Dhillon v Sikh Cultural Socy., Inc.
2019 NY Slip Op 31866(U)
May 15, 2019
Supreme Court, Queens County
Docket Number: 711580/2018
Judge: Ulysses B. Leverett
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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HARBANS SINGH DHILLON,

Plaintiff,

-against-

Index No. 711580/2018

Motion Seq. No.1

THE SIKH CULTURAL SOCIETY, INC., GURDEV SINGH KANG individually, KULDLP S. DHILLON individually, MOHINDER SINGH UPPAL individually, SUKHJINDER SINGH NIJJAR individually, SURJIT SINGH individually, DIDAR SINGH individually, BALWINDER SINGH individually, JATINDER BOPARAI individually, BHUPINDER S. ATWAL individually, and "JOHN DOE," and "JANE DOE," numbers 1 through 10, fictitiously named parties, true names unknown,

DECISION/ORDER

Defendants.

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Present: **HONORABLE ULYSSES B. LEVERETT**:

	Papers Numbered
Notice of Motion.....	----------(1)----------
Memorandum in Support.....	----------(2)----------
Notice of Cross Motion/Affirmation in Opposition....	----------(3)----------
Memorandum in Opposition to Cross Motion.....	----------(4)----------
Memorandum in Reply.....	----------(5)----------

Upon the foregoing papers, the decision and order on this motion is as follows:

Plaintiff, Harbans Singh Dhillon's motion pursuant to Civil Practice Law and Rules (CPLR) §3211(b) and CPLR §3211(a)(5) and (7) to dismiss defendants', The Sikh Cultural Society, Inc., et al ("SCS Defendants"), affirmative defenses from first through the eleventh and their first counterclaim in defendants' answer dated August 21, 2018 is granted in part. SCS Defendants' cross motion pursuant to CPLR §3016(a) and CPLR §3211(a)(7) and (10) to dismiss plaintiff's complaint and grant SCS Defendants' relief demanded in counterclaim is denied without prejudice to renew upon submission consistent with part rules.

Plaintiff commenced this action for defamation on July 26, 2018 for the writing, publishing, and dissemination of an online article with plaintiff's picture on their alleged Facebook group in Punjabi called "Paka America Walla," (PKW) and for allegedly falsely stating that plaintiff was a member of a Hindu terrorist group called Rashtriya Swayamsevak (RSS).

Pursuant to Civil Practice Law and Rules (CPLR) §3211(b), a party may move to dismiss one or more defenses on the ground that a defense is not stated or has no merit. Plaintiff seeks to dismiss all of SCS Defendants' affirmative defenses and counterclaim. In the first affirmative defense, defendants allege that the Court lacks jurisdiction in that service was improperly effectuated. An affidavit of service, proper on its face, is prima facie evidence of service. *See US Bank National Ass'n v. Martinez*, 139 A.D.3d 548 (1st Dept. 2016) and *Baer v. Lipson*, 194 A.D.2d 787 (2d Dept. 1993). Plaintiff has provided affidavits of service for all SCS Defendants, and as conclusory denial are insufficient to rebut the prima facie evidence of service. The first affirmative defense lacks merit.

In the second affirmative defense, defendants allege that the claims in the complaint fail to state any grounds. In a motion to dismiss for failure to state a cause of action "the Court is required to view every allegation of the complaint as true and resolve all inferences in favor of the plaintiff regardless of whether the plaintiff will ultimately prevail on the merits. *See Grand Realty Co. v. City of White Plains*, 125 A.D.2d 639 (2d Dept. 1986). This defense lacks merit because the plaintiff sufficiently stated causes of actions in their pleadings for defamation.

In the third affirmative defense, defendants allege that the damages alleged were caused by the culpable conduct or negligence of the plaintiff. In the fourth affirmative defense, defendants allege that if the damages did occur, the plaintiff failed to mitigate his damages. These defenses lack merit because plaintiff's defamation claim is a strict liability tort for which recovery cannot be had under the principle of negligence. *See Colon v. Rochester*, 307 A.D.2d 742 (4th Dept. 2003).

In the fifth affirmative defense, defendants allege that if they are found to have made any statements toward plaintiff, these statements were not defamatory, libelous or slanderous. In the sixth affirmative defense, defendants allege that if they are found to have made any statements toward plaintiff, these statements were opinions therefore not defamatory, libelous or slanderous. Defamatory statements must be those alleging facts and not opinions. The Courts analyze statements in a three prong test: "(1) whether the specific language has a precise meaning that is readily understood, (2) whether the statements are capable of being proven true or false, and (3) whether the context in which the statement appears signals to readers that the statement is likely to be opinion, not fact." *See Silverman v. Daily News, L.P.*, 129 A.D.3d 1054 (2nd Dept. 2015). Here, the fifth and sixth affirmative defenses are valid asserted defenses to plaintiff's alleged claims.

In the seventh affirmative defense, defendants allege that plaintiff has failed to set forth the precise words as required by the CPLR. Plaintiff set forth a translation of the alleged words (translated from Punjabi):

> "But the Sikh Panth [community] is already aware of Harbans Dhillon, who has been the main accused of Jatt-Lobana [two different castes] infighting. Because of which one lobana young boy was killed for no reason. On the other hand Jatt boys were imprisoned and some ran away to Punjab. And with killing of that innocent boy, Harbans Dhillon became Chaudhary [mayor] of New York."

However, the exhibited English translation was not accompanied by an affidavit stating the translator qualification as required by CPLR §2101(b). *See also Matter of S.A.B.G.*, 47 Misc.3d 812 (Family Court, Nassau County 2014). A merited defense has been stated.

In the eighth affirmative defense, defendants allege that plaintiff fails to state a cause of action for libel, slander and/or injurious falsehood because the complaint fails to state that the defendants acted with malice. In the ninth affirmative defense, defendants allege that plaintiff fails to state a cause of action for injurious falsehood because the complaint fails to state that the defendants published false matters derogatory to the plaintiff's business. To be successful in a defamation action that concerns a private individual and a public matter, a plaintiff must prove that the publisher acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties. *See Knutt v. Metro Intl., S.A.*, 91 A.D.3d 915 (2d Dept. 2012) and *Park v. Capital Cities Communications, Inc.*, 181 A.D.2d 192 (4th Dept. 1992). Constitutional malice is not a requirement unless a private plaintiff is suing a media defendant. *See Matherson v. Marchello*, 100 A.D.2d 233 (2d Dept. 1984). Accordingly, plaintiff is not required to state that SCS Defendants acted with malice or that the alleged statements affected his business.

In the tenth affirmative defense, defendants allege that plaintiff has not properly plead "publication" of any defamatory statement or any kind. Plaintiff claims that SCS Defendants disseminated an online article to thousands of people through Facebook, What's App and Punjabi TV stations however, plaintiff has not provided any evidence to support this claim. Publication of a defamatory statement to a third party is an essential element of defamation. *See Ostrowe v. Lee*, 256 N.Y. 36 (N.Y. 1931) and *Rossignol v. Silvernail*, 146 A.D.2d 907 (3d Dept. 1989). This affirmative defense of publication is of possible merit.

In the eleventh affirmative defense, defendants allege that they do not own, operate, control or have anything to do with the Facebook page "Paka America Walla" and that plaintiff has sued the wrong parties. Plaintiff must prove that defendants published the defamatory statement. This defense is of possible merit for the defendants accused.

Accordingly, defendants' first, second, third, fourth, and ninth affirmative defenses are dismissed for lack of merit.

In the first counterclaim, defendants allege that the plaintiff has commenced a frivolous action against the SCS Defendants, that plaintiff and their counsel have not done their due diligence to insure they have sued the correct parties, and plaintiff is abusing the legal process and using this action to harass the defendants. SCS Defendants seek reimbursement for any and all damages proven at trial, along with the costs and disbursements incurred in defense of this action. However, there is no recognized cause of action for a frivolous lawsuit and defendants counterclaim for such relief is dismissed. See CPLR §8303-a and *Yankee Tails, Inc. v. Jardine Ins. Brokers Inc.*, 145 Misc.2d 282 (Supreme Court, Rensselaer County 1989). Defendants' counterclaim is dismissed for lack of stating a cause of action for which they seek relief.

This Court received SCS Defendants' cross motion and opposition in one document. However, pursuant to the Court's Part 41 Rules, "cross motions shall NOT be considered as opposition to main motions. Papers proffered in opposition to the main motion shall be contained in a standalone document and not subsumed in a cross motion. Likewise, papers proffered in opposition to a cross motion shall be a standalone document and not subsumed in a Reply. Failure to comply with the requirements of this section may result in the rejection of the non-compliant papers."

Accordingly, defendants' cross motion to dismiss plaintiff's complaint is denied without prejudice to renew.

This is the decision and order of this Court.

Dated: May 15, 2019

Ulysses B. Leverett, JSC