

Martone v Breyfogle
2018 NY Slip Op 32759(U)
May 1, 2018
Supreme Court, Westchester County
Docket Number: 69304/15
Judge: Gerald E. Loehr
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To commence the statutory time period of 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

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MICHELE MARTONE, a/k/a MIKE MARTONE,
ANTONELLA MARTONE, ROSA MARTONE,
MARIO MARTONE, SAL MARTONE,
MICHELE MARTONE, JR. a/k/a MIKE MARTONE, JR.,

Plaintiffs,

DECISION AND ORDER
Index No.: 69304/15

-against-

EUGENE BREYFOGLE,

Defendant.

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LOEHR, J.

The Court having conducted a non-jury trial of this matter now makes the following Findings of Fact and Conclusions of Law: Plaintiff Mike Martone is the “sole owner” of Martone Auto Collision, Inc., a body shop that buys and sells and repairs motor vehicles in Ossining, New York. Rosa Martone is Mike’s wife, and Antonella Martone and Mario Martone are their sons, and all of the Plaintiffs are family members some of whom may also have worked in the collision shop from time to time. In or about 2014, Defendant, an acquaintance of at least one of the Plaintiffs, performed odd jobs at the collision shop. Thereafter, apparently with Mike’s permission, Defendant purchased a vehicle wholesale at an auction using the corporation’s license and dealer plates. Then, over the next few months, Defendant purchased nine additional cars, in the corporation’s name, without authority, and when he could not borrow the corporation’s dealer plates to drive them, he started sending the Plaintiffs nasty emails, complaining about one family member to another. After Antonella convinced Mike to put a stop to Defendant’s buying cars at auction in the corporation’s name, Defendant demanded that title to the vehicles he had purchased be transferred to him. Antonella agreed upon the condition that

Defendant pay the applicable taxes. Defendant's response was to threaten to go "on a path, a path from God." In other words, he was going to go to war with the whole family. For the next year or so, Defendant published defamatory lies about Mike, Antonella, Rosa, Mario and the corporation on blogs and other on-line sites, such as Yelp. In most cases, the author of the blogs and reviews was ostensibly a "Johnny Mungo." In this action, the defense was that Defendant denied being Johnny Mungo or responsible for his posts. Based both on the circumstantial evidence, which is substantial, and having observed the Defendant on the stand, the Court finds the Defendant's denials unworthy of belief. The Court has no doubt the Defendant was the author: the blogs and reviews started only after the dispute between Plaintiffs and Defendant started and right after Defendant threatened the Plaintiffs with a war of retribution therefor. The blogs and reviews contained personal information about both Plaintiffs and Defendant that only Defendant knew – such as that the Defendant claimed to have been in a coma for three months at some point in his life. Moreover, after the Plaintiffs hired an attorney (David Rabin), Johnny Mungo began publishing defamatory blogs about such attorney – until he withdrew – and when he was replaced by Jonathan Victor, Johnny Mungo published defamatory blogs about such second attorney – until he withdrew. Finally, there was evidence that Johnny Mungo and Defendant had the same email address.

As to the false reviews and other defamatory statements published on Yelp and otherwise concerning the collision shop, Plaintiffs claim that it caused the corporation's business to decline 60-70% due to these attacks. However, the damage was to the corporation, an entity in its own right, and not a party to this action. As the individual Plaintiffs do not have standing to recover for damages to the corporation, the Court cannot make an award therefor.

With respect to Mike Martone, Defendant published a blog in which he suggested that Mike had murdered his cousin, Frank Forgione, who had drowned two years earlier, going so far as to say that Mike had confessed the murder to him. Defendant also compared Mike to the infamous Son of Sam murderer. Defendant also published a blog wherein he claimed that Mike was unfaithful to his wife, maintaining a mistress. Defendant also accused him of defrauding customers of the collision shop and the IRS with respect to taxes, and being a Nazi and a bigot.

With respect to Mike's wife, Rosa, Defendant published a blog wherein he accused her of infidelity and of having a communicable disease which put her employment at Club Fit in jeopardy.

With respect to Mario Martone, Defendant published a blog wherein he accused him of

beating his girlfriend and stealing money. Additionally, on an unspecified date, Defendant struck Mario with a sign when Mario confronted Defendant protesting outside of the collision shop.

With respect to Antonello, on April 15, 2015, there was a confrontation between him and Defendant in front of the collision shop wherein Defendant spat through an open car window onto Antonello. And then on April 20, 2015, when Antonello caught Defendant trespassing on the collision shop's property, Defendant attempted to stab Antonello with a knife. The police were called and Defendant was arrested.¹

Based thereon, I find that Defendant defamed Mike Martone, Rosa Martone, Antonello Martone and Mario Martone and I award each \$150,000 in general compensatory damages and \$250,000 in punitive damages. With respect to the civil assault on Antonello (the attempted stabbing), I award compensatory damages of \$15,000 and punitive damages of \$25,000. With respect to the battery on Mario with the sign, I award \$25,000 in compensatory damages and \$50,000 in punitive damages.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
May / , 2018



HON. GERALD E. LOEHR
J.S.C.

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¹ The outcome of that arrest is not set forth.

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