

Ram v Morales

2019 NY Slip Op 34024(U)

November 22, 2019

Supreme Court, Nassau County

Docket Number: 610556/19

Judge: Antonio I. Brandveen

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ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: **ANTONIO I. BRANDVEEN**
J. S. C.

DORPATIE RAM,

Plaintiff,

- against -

RUD MORALES,

Defendant.

TRIAL / IAS PART 25
NASSAU COUNTY

Action No. 1

Index No. 610556/19

Motion Sequence No. 001

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2, 3, 4</u>
Answering Affidavits	_____
Replying Affidavits	_____
Briefs: Plaintiff's / Petitioner's	<u>5</u>
Defendant's / Respondent's	<u>6</u>
Efiled documents/exhibits	15, 16

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of
the foregoing papers, this motion is decided as follows:

The underlying action seeks damages resulting from the defendant's alleged willful and deliberate dissemination, at public hearings, of defamatory statements made with the purpose to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of the plaintiff in the minds of right-thinking persons, and to deprive the plaintiff of their friendly intercourse in society.

The plaintiff moves for an order (a) to preliminary enjoining and restraining the defendant, and any persons or entities acting in concert with the defendant pending the hearing

and determination of this proceeding, hereafter permanently from: (I) making any false, defamatory, slanderous and libelous statements of or about the plaintiff to any person, business, governmental entity/agent, community board 12 member, State Liquor Authority or website by the defendant using the defendant's own name or through any third party, (II) from appearing at any public, governmental regulatory hearing, licensing hearing in which the plaintiff or entity of the plaintiff is on the ballot, or calendar, and (III) from altering, deleting, destroying any and all documents, files, cases including but not limited to "FBI Files" the defendant claims to have in the defendant's possession concerning criminal investigations about the plaintiff. The plaintiff also moves for an order to preliminary enjoining and restraining the defendant, and any persons or entities acting in concert with the defendant pending the hearing and determination of this proceeding, hereafter permanently from contacting the plaintiff, the plaintiff's fiancé and the fiancé's business associates.

The defendant opposes the plaintiff's motion. The defense asserts the plaintiff has not shown a likelihood of success on the merits. The defense avers the plaintiff has not established irreparable injury will ensue from denial of a preliminary injunction. The defense further indicates the plaintiff has not shown that the balance of equities is in the plaintiff's favor.

The plaintiff does not satisfy the burden for an order to preliminary enjoining and restraining the defendant, and any persons or entities acting in concert with the defendant pending the hearing and determination of this proceeding, hereafter permanently from: (I) making any false, defamatory, slanderous and libelous statements of or about the plaintiff to any person, business, governmental entity/agent, community board 12 members, State Liquor Authority or website by the defendant using the defendant's own name or through any third party

or (II) from appearing at any public, governmental regulatory hearing, licensing hearing in which the plaintiff or entity of the plaintiff is on the ballot, or calendar. The plaintiff also does not satisfy the burden for an order to preliminary enjoining and restraining the defendant, and any persons or entities acting in concert with the defendant pending the hearing and determination of this proceeding, hereafter permanently from contacting the plaintiff, the plaintiff's fiancé and the fiancé's business associates.

Here, the Court recognizes the role of free speech in this society, and the Judiciary's lengthy acknowledgment that prior restraint on speech and publication could be a serious infringement of constitutional rights (New York Constitution, Art. I, § 8, *see also* U.S. Const. Amend. 1; *see Rosemont Enterprises, Inc. v Irving*, 49 AD2d 445 [1st Dept 1975]). The plaintiff did not provide a likelihood of success on the merits (*see Brummer v Wey*, 166 AD3d 475 [1st Dept 2018]). The plaintiff has not shown the destruction of an ongoing business concern, but a claim of disruption which does not satisfy a claim of irreparable harm which would warrant the issuance of a preliminary injunction (*see Family-Friendly Media, Inc. v Recorder Television Network*, 74 AD3d 738 [2d Dept 2010]). The plaintiff has not shown the balance of equities is in the plaintiff's favor (*see Reuschenberg v Town of Huntington*, 16 AD3d 568 [2d Dept 2005]). Moreover, the plaintiff fails to satisfy the burden for a permanent injunction on any of the plaintiff's requests (*see Aponte v Estate of Aponte*, 172 AD3d [2d Dept 2019]). The plaintiff has an adequate remedy at law concerning post publication damages regarding claims (*see Ramos v Madison Square Garden Corp.*, 257 AD2d 492 [1st Dept 1999]).

However, while the plaintiff failed to satisfy the three prong test for a preliminary injunction and a permanent injunction for the first two branches of the plaintiff's requests, the

plaintiff satisfied the burden for an order for preliminary injunction enjoining and restraining the defendant, and any persons or entities acting in concert with the defendant pending the trial and determination of this plenary action from altering, deleting, destroying any and all documents, files, cases including but not limited to “FBI Files” the defendant claims to have in the defendant’s possession concerning criminal investigations about the plaintiff.

ORDERED that the branch of the motion is DENIED to preliminary enjoining and restraining the defendant, and any persons or entities acting in concert with the defendant pending the hearing and determination of this proceeding, hereafter permanently from making any false, defamatory, slanderous and libelous statements of or about the plaintiff to any person, business, governmental entity/agent, community board 12 members, State Liquor Authority or website by the defendant using the defendant’s own name or through any third party, and it is also,

ORDERED that the branch of the motion is DENIED to preliminary enjoining and restraining the defendant, and any persons or entities acting in concert with the defendant pending the hearing and determination of this proceeding, hereafter permanently from appearing at any public, governmental regulatory hearing, licensing hearing in which the plaintiff or entity of the plaintiff is on the ballot, or calendar, and it is also,

ORDERED that the branch of the motion is GRANTED to preliminary enjoining and restraining the defendant, and any persons or entities acting in concert with the defendant pending the hearing and determination of this proceeding from altering, deleting, destroying any and all documents, files, cases including but not limited to “FBI Files” the defendant claims to have in the defendant’s possession concerning criminal investigations about the plaintiff, and it is

further,

ORDERED that the plaintiff is directed to provide an undertaking in the amount of a \$10,000.00 bond or cash alternative as required by law pending the hearing and determination of this litigation regarding the preliminary injunction on altering, deleting, destroying any and all documents, files, cases including but not limited to "FBI Files" the defendant claims to have in the defendant's possession concerning criminal investigations about the plaintiff.

This foregoing decision constitutes the decision and order of the Court. All applications not specifically addressed are denied.

So ordered.

Dated: **November 22, 2019**

ENTER:



J. S. C.

HON. ANTONIO I. BRANDVEEN
J.S.C.

NON FINAL DISPOSITION

ENTERED
DEC 02 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE