

Zheng Wu v Guo Wengui
2019 NY Slip Op 30892(U)
April 5, 2019
Supreme Court, New York County
Docket Number: 152123/2018
Judge: Barbara Jaffe
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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: HON. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

-----X

INDEX NO. 152123/2018

ZHENG WU a/k/a BRUNO WU and YANG LAN,

MOTION DATE

Plaintiffs,

MOTION SEQ. NO. 002

- v -

GUO WENGUI a/k/a/ MILES KWOK,

DECISION AND ORDER

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to dismiss.

Defendant moves pursuant to CPLR 3211(a)(7) for an order dismissing plaintiffs' third and fourth causes of action, and pursuant to CPLR 3024(b) for an order striking paragraphs 1-11, 26-27, 29-61, and 95-108 of the amended complaint. Plaintiffs oppose.

I. COMPLAINT (NYSCEF 22)

Plaintiff Wu, a prominent investor, media entrepreneur, and published author, and plaintiff Lan, a leading broadcast journalist and media entrepreneur, allege that defendant, a Chinese billionaire "in self-imposed" exile in New York, believing that plaintiffs could negatively influence his ability to remain here, defamed them by stating in various formats that they engaged in criminal conduct, such as murdering and raping children, that Lan has sexually transmitted diseases, and that Lan has engaged in extra marital affairs to advance her career (first and second causes of action for, respectively, defamation per se and defamation). They also contend that defendant did so with the intent to cause them severe emotional distress, or while recklessly disregarding the substantial likelihood of same, by electronically and/or physically

surveilling them, by having his son and his bodyguards surround and photograph them and their family at dinner in London, and by directing at Lan veiled threats of future bodily harm via YouTube, and by otherwise harassing and intimidating them on his website (third cause of action for intentional infliction of emotional distress), and that he has conspired with others to intentionally inflict on them emotional distress (fourth cause of action for conspiracy to intentionally inflict emotional distress).

Specifically, plaintiffs assert, as pertinent to this motion, as follows:

1. This action is brought against Defendant Guo Wengui (“Guo”), a citizen of numerous countries including Hong Kong, the United Arab Emirates, and the Republic of Malta, who after having been accused and convicted of a broad array of criminal acts fled to the United States with the hope of purchasing for himself the type of unofficial asylum reserved for those of extreme wealth.
2. Indeed, notwithstanding evidence tying Guo to money laundering schemes, forgery, bribery and physical and sexual assault, Guo has been able to obtain temporary refuge from his crimes in the United States, where he purchased a penthouse apartment in the prestigious Sherry Netherland at 781 Fifth Avenue, New York, New York for which he paid \$67.5 million in cash.
3. With this new home becoming a base of operation, Guo commenced his propaganda campaign designed to meet his twin objectives of obfuscating his criminality and increasing the odds that his pending political asylum application is granted.
4. In particular, Guo has sought to define himself as a liberal-minded refugee by dribbling out over social media largely nonsensical claims of purported acts of corruption and high drama within the People’s Republic of China (“PRC” or “China”).
5. By these yams, Guo pitches himself as a “pioneer of using YouTube and Twitter to fight for the rule of law, human rights, freedom and democracy in China.”
6. But in reality, Guo is nothing more than a two bit con-man.
7. His “revelatory” claims of political corruption are little more than cheap and defamatory falsehoods about the personal lives of various Chinese and American citizens that Guo hopes to paint as antagonists of soap operatic proportions, and which he then feeds to his millions of “followers.”
8. Guo does not expose “corruption”; instead, he uses the internet as an extension of his chaotic and criminal enterprise.
9. Thus, this action was originally brought in March 2018, by filing of the Summons and Complaint, to hold Guo to account for his wanton and malicious acts of defamation and to compensate those his deluded efforts have harmed.
10. Far from curtailing his activities, however, in response to this case, Defendant Guo has actually stepped up his attempts to silence Plaintiffs, and has now conspired with third parties, including, but not limited to, his own son Mileson Guo and others, to assist him in

what has become a world-wide campaign of bullying and intimidation.

11. Accordingly, this Amended Complaint is being filed to address Guo's continuing and escalating misconduct, which has now veered into a conspiratorial attack on Plaintiffs.

...

26. Defendant Guo is a billionaire who purports to have made his money in various real estate ventures in China, and who now lives in "self-imposed exile" in New York City. Guo has sought permanent residence in the United States via an application for asylum, predicated on nonsensical claims levied by him in an effort to present himself to the United States government as a political refugee.

27. Guo possesses passports from numerous countries, including those from Hong Kong, the United Arab Emirates, and the Republic of Malta, and uses a number of aliases, including Guo Wen Gui, Guo Haoyun and Miles Kwok, among others.

...

29. Contrary to victimology cultivated by Guo through media manipulation, he is not now, nor has he ever been, a political prisoner of the PRC.

30. Instead, Guo's relationship with the criminal authorities first began when he was approximately 18 years old and convicted of fraud, whereupon he was imprisoned along with others determined to be guilty of acts of petty thievery.

31. Guo was not, as he otherwise contends, jailed with "pro-democracy activists and political dissidents."

32. Subsequent to this period of incarceration, Guo went on to engage in increasingly more sophisticated financial frauds, concocting Ponzi schemes designed to enrich himself personally, to the detriment of his unwitting victims and the unfortunate business "partners" he ultimately turned against.

33. For example, Guo engaged in a series of fraudulent transactions whereby hundreds of millions of dollars were fraudulently obtained from the Agricultural Bank of China through the use of fake contracts, false receipts and creative interpretations of the word "leverage."

34. Guo also undertook efforts to work with officials from (and ultimately began to work for) China's Ministry of State Security ("MSS"), China's central intelligence agency with both domestic and foreign jurisdiction.

35. In particular, Guo struck up a close relationship with MSS leader Ma Jian, which resulted in Guo's participation in a number of covert and illegal acts, including "investigations" targeting Chinese nationals and United States political leaders, for which Guo has received medals from his MSS colleagues.

36. Other Guo associates are now, like Ma Jian, under investigation or prosecution for bribery and abuse of power crimes, including Zhang Yue, who acted as the Head of the Politics and Law Committee in China's Hebei Province, and Meng Huiqing, who was an official with CPC's Ant-Corruption Commission.

37. But Guo's acts were not predicated on Guo's belief in any particular political philosophy; instead, like everything else Guo undertakes, he sought to benefit personally from his relationship with the government, particularly with corrupt officials in intelligence and law enforcement agencies.

38. This included telling those he was assisting in investigating that he might obtain lighter sentences for them - so long as they transferred over to Guo their assets for Guo's personal use.

39. Guo also took as many precautions as he could to insulate himself from having to answer for his double dealing, often recording or video-taping government officials or business colleagues and acquaintances with sex workers Guo himself employed and planted - recordings he then used as a means of extortion.

40. And when politics in China changed, so did Guo's "loyalty."

41. Indeed, on more than one occasion Guo has promised allegiance to the PRC if only they will take him back with the promise of no prosecution.

42. In exchange for special treatment by the PRC, Guo also (a) promised to provide the location of various Chinese political dissidents in the United States, (b) spied on and wiretapped various government figures, including former United States Secretary of Homeland Security Jeh Charles Johnson and former United Kingdom Prime Minister Tony Blair, for which he has received MSS medals, and (c) colluded with various terrorist organizations.

43. Far from being the anti-government crusader that he portrays himself to be from his comfortable surroundings in New York City, Guo was and is more than happy to remain an agent of the government that he now claims to hate - so long as there is something in it for him.

44. Eventually, the story of Guo's wrongdoing and the toxicity of associating with him came to light by and through the press.

45. In particular, in 2015, a watershed expose was published by Caixin Media Company Ltd, implicating Guo in a conspiracy to oust Beijing's mayor and various other potentially wrongful acts he had undertaken.

46. This same article reported on Guo's plan to video the deputy mayor of Beijing's private sexual activities as part of a scheme to discredit the municipality's political leaders and to enable Guo to acquire development rights to a plaza located near the Bird's Nest stadium in the Olympic Park of Beijing.

47. By at least one account, Caixin's coverage lead to an article that became the most widely read article in the history of Chinese journalism.

48. Moreover, media outlets began reporting in April 2017 that former MSS leader Ma Jian abused his power between 2008 and 2014 to jail, extort, or seize the property of Guo's business rivals in exchange for millions of dollars in bribes from Guo.

49. The media also reported that Guo paid millions of dollars to former Hebei Provincial Police Chief Zhang Yue, who in return interfered with and investigated Guo's business rivals, allowing Guo to obtain favorable deal terms or shutting out competition.

50. As a result of these reports and follow-on reporting, Guo was thrust into the international discourse.

51. Guo's crimes, too, have garnered international attention, with reports of a Red Notice having been issued by Interpol in April 2017.

52. As noted above, Guo fled the PRC to avoid answering for his crimes.

53. Since that time, he has made numerous efforts to "buy" his way back into his home country in a way that would allow him to avoid jail time -- including but not limited to letters written to the Chinese government that beg for a homecoming and which pledge allegiance to the PRC.

54. Always one to hedge his bets, however, simultaneously Guo has unleashed a series of schemes designed to afford him respite in the United States.

55. Chief among these schemes was Guo's decision to develop a fan base cultivated by attacks, perpetrated over social media, on the PRC, the press agents that have reported on his "business practices" in China, and anyone else, including Plaintiffs, who he believes (rightly or wrongly) might have information which could negatively influence his ability to remain safely ensconced on his billionaire perch in New York City.

56. Notably, Guo seems to take particular pleasure in defaming females, primarily by implicating them in sexual acts (that have never taken place) but which would act to embarrass, humiliate and harm their reputations.

57. Guo's misogynist protocol also carries with it the benefit of potential embarrassment to the partners and children of his targets.

58. For example, Guo used his social media accounts to attack Hu Shuli, the founder and Chief Executive of Caixin, a former Knight Journalism Fellow at Stanford, and a well-respected journalist.

59. In particular, Guo indicated that Ms. Hu engaged in "sex [abuse] games" with various Chinese officials. Ms. Hu has denied any such sexual activity or relationship, and her defamation suit (in which Caixin is a co-Plaintiff) is pending before this Court. *See Caixin Media Company Ltd, et al. v. Wengui*, Index. No. 652154-2017 (N.Y. Sup. Ct. N.Y. Cty. 2017).

60. Similarly, Guo has targeted Huang Yan, a female Chinese government official. By Ms. Huang's defamation claim (which is also pending in this Court), Guo is accused of egregious misstatements about her sex life, including but not limited to claims that she attained her position by engaging in sexual favors. *See Huang Yan v. Wengui*, Index No. 156552/2017 (N.Y. Sup. Ct. N.Y. Cty. 2017).

61. Regrettably, this is just a small sample of those targeted by Guo's infatuation with female sexuality. Others victimized include Fan Bingbing, Xu Qing, Gao Yanyan, Li Bingbing, Lin Zhiling, Dong Qing, Li Sisi, Mei Tong, Wanf Fang, Shu Xiaoqing, Zeng Chang, and (as described more fully below), Plaintiff Yang Lan.

...

95. This action was commenced against Guo in March 2018.

96. However, far from curtailing his activity as a result of that filing, Guo has gotten more desperate and engaged in further, more drastic acts of threatened violence, intimidation and stalking.

97. In a new twist, and in an escalation of his intimidation campaign, Guo enlisted third parties, including his son Guo Mileson ("Mileson"), into his plot to physically intimidate and silence Plaintiffs.

98. Specifically, on or about April 6, 2018, Plaintiffs and their family were dining at a restaurant named Estiatorio Milos in London, U.K.

99. In a deliberate attempt to intimidate Plaintiffs, Mileson and a cohort of threatening bodyguards, at the instance and direction of Defendant Guo, secured four tables surrounding Plaintiffs, their family and their dining companions.

100. Then, while Plaintiffs, their family were dining, Mileson took photographs of Plaintiff Zheng Wu, his family and his dining companions.

101. Thereafter, Defendant Guo posted these photographs of Plaintiffs and their family

and dining companions eating dinner.

102. The circumstances under which Mileson and his cohorts surrounded Plaintiffs and took these photographs demonstrate that Defendant Guo, or third parties on his behalf, had engaged in some manner of surveillance of and/or eavesdropping on Plaintiffs.

103. Specifically, Plaintiffs' reservation at Estiatorio Milos was under the name of a third party, not either of the Plaintiffs.

104. Moreover, the identity of the party that made the reservation was only known by Plaintiffs and their other dining companions.

105. In fact, the identity of the person making the reservation was not even known to the restaurant itself until approximately 3 hours prior to Plaintiffs' seating.

106. Accordingly, this information must have been ascertained through some form of eavesdropping or other invasive and threatening monitoring of Plaintiffs, either physically or electronically.

107. In addition to this conduct in London, as noted above, Guo's May 9, 2018 posting demonstrates that Guo, either himself or through others, was surveilling Plaintiffs during their trip to New York.

108. Directly as a result of this conduct directed by Guo, Plaintiffs have suffered severe emotional distress, shame, anxiety, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses as set forth hereinabove.

II. CONTENTIONS

A. Defendant (NYSCEF 20)

Defendant maintains that paragraphs 1 through 11 only allege generalized and false allegations which do not relate to plaintiffs, and observes that in paragraphs 29 through 61 of the amended complaint, plaintiffs: (1) describe interactions he is falsely alleged to have had with others occurring more than one year before the commencement of this action; (2) falsely set forth his criminal history and relationship with a Chinese leader, culminating in his attempts to insulate himself from various consequences via participating in covert and illegal acts; (3) relate various media reports about him that are irrelevant and unfounded concerning an alleged conspiracy to oust the mayor of Beijing, a plan to video the deputy mayor's private sexual activity, and the payment of millions of dollars to another official who interfered with and investigated his business rivals; and (4) falsely and irrelevantly accuse him of defaming females primarily by implicating them in nonexistent sex acts.

Asserting that in order to bolster their intentional infliction claim, plaintiffs relate in paragraphs 95 through 108 an incident whereby they allege that defendant had them under surveillance in that non-parties, including defendant's son, had dinner in London at the same restaurant as plaintiffs and took photographs of them.

Defendant argues that the intentional infliction claim is duplicative of the defamation claim and must thus be dismissed, and even if not duplicative, it must be dismissed absent an allegation amounting to outrageous conduct. Defendant observes that in contrast to plaintiffs' other three causes of action, their third cause of action does not incorporate into it the rest of the amended complaint and thus, it lacks sufficient facts to state a cause of action. Even if the entire complaint were considered, it does not state a cause of action for intentional infliction, as the majority of the allegations pertains to conduct directed at non-parties. Additionally, none of the alleged statements was made directly to plaintiffs, defendant alleges, and he is not alleged to have harassed plaintiffs personally at the restaurant.

Defendant also maintains that as there is no cause of action in New York for conspiracy to commit a tort, or even for conspiracy, the fourth cause of action must be dismissed.

Relying on CPLR 3024(b), defendant contends that as the aforementioned paragraphs are irrelevant to the claims against him, they too must be dismissed.

B. Plaintiffs (NYSCEF 29)

Plaintiffs deny that their intentional infliction claims are duplicative of their defamation claims, as they are premised on defendant's threats of future bodily harm, continuous surveillance of plaintiffs, and intimidation and harassment.

Their fourth cause of action is valid, they assert, as it constitutes a claim for intentional infliction based on the actions of defendant's co-conspirators, which differs substantially from a

claim of civil conspiracy or conspiracy to commit an uncompleted tort. Rather, they seek to hold defendant liable for his contributions to a common scheme to inflict emotional distress on them. They also deny any obligation to sue one or more of defendant's co-conspirators.

A claim for intentional infliction is stated where, as here, it arises from a campaign of harassment and intimidation, plaintiffs contend. The aggregate of their allegations, including defendant's threat that plaintiffs would be killed, and that defendant engaged in harassment, intimidation, and surveillance plaintiffs, are sufficiently outrageous to state a claim for intentional infliction.

To the extent that defendant argues that plaintiffs' third cause of action fails because they fail expressly to incorporate all prior allegations in the amended complaint, plaintiffs argue that express incorporation of preceding statements is not required, as they are deemed repeated or adopted under the CPLR.

Plaintiffs argue that allegations pertaining to defendant's son and his bodyguards should be considered as they concern conduct for which defendant may be held liable. And, although defendant asserts that his statements, including threats, are not actionable because they were not addressed directly to them, plaintiffs observe that in one of his videos, defendant acknowledges that plaintiffs would receive his threats, and he explicitly "welcomed" any resulting lawsuit. In any event, even if his statements were not directed at plaintiffs, their claim is premised on harassment, intimidation, and surveillance, not just threats and statements.

Plaintiffs assert that their allegations pertaining to defendant's conviction for fraud and other criminal acts should not be stricken, as they are relevant to the motives and intent behind defendant's conduct. They deny that their allegations are scandalous and prejudicial as they have been widely reported on in the media, as evidenced by various news articles concerning the

allegations in the complaint. (NYSCEF 28).

Plaintiffs argue that their allegations do not constitute evidence of propensity as they allege no financial fraud claims.

C. Reply (NYSCEF 30)

In reply, defendant reiterates his arguments.

III. ANALYSIS

A. CPLR 3024(b)

A party may move for an order striking any scandalous or prejudicial matter unnecessarily inserted in a pleading. (CPLR 3024[b]). The determination of such a motion requires inquiry into “whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action.” (*Soumayah v Minnelli*, 41 AD3d 390, 392 [1st Dept 2007]). And, “if the item would be admissible at the trial under the evidentiary rules of relevancy, its inclusion in the pleading, whether or not it constitutes ideal pleading, would not justify a motion to strike under CPLR 3024(b).” (*Soumayah*, 41 AD3d at 393).

Given the liberality with which evidence may be found relevant for admission in evidence at trial (*People v Harris*, 26 NY3d 1, 5 [2015] [relevant evidence is anything that has a “tendency” to prove the existence of a material fact]), and in light of plaintiffs’ intent to provide the background and motives of defendant to explain their action, there is an insufficient basis to strike any of the pleadings here (*see e.g., Meridian Capital v Fifth Avenue 58/59*, 2007 NY Slip Op 33035[U] [Sup Ct, NY County 2007], *affd* 60 AD3d 434 [1st Dept 2009] [denying motion to strike allegations that otherwise constituted inadmissible settlement material, as they were used to establish motive]).

B. CPLR 3211(a)(7)

A pleading may be dismissed for a failure to state a cause of action. (CPLR 3211[a][7]). In deciding the motion, the court must liberally construe the pleading, “accept the alleged facts as true, accord [the non-moving party] the benefit of every possible favorable inference, and determine only whether the alleged facts fit within any cognizable theory.” (*Leon v Martinez*, 84 NY2d 83, 87 [1994]).

1. Conspiracy to intentionally inflict emotional distress

In New York, a plaintiff may not assert an independent cause of action for conspiracy to commit a tort. (*Carlson v Am. Int’l Grp., Inc.*, 30 NY3d 288, 310 [2017]). However, a plaintiff may plead the existence of a conspiracy in order to hold a defendant liable for the actionable tort of another. (*Blanco v Polanco*, 116 AD3d 892, 896 [2d Dept 2014]; *Am. Preferred Prescription, Inc. v Health Mgmt., Inc.*, 252 AD2d 414, 416 [1st Dept 1998]). Thus, plaintiffs’ claim of conspiracy may be asserted with the intention to connect defendant with the actions of third parties, such as defendant’s son. It may not, however, be asserted as a separate cause of action; rather, it is subsumed by plaintiffs’ cause of action for intentional infliction of emotional distress.

2. Intentional infliction of emotional distress

Where the clarity of a pleading is not an issue, as is the case here, prior statements need not be repleaded within the same pleading. (CPLR 3014). Accordingly, all facts alleged in the complaint are considered when adjudicating plaintiffs’ third cause of action.

As plaintiffs concede that defendant’s alleged defamatory statements do not constitute a basis for their intentional infliction claim, the issue of duplicativeness is not addressed. The elements of a cause of action for intentional infliction of emotional distress are: 1) extreme and outrageous conduct, 2) with the intent, or disregard of a substantial likelihood, of causing

severe emotional distress, 3) a causal connection between the conduct and injury, and 4) severe emotional distress. (*Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]). “The conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” (*Id.*, at 122). Allegations of mere threats, no matter how upsetting, are insufficient. (*Kreindler et al.*, New York Law of Torts § 1:38 [14 West’s Prac Series 2014]; *Owen v Leventritt*, 174 AD2d 471 [1st Dept 1991], *lv denied* 79 NY2d 751). To survive dismissal, the plaintiff must allege facts demonstrating a campaign of intolerable conduct. (*See Nader v Gen. Motors Corp.*, 25 NY2d 560, 569 [1970]; *164 Mulberry St. Corp. v Columbia Univ.*, 4 AD3d 49, 56 [1st Dept 2004], *lv denied* 2 NY3d 793; *Seltzer v Bayer*, 272 AD2d 263, 264-265 [1st Dept 2000]).

The high bar imposed on one seeking recovery for this tort is expressed in *Seltzer v Bayer*. There, the plaintiff alleged that the defendant “dumped a pile of cement on the sidewalk in front of his house, tossed lighted cigarettes into his backyard, threw eggs on his front steps, and threatened once to paint a swastika on his house.” (272 AD2d at 265). The Court found that this evidence was not outrageous, observing that the threshold of outrageousness “is so difficult to reach that, of the intentional infliction of emotional distress claims considered by the Court of Appeals, ‘every one has failed because the alleged conduct was not sufficiently outrageous.’” (*Id.* at 264).

The online threat and surveillance, allegedly performed at defendant’s direction and taken together, do not demonstrate a campaign of harassment and intimidation required to state a claim. (*See Foster v Svenson*, 128 AD3d 150, 162–163 [1st Dept 2015] [family that was photographed inside their home by neighbor without knowledge or consent did not state claim

for intentional infliction]; see also *Owen v Leventritt*, 174 AD2d 471, 472 [1st Dept 1991] [defendant’s threat that she would “kill” plaintiff was not actionable as it was made in public meeting which plaintiff did not attend], *lv denied* 79 NY2d 751 [1991] *cf Estreicher v Oner*, 148 AD3d 867, 868 [2d Dept 2017] [counterclaim for intentional infliction stated where the plaintiff was accused of “calling the defendant, his family, and guests ethnic and racial epithets and throwing items onto his property to eventually making threats of violence, making false criminal accusations, committing assault and battery against the defendant, and continuing to engage in threatening and intimidating conduct nearly two months after the physical confrontation”]).

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant’s motion is granted to the extent it seeks dismissal of plaintiffs’ third and fourth causes of action; it is further

ORDERED, that defendant’s motion to strike is denied; it is further

ORDERED, that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED, that the parties appear for a preliminary conference on June 12, 2019 at 2:15 pm at 60 Centre Street, Room 341, New York, New York.

20190405115629B1AFFE6106C0E833F847ED87F96FC8F6766C5B

BARBARA JAFFE, J.S.C.

4/5/2019
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE