

Stone v Bloomberg Inc.
2017 NY Slip Op 32920(U)
April 19, 2017
Supreme Court, Westchester County
Docket Number: 67221/2016
Judge: Lewis J. Lubell
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To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF WESTCHESTER

-----X
AVERY STONE,

Plaintiff,

-against -

BLOOMBERG INC., BLOOMBERG L.P.,
TRACY ALLOWAY, in her professional
and personal capacities, BENJAMIN
ROBERTSON, in his professional and
personal capacities,
EFINANCIALCAREERS, INC., and PAUL
CLARKE, in his professional and
personal capacities,

Defendants.

-----X
LUBELL, J.

DECISION & ORDER

Index No.67221/2016

Sequence No. 2,6,7

To the extent relevant to the following motions, the following papers were considered in connection with **Motion Sequence #2** by Bloomberg defendants for an Order admitting Thomas G. Hentoff, Esq. and Monika ("Isia") Beata Jasiewicz, Esq. *pro hac vice* as counsel for Bloomberg in the pre-trial and trial proceedings in this action; **Motion Sequence #6** by plaintiff for an Order amending the caption in this action to strike Bloomberg, Inc. as a named defendant; and **Motion Sequence #7** by plaintiff for an Order granting a preliminary injunction and directing and ordering defendant EfinancialCareers, Inc., (1) to cease making its November 2, 2016 Efinancial article or any comments about that article available on the Internet through any domain names, websites, or links which eFinancialCareers, Inc. owns or controls and (2) (a) to remove the November 2, 2016 eFinancial article (or any comments about that article) from all websites and/or links which eFinancialCareers, Inc. owns or controls and (b) any and all false assertions about plaintiff from all websites and/or links which eFinancialCareers, Inc. owns or controls:

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Plaintiff, Avery Stone, commenced this action for declaratory, injunctive and equitable relief, and monetary damages against the named defendants to redress alleged acts of defamation and libel per se.

The action was commenced upon the November 17, 2016, filing of a Summons and Complaint. Plaintiff has since filed a supplemental Summons and Amended Complaint dated December 12, 2016. Subsequent thereto, plaintiff discontinued the action as against defendant, Bloomberg Inc., has withdrawn as against all defendants his Second Cause of Action for Intentional Infliction of Emotional Distress, and has withdrawn as against Bloomberg L.P. that aspect of Motion

Sequence #7 seeking injunctive relief against Bloomberg L.P. ("Bloomberg").

Through his complaint, plaintiff avers that he was a "director at a struggling, yet entirely legitimate and law-abiding Hong Kong business - Global Merchant Funding, Ltd. ("GMF")" (Complaint ¶3). As against Bloomberg and two of its reporters, defendants Tracy Alloway and Benjamin Robertson, plaintiff contends that he was defamed in an on-line news article published on October 31, 2016 wherein it was

". . . falsely, maliciously and with reckless disregard for the truth [reported] that: (1) Avery Stone, along with his GMF partners, "duped" his friends into investing \$32 Million Dollars into the business and then "vanished"; (2) Avery Stone and his partners "systematically preyed off [his] friends" in an intentional and illegal Ponzi scheme to make money with no hope of actually realizing a positive return on their investments; (3) GMF's liquidator, accounting firm JLA Asia, itself reported to the Hong Kong Police in April, 2016, that it had suspicions that Stone and his two other directors "may have misappropriated some of the money owed to the investors"; and (4) Avery Stone was a "crook" and a "low-life" who was "lying low" after stealing \$400,000.00 of family possessions from his own father" (Complaint ¶4), [after which he "then "vanished" into thin air like an international fugitive from justice (Complaint ¶5).

The impact of these statements were allegedly "exacerbated by a follow-up article by Paul Clarke that was published online on eFinancialCareers' widely circulated website, on November 2, 2016" (Complaint ¶6). More specifically, plaintiff contends:

The eFinancialCareers Defendants falsely, maliciously and with reckless disregard for the truth, stated as facts in their November 2, 2016 article that: (1) Avery Stone, was a "schmoozing \$32m banker con man"; (2) Avery Stone and his partners "systematically preyed off [his] friends" in an intentional and illegal scheme to make money with no hope of actually realizing a positive return on their

investments; (3) Avery Stone was a "crook" and a "low-life" who was "lying low"; (4) that Avery Stone "borrowed \$89k from his 82-year-old father, Richard, to 'get out of Hong Kong very fast' before stealing \$400k of family possessions and disappearing"; and (5) that "Hong Kong Police are investigating" Avery Stone's alleged theft of \$400,000.00 of personal property items from his own father.

(Complaint ¶7).

Currently before the Court are seven motions. **Motion Sequences #2, #6 and #7** will now be addressed with decisions to follow on **Motion Sequence Nos. #1, #3, #4 and #5** seeking, among other things, dismissal of the complaint pursuant to CPLR 3211(a)(1) and (7), discovery, and conversion of defendants' motions to dismiss to motions for summary judgment.

Unopposed **Motion Sequence #2** for the admission, pro hac vice, of Thomas G. Hentoff, Esq., a member in good standing of the bar of the District of Columbia, and Monika ("Isia") Beata Jasiewicz, Esq., a member in good standing of the bar of the District of Columbia, is granted, as is unopposed **Motion Sequence #6** for an Order amending the caption to strike Bloomberg, Inc. as a named defendant.

The Court denies plaintiff's motion for an Order granting a preliminary injunction (**Motion Sequence #7**): (1) directing eFinancialCareers, Inc. to cease making its November 2, 2016 eFinancial article or any comments about that article available on the Internet through any domain names, websites, or links which eFinancialCareers, Inc. owns or controls; (2) directing it to (a) remove the November 2, 2016 eFinancial article (or any comments about that article) from all websites and/or links which eFinancialCareers, Inc. owns or controls and (b) remove any and all false assertions about plaintiff from all websites and/or links which eFinancialCareers, Inc. owns or controls.

It is well established that:

"Absent extraordinary circumstances, injunctive relief should not be issued in defamation cases (see Metropolitan Opera Assn. v. Local 100, Hotel Empls. & Rest. Empls. Intl. Union, 239 F3d 172, 177 [2001]; see also

Jordan v. Metropolitan Life Ins. Co., 280 F Supp 2d 104 [2003]).

(Rombom v. Weberman, 309 AD2d 844, 845 [2d Dept 2003]). This standard applies even where, as in Rombom v. Weberman, supra, the defamatory nature of the underlying statement is established, after trial, and compensatory and punitive damages have been awarded.

More particularly, after the entry of judgment, defendants in Rombom, supra, moved to set aside the verdict and plaintiffs cross-moved for a permanent injunction. Upon denying defendants' motion in its entirety, the Supreme Court granted that branch of the plaintiffs' cross motion for a permanent injunction to the extent of

" . . . directing the defendants to remove any and all published statements about plaintiffs and plaintiff Rombom's family from their web sites . . . found by the jury to have been libelous, and to the extent possible, from all mirror [s]ites upon which defendants caused those statements to be published, and prohibiting defendants from publishing any statements about plaintiffs and plaintiff Rombom's family found by the jury to have been libelous."

(Rombom v. Weberman, 309 AD2d 844, 845 [2d Dept 2003]). That determination was reversed upon appeal.

Here, plaintiff has failed to establish the existence of any "extraordinary circumstances" as would justify a permanent injunction, let alone a preliminary one. The granting of a preliminary injunction upon the facts presented, would, in this Court's opinion, "constitute[] an impermissible prior restraint on free speech" (Rose v. Levine, 37 AD3d 691, 693 [2d Dept 2007] citing Rombom v. Weberman, supra, Rosenberg Diamond Dev. Corp. v. Appel, 290 A.D.2d 239; Bihari v. Gross, 119 F.Supp.2d 309, 325-27; see also LoPresti v. Florio, 71 AD3d 574 [1st Dept 2010] ["no evidence of a sustained campaign to interfere with the plaintiff's business by the use of false statements, [thus] a claim for injunctive relief does not lie]). "[P]rior restraint on expression comes . . . with a heavy presumption' against its constitutional validity" (Organization for a Better Austin v. Keefe, 402 U.S. 415, 419, 91 Sct 1575, [1971], quoting Carroll v. President and Comm'rs of Princess Anne, 393 U.S. 175, 181, 89 Sct 347 [1968]; Ramos v. Madison Sq. Garden Corp., 257 A.D.2d 492 [1st Dept 1999]).

Based upon the foregoing, it is hereby

ORDERED, that **Motion Sequence #6**, whereby plaintiff seeks an Order amending the caption to strike Bloomberg, Inc. as a named defendant is granted and the caption is hereby amended accordingly; and, it is further

ORDERED, that, that Second Cause of Action is hereby deemed stricken from the Amended Complaint; and, it is further

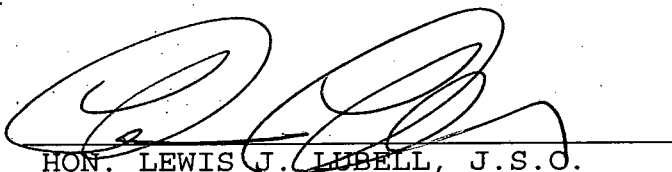
ORDERED, that, Thomas G. Hentoff, Esq. and Monika ("Isia") Beata Jasiewicz, Esq. are hereby admitted, *pro hac vice*, as counsel for Bloomberg in the pre-trial and trial proceedings in this action (**Motion Sequence #2**); and, it is further

ORDERED, that, plaintiff's application for preliminary injunction against Bloomberg is deemed withdrawn and, as against eFinancialCareers, Inc., is denied (**Motion Sequence #7**); and, it is further

ORDERED, that any further appearances by the parties will be directed in the Court's determination of Motion Sequence Nos. 1, 3, 4 and 5.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York
April 19th, 2017



HON. LEWIS J. LEBELL, J.S.O.

Kevin T. Mulhearn, Esq.
Attorney for Plaintiff
60 Dutch Hill Road, Suite 15
Orangeburg, NY 10962

Russell M. Yankwitt, Esq.
Attorneys for Defs. Bloomberg
140 Grand Street, Suite 501
White Plains, NY 10601

Wilson Elser Moskowitz Edelman & Dicker LLP
By: Jonathan E. Meer, Esq.
Attorneys for Def. eFinancialCareers, Inc.
150 East 42nd Street
New York, New York 10017