

Centrifugal Assoc. Group LLC v Newell Contr., Inc.

2019 NY Slip Op 32615(U)

September 3, 2019

Supreme Court, Kings County

Docket Number: 523703/18

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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CENTRIFUGAL ASSOCIATES GROUP LLC,
Plaintiff,

Decision and order

- against -

Index No. 523703/18

NEWELL CONTRACTING, INC., &
KRZYSZTOF BIELAK,
Defendants,

ms # 3

September 3, 2019

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking to reargue a decision and order dated May 21, 2019 denying default judgement against the defendants and dismissing the second cause of action. The defendant Bielak has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in the prior order the plaintiff, a contractor, hired defendant Newell Contracting as a subcontractor to perform certain work at a job site, located at 1-02 26th Avenue in Queens County. On September 17, 2018 Newell filed a Mechanic's Lien alleging they are owed \$320,000 for work performed that remains unpaid. The plaintiff instituted the instant lawsuit alleging a cause of action for breach of contract and for injurious falsehood alleging Newell did not fulfill its obligations under the subcontractor agreement and that the Mechanic's Lien contained false and damaging information and thus the defendants committed defamation.

The court denied the plaintiff's motion seeking summary

judgement on the grounds no cause of action for defamation could follow based upon the filing of a Mechanic's Lien. Upon reargument the plaintiff notes the cause of action did not seek defamation but rather injurious falsehood which can be based upon an alleged improper filing of a Mechanic's Lien. Based upon reargument the plaintiff seeks summary judgement.

Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]).

The defendant Beilak concedes the proper cause of action for which the plaintiff seeks redress is injurious falsehood. To establish a claim for injurious falsehood the plaintiff must allege statements were published with malice or reckless disregard for the truth, which were false and the plaintiff must allege special damages (see, Restatement of Torts (Second) §623A [1977]). Thus, the plaintiff must present prima facie evidence of special damages with sufficient specificity that were caused by the defendant's conduct (see, Gonzalez v. Village Taxi Corp., 155 AD3d 696, 64 NYS3d 242 [2d Dept., 2017]). The defendant argues the allegations of special damages are too speculative to

support a cause of action for injurious falsehood. However, the plaintiff has alleged specific damages in the loss of at least one identifiable customer. Further, the Complaint specifically delineates the flow of damages from the alleged falsity to the alleged damages that have occurred (see, Sprewell v. NYP Holdings Inc., 1 Misc3d 847, 772 NYS2d 188 [2d Dept., 2003]).

Moreover, the facts of this case may fall within one of the four recognized exceptions where special damages need not be pled. Thus, statements that "tend to injure another in his or her trade, business or profession" are *per se* improper (Liberman v. Gelstein, 80 NY2d 429, 590 NYS2d 857 [1992]). As the court stated in Van Lengen v. Parr, 136 AD2d 964, 525 NYS2d 100 [4th Dept., 1988], "a statement imputing incompetence or dishonesty to the plaintiff is defamatory *per se* if there is some reference, direct or indirect, in the words or in the circumstances attending their utterance, which connects the charge of incompetence or dishonesty to the particular profession or trade engaged in by plaintiff" (*id.*). In Angio-Medical Corp., v. Eli Lilly & Co., 720 F.Supp 269 [S.D.N.Y. 1989] the court applied this exception to the tort of injurious falsehood, also known as trade libel.

There can be little dispute the filing of a Mechanic's Lien and the statements contained therein tend to injure the business of the plaintiff. Thus, even if the Complaint did not plead special damages, there is certainly sufficient evidence at this

stage that the plaintiff is exempt from such requirement.

Therefore, based on the foregoing, the motion seeking reargument is granted and the second cause of action is restored. The better course of action at this juncture is to permit the defendant to file an answer. Therefore, the defendant Bielak will have twenty days from the date of this order in which to serve an answer.

The parties will be notified of a new inquest date concerning the corporate defendant.

So ordered.

ENTER:



DATED: September 3, 2019
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

2019 SEP -4 AM 8:10
KINGS COUNTY CLERK
FILED