by plaintiff. Three defendants heard the first statement from defendant Jeffrey Waunch. Waunch avers that he was on a job site with plaintiff in 2013 "when [plaintiff] stated that if he had a short time to live he would come to work and kill all that did him wrong. Hoops said this to me in a matter of fact way and without emotion. I told my other co-workers at National Grid that Hoops had said this to me."

Peter Guerne avers that plaintiff stated to him while at work that "anyone that will fuck with him he will fuck them twice as hard," and "that he has a list of who those people are and has already gotten one of them in our yard." Anton Augustin avers that plaintiff made disturbing statements to him including that plaintiff "would arrange to have black men do violence to a supervisor's wife and would not give CPR to fellow employees." Katherine A. Irazarry avers that she is employed by PSEGLI in the human resources department and the petition was investigated by National Grid, "found to be unsubstantiated and did not effect Carl Hoop's employment with National Grid or PSEGLI in any manner." Walter Sharpe testified that plaintiff made the "comment that he was surprised that nothing like that [a workplace shooting] had happened here." Michael Whalen testified that "the petition had nothing to do with" Ruffino's grievance.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The burden then shifts to the party opposing the motion which must produce evidentiary proof in admissible form sufficient to require a trial of the material issues of fact (*Rebecchi v Whitmore*, 172 AD2d 600, 568 NYS2d 423 [2d Dept 1991]; *Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]). Because summary judgment deprives the litigant of his or her day in court, it is considered a "drastic remedy" which should be invoked only when there is no doubt as to the absence of triable issues (*Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131 [1974]; *Elzer v Nassau County*, 111 AD2d 212, 489 NYS2d 246 [2d Dept 1985]). Indeed, where there is any doubt as to the existence of triable issues, the Court must deny the motion (*Chilberg v Chilberg*, 13 AD3d 1089, 788 NYS2d 533 [4th Dept 2004], *rearg denied* 16 AD3d 1181, 792 NYS2d 368 [4th Dept 2005]; *Barclay v Denckla*, 182 AD2d 658, 582 NYS2d 252 [2d Dept 1992]; *Cohen v Herbal Concepts, Inc.*, 100 AD2d 175, 473 NYS2d 426 [1st Dept 1984], *affd* 63 NY2d 379, 482 NYS2d 457 [1984]).

"Defamation has long been recognized to arise 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. The elements are a false statement, published without a 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" (*Dillon v City of New York*, 261 AD2d 34, 37-38, 704 NYS2d 1 [1st Dept 1999]). Defamation is the injury to a person's reputation, either by written expression (libel) or oral expression (slander). "In cases involving defamation per se, the law presumes that damages will result, and special

damages need not be alleged or proven” (*Gatz v Otis Ford*, 274 AD2d 449, 450, 711 NYS2d 467 [2d Dept 2000]). The per se categories consist of the following statements: (1) the plaintiff committed a crime; (2) the statement tends to injure the plaintiff in his or her trade, business or profession; and (3) the plaintiff has contracted a loathsome disease among others (see *Matherson v Marchello*, 100 AD2d 233, 473 NYS2d 152 [2d Dept 1984]). When the defamatory statement falls into one of these categories, “the law presumes damage to the slandered individual’s reputation so that the cause is actionable without proof of special damages” (*60 Minute Man v Kossman*, 161 AD2d 574, 575, 555 NYS2d 152 [2d Dept 1990]).

Defendants have established their prima facie entitlement to summary judgment dismissing the complaint, including the cause of action sounding in defamation or libel as no evidence exists in this record that plaintiff was damaged by the alleged defamatory statements. Katherine A. Irazarry avers that the investigation “did not effect Carl Hoop’s employment with National Grid or PSEGLI in any manner.” Additionally, as each of the signers of the petitioner were coworkers with plaintiff, they enjoy a qualified common interest privilege (*Atkins v Flat Rate Movers*, 134 AD3d 437, 19 NYS3d 735 [1st Dept 2015]). There is no evidence that the defendants acted with malice. The signers of the petition testified that they were concerned for their safety. Affidavits from Jeffrey Wansch and Peter Guerne, along with plaintiff’s own admissions, establish the privilege (*Lieberman v Gelstein*, 80 NY2d 429, 590 NYS2d 857 [1992]). It is noted that plaintiff acknowledges in his memorandum of law that the first cause of action sounds in libel, and not libel per se. In any event, a statement that plaintiff “threatened to kill me and my family” is not libelous per se. Any claim that words of this nature, falsely attributed, related only to “the commission of the crime of harassment (see, Penal Law § 240.25; *People v Dorns*, 88 Misc 2d 1064, 390 NYS2d 546 [NY Just Ct 1976] [threats to kill]). “Harassment is a relatively minor offense in the New York Penal Law—not even a misdemeanor—and thus the harm to the reputation of a person falsely accused of committing harassment would be correspondingly insubstantial. Hence, even if we agreed with plaintiff that the statement would not have been construed by the listeners as rhetorical hyperbole, the cause of action must nevertheless be dismissed because it is not [libelous] per se to claim that someone committed harassment” (*Lieberman v Gelstein*, 80 NY2d 429, 590 NYS2d 857). Finally, as to defendants William Sinram, Anton Augustin, Edward Zadigan, Peter Guerne, Keith Saboe, Harold Greslin, Vincent Farnella, Robert Boltrek, Mike Olson, and Edwin Naranjo, no evidence of publication exists. These defendants signed the petition, but did not publish it (*Ostrowe v Lee*, 256 NY 36, 175 NE 505 [1931]).

In opposition, plaintiff has failed to raise a triable issue of fact. Plaintiff’s statement regarding damages that he “lost overtime opportunities” is speculative, and that he “was forced to be segregated separate and apart from his coworkers” is belied by his own sworn statement that “most of the time [he] worked alone with [his] individual assigned equipment and truck.”

As to the second cause of action, the elements of a cause of action for prima facie tort are the intentional infliction of harm, which results in special damages, without any excuse or justification, by an act or series of acts which would otherwise be lawful (*Freihofer v Hearst Corp.*, 65 NY2d 135, 142–143, 490 NYS2d 735 [1985]). Here, no evidence exists that the alleged statements by defendants were solely motivated by malice or “disinterested malevolence” (*Burns Jackson Miller Summit & Spitzer v Lindner*, 59 NY2d 314, 333, 464 NYS2d 712 [1983]; see also *Curiano v Suozzi*, 63 NY2d 113, 117, 480 NYS2d 466 [1984]). The uncontroverted testimony by defendants establish that any alleged statements were not

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motivated solely by malice toward plaintiff. Further, a critical element of the cause of action for prima facie tort is that the plaintiff suffered specific, measurable loss, causing special damages (*Freihofer v Hearst Corp.*, *supra*, 65 NY2d, at 143, 490 NYS2d 735; *Curiano v Suozzi*, *supra*, 63 NY2d, at 117, 480 NYS2d 466; *ATI, Inc. v Ruder & Finn*, 42 NY2d 454, 458, 398 NYS2d 864 [1977]). Plaintiff has not testified to or shown any special damages. Accordingly, the motion by the defendants is granted and the complaint is dismissed.

Dated: **JAN 06 2017**



HON. JOSEPH A. SANTORELLI
J.S.C.

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