

Pirrone v News 12 Interactive LLC
2017 NY Slip Op 32207(U)
September 26, 2017
Supreme Court, Queens County
Docket Number: 711977/2016
Judge: Thomas D. Raffaele
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13
Justice

FILED
OCT -3 2017
COUNTY CLERK
QUEENS COUNTY

LORI PIRRONE, x

Index
Number 711977/2016

Plaintiff,

Motion
Date 3/3/16

- against -

NEWS 12 INTERACTIVE LLC and
NEWS 12 WESTCHESTER LLC,

Motion Seq. No. 1

Defendants.

x

The following papers numbered EF5 to EF31 read on this motion by News 12 Interactive LLC and News 12 Westchester LLC (herein "News 12"), to dismiss the complaint pursuant to CPLR 3211 [a][1] and [7].

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	EF5 -EF18
Answering Affidavits - Exhibits.....	EF19-EF26
Reply Affidavits.....	EF27-EF31

Upon the foregoing papers, and for the reasons stated herein, the motion is granted in part and denied in part, for the reasons stated herein.

Plaintiff in this defamation action seeks damages based upon the alleged false and libelous reporting by defendants of an arrest involving plaintiff and her alleged boyfriend. The news reports indicate, in substance, that "a Queens couple is accused of running a massive marijuana grow house in Valley Cottage." Plaintiff submits that the articles contain facts that are untrue as to plaintiff in that she never ran a marijuana grow house and was never accused of running a marijuana grow house. Plaintiff alleges further that

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the false and incorrect written statements crossed the line between reporting real facts and abuse against plaintiff without reasonable cause or restraint; and that by doing so defendants defamed plaintiff.

The complaint alleges six causes of action in relation to the defamation action, to wit: libel, slander, negligent infliction of emotional distress, intentional infliction of emotional distress, and the fifth and sixth causes of action pertain to damages and exemplary/punitive damages. Defendants move to dismiss the complaint based upon documentary evidence and for failure to state a cause of action. Plaintiff opposes the motion.

Facts

It appears that on October 9, 2015, the Clarkstown Police Department arrested Joseph Pisana and plaintiff Lori Pirrone "when he attempted to return to" a home in Valley Cottage, where the police had recently discovered a "marijuana growing operation" in the course of executing a search warrant. That search yielded \$250,000 worth of marijuana, handguns, cocaine and over \$40,000 in cash. Pisana and plaintiff were charged with various offenses and were to be arraigned later that day. To notify the public of these events, the Clarkstown Police Department issued a press release titled "Pot House Arrest." It also released a police report setting forth the details of the arrests.

News 12 reported the story on the same day. It published a video clip and news article reporting that police had arrested a "Queens couple" who were "accused of running a massive marijuana grown house in Valley Cottage." These reports summarized other information contained in the press release and police report and featured an interview with a Clarkstown police officer and a neighborhood resident. Plaintiff now sues News 12 for statements contained in these reports. Among other things, plaintiff alleges that she was not connected to the marijuana grow operation, and that the News 12 stories falsely stated and implied that she was.

In moving to dismiss the complaint, defendants argue, among other things, that the reports were privileged as "fair and true" reports of a judicial proceeding pursuant to Civil Rights Law § 74. In support of their motion, the defendants submitted, inter alia, the police report and the Press Release which includes the news of plaintiff's arrest. In opposition to the motion, plaintiff argues that news reports are not entitled to the privilege afforded by Civil Rights Law § 74 because they were not "fair and true."

Discussion

To state a cause of action to recover damages for defamation, a plaintiff must allege that the defendant published a false statement, without privilege or authorization,

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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* (see *Brady v Gaudelli*, 137 AD3d 951, 951 [2016]; *Kamchi v Weissman*, 125 AD3d 142, 156 [2014]; *El Jamal v Weil*, 116 AD3d 732, 733 [2014]). A motion to dismiss pursuant to CLR 3211 (a) (1) “may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]). A motion to dismiss pursuant to CPLR 3211(a)(7), for failure to state a cause of action, the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory (see CPLR 3026; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Thompson Bros. Pile Corp. v Rosenblum*, 121 AD3d 672 [2014]).

The privilege afforded by Civil Rights Law § 74 is an affirmative defense (see *Freihofer v Hearst Corp.*, 65 NY2d 135, 141 [1985]; *Shiles v News Syndicate Co.*, 27 NY2d 9, 13 [1970], *cert denied* 400 US 999 [1971]; *Sokol v Leader*, 74 AD3d 1180, 1181 [2010]; *Arrow Communications Labs. v Pico Prods.*, 199 AD2d 1055, 1056 [1993]). That statute provides that “[a] civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding or other official proceeding, or for any heading of the report which is a fair and true headnote of the statement published” (Civil Rights Law § 74). The privilege afforded by this statute is absolute “and is not defeated by the presence of malice or bad faith” (*Glendora v Gannett Suburban Newspapers*, 201 AD2d 620, 620 [1994]; see *Cholowsky v Civiletti*, 69 AD3d 110, 114 [2009]; *Pelayo v Celle*, 270 AD2d 469, 469-470 [2000]). This absolute privilege applies only where the publication is a comment on a judicial, legislative, or other official proceeding (see *Cholowsky v Civiletti*, 69 AD3d at 114-115; *Cuthbert v National Org. for Women*, 207 AD2d 624, 626 [1994]; see also *Ramos v El Diario Publ. Co.*, 16 AD2d 915 [1962]), and is a “fair and true” report of that proceeding (*Holy Spirit Assn. for Unification of World Christianity v New York Times Co.*, 49 NY2d 63, 67 [1979]; *Briarcliff Lodge Hotel, Inc. v Citizen-Sentinel Publs.*, 260 NY 106, 118 [1932]).

As to the requirement that the publication be a fair and true report of the official proceeding, the Court of Appeals has stated that “[f]or a report to be characterized as ‘fair and true’ within the meaning of [Civil Rights Law § 74], thus immunizing its publisher from a civil suit sounding in libel, it is enough that the substance of the article be substantially accurate” (*Holy Spirit Assn. for Unification of World Christianity v New York Times Co.*, 49 NY2d at 67). Moreover, “a fair and true report admits of some liberality; the exact words of every proceeding need not be given if the substance be

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substantially stated” (*Briarcliff Lodge Hotel, Inc. v Citizen-Sentinel Publs.*, 260 NY at 118; see *Holy Spirit Assn. for Unification of World Christianity v New York Times Co.*, 49 NY2d at 67).

Here, the complaint alleges that News 12 published eight “false, defamatory statements of fact” about plaintiff. They are:

- a. that plaintiff was in a relationship with Joseph Pisana
- b. that plaintiff was a couple with Joseph Pisana and that this couple ran a marijuana grow house.
- c. that this couple was arraigned on a slew of charges stemming from their arrest.
- d. that this couple was accused of running a marijuana grow house;
- e. misleading information that suggested that plaintiff is associated with charges for cocaine possession;
- f. misleading information that suggested that plaintiff is associated with charges for marijuana possession;
- g. misleading information that suggested that plaintiff is associated with charges for illegal possession of five handguns; and
- h. misleading information that suggested that plaintiff is associated with charges for marijuana possession with intent to distribute.

The reports omitted certain crucial information, including the obvious fact that plaintiff was only charged with obstructing governmental administration and hindering prosecution, thus they are not truthful.

Furthermore, to recover on the cause of action alleging libel, there must be allegations, which if proven, would show that News 12 “acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties” (*Sheridan v Carter*, 48 A.D.3d 447, 448 [2008], citing *Chapadeau v Utica Observer-Dispatch*, 38 NY2d at 199). The court finds that defendant published its statements in a grossly irresponsible manner. In sum they should have exercised some sort of quality control to substantiate the statements

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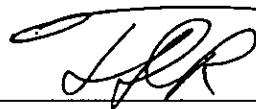
contained in the article before it was published and disseminated to the public at large.

However, the fourth cause of action for intentional infliction of emotional distress is dismissed as unopposed and otherwise on the merits (*see Brancaleone v Mesagna*, 290 AD2d 467 [2d Dept. 2002] (“[T]he cause of action for intentional infliction of emotional distress should have been dismissed as duplicative of the cause of action for defamation”).

With regards to the fifth and sixth causes of action which assert damages and exemplary damages, respectively, plaintiff improperly denominated her request for damages and exemplary damages as separate causes of action (*see Yong Wen Mo v Gee Ming Chan*, 17 AD3d 356, 359 [2005]), and she failed to allege facts sufficient to demonstrate that defendants engaged in conduct which rose to the high level of moral culpability necessary to support a claim for punitive damages (*see 99 Cents Concepts, Inc. v Queens Broadway, LLC*, 70 AD3d 656 [2010]; *Anderson v Elliott*, 24 AD3d 400, 402 [2005]; *cf. Randi A. J. v Long Is. Surgi-Ctr.*, 46 AD3d 74, 81-82 [2007]).

Accordingly, the motion is granted in part solely to the extent of dismissing the fourth, fifth and sixth causes of action. The motion is denied with respect to the first, second and third causes of action.

Dated: September 26, 2017



Thomas D. Raffaele, J.S.C.

