

No Fault N.Y., LLC v Platta

2020 NY Slip Op 31145(U)

April 30, 2020

Supreme Court, New York County

Docket Number: 154477/2019

Judge: Paul A. Goetz

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ

PART

IAS MOTION 47EFM

Justice

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No Fault New York, LLC, et al.,
Plaintiffs,

- v -

Slawomir Platta, et al.,
Defendants.

Table with 2 columns: INDEX NO., MOTION DATE, MOTION SEQ. NO., and DECISION AND ORDER.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 11-14, 24-36 were read on this motion to/for DISMISS

Plaintiffs No Fault New York, LLC d/b/a Orange River Media Marketing, a social media marketing company concentrating on the Polish community, and its members, Magdalena Kulisz and Shahr Kenan, proceeding pro se, commenced this action against defendants Slawomir Platta and his law firm, the Platta Law Firm PLLC, seeking to recover damages based on defendants' failure to pay for services and based on defendants' allegedly defamatory statements regarding the plaintiffs. By order dated November 19, 2019, this court denied plaintiffs' motion for default judgment as moot based on the defendants' filing of a response to the complaint. Defendants now move pursuant to CPLR 3211 to dismiss the complaint. In response to the motion, plaintiffs, who have now retained an attorney, cross-move to reargue their motion for default judgment and for leave to file an amended complaint. Defendants oppose the cross-motion and argue that the motion to amend should be denied because, with the exception of the first and ninth causes of action, the amended complaint lacks merit.

Under CPLR 3211(f), defendants' motion to dismiss extended the plaintiffs' time to amend its complaint and as such, plaintiffs may amend their complaint as of right under CPLR 3025. However, the motion to dismiss is not automatically abated and the moving party has the

option to decide whether its motion should be applied to the amended pleadings. *Fownes Bros. & Co. v. JPMorgan Chase & Co.*, 92 A.D.3d 582 (1st Dep't 2012) (citing *Sage Realty Corp. v. Proskauer Rose LLP*, 251 A.D.2d 35 (1st Dep't 1998)). Here, defendants' opposition to the cross-motion makes it plain that defendants seek to pursue their motion with respect to the amended pleading.

Notably, the amended complaint plaintiffs submit in support of their cross-motion substantially transforms the original complaint by not only adding specific factual allegations, but also removing many of the causes of action in the original complaint, such as the cause of action for intentional infliction of emotional distress, the causes of action for fraud and fraudulent inducement, and for extortion, blackmail and theft. Thus, many of the arguments that defendants asserted in their motion to dismiss are mooted by defendants' amended complaint, which has transformed this case into an action for breach of contract and defamation.

Turning to the substance of the motion to dismiss, defendants argue that, except for the first and ninth causes of action in the amended complaint, the remaining causes of action lack merit. The second cause of action in the amended complaint is based on defendants' alleged breach of August 2018 agreement pursuant to which defendants hired plaintiffs to manage defendant Platt's political campaign for a New York State Senate seat. Plaintiffs were to provide campaign consultancy services and manage campaign operations. Amended Complaint, paras. 23-27 & 11. Plaintiffs allege that defendants breached this agreement by failing to pay plaintiffs for services rendered in August 2018 and seek expectation damages for the money they would have earned had the contract not been terminated by defendants. Defendants argue that plaintiffs are not entitled to expectation damages since they fail to allege that defendants' termination of this contract was improper. Amended Complaint, para. 50. However, reading all the allegations

in the amended complaint as true and drawing all inferences in plaintiffs' favor, as the court must on a motion to dismiss, the allegations in the amended complaint sufficiently allege that the defendants' termination of the contract was improper. *Devash LLC v. German American Capital Corp.*, 104 A.D.3d 71 (1st Dep't 2013). Accordingly, the second cause of action will not be dismissed.

In the third cause of action, plaintiffs assert a *quantum meruit* claim based on the same allegations, averring that they had expectation damages to perform campaign management services for defendants from August 2018 to November 2018. However, as defendants correctly argue, this claim must be dismissed as plaintiffs have failed to allege that they performed any work for defendants after they were terminated in August 2018. *Caribbean Direct Inc. v. Dubset LLC*, 100 A.D.3d 510, 511 (1st Dep't 2012) (in order to establish a claim for *quantum meruit*, plaintiffs must show the performance of services in good faith). Accordingly, the third cause of action will be dismissed.

In the fourth through seventh causes of action, plaintiffs assert claims for libel *per se* based on statements allegedly posted on Facebook disparaging plaintiffs' professional reputations and accusing them of criminal conduct. Amended Complaint, paras. 56-75. Generally, a written statement is considered defamatory *per se* "if it tends to expose a person to hatred, contempt or aversion, or to induce an evil or unsavory opinion of him in the minds of a substantial number of the community." *Geraci v. Probst*, 15 N.Y.3d 336, 344 (2010) (internal citations and quotations omitted). "Damages will likewise be presumed for statements that charge a person with committing a serious crime or that would tend to cause injury to a person's profession or business." *Id.* Here, the alleged statements and images that defendants posted on Facebook disparaged plaintiffs' professional reputation and accused plaintiffs of criminal

conduct. Further, contrary to defendants' contentions, there is insufficient evidence at this point to warrant treating the plaintiffs as limited purpose public figures. In any event, the amended complaint sufficiently alleges that even if plaintiffs were considered limited purpose public figures, the defendants' allegedly defamatory statements were made with malice or a reckless disregard for the truth of these statements sufficient to withstand dismissal even under the higher standard applicable to public figures. *See Rebecca Broadway Ltd. v. Hotton*, 143 A.D.3d 71, 77 (1st Dep't 2016). Accordingly, the fourth through seventh causes of action will not be dismissed.

Plaintiffs' eighth cause of action is based on an August 17, 2018 email defendants allegedly sent to third parties accusing plaintiffs of not only breaching their contract and providing sub-par work, but also being agents of the Mossad, Israel's national intelligence agency, and engaging in criminal conduct by attacking defendants' employees. As discussed above, such allegations are sufficient to state a cause of action for defamation *per se*. *See Martin v. Daily News LP*, 121 A.D.3d 90 (1st Dep't 2014). Accordingly, the eighth cause of action will not be dismissed.

However, the tenth cause of action for slander *per se* must be dismissed. This cause of action is based on the statement of a third-party informing the plaintiffs that she had been warned by defendant Platt to stay away from plaintiffs. Amended Complaint, para. 88. The tenth cause of action fails to identify the speaker, the particular words complained of and specify "the time, the manner and the persons to whom the publication was made". *Rubin v. Napoli Bern Ripka Shkolnik, LLP*, 151 A.D.3d 603, 604 (1st Dep't 2017); *Murphy v. City of New York*, 59 A.D.3d 301, 301 (1st Dep't 2009). Accordingly, the tenth cause of action will be dismissed.

The eleventh cause of action (Amended Compl. Paras. 91-97), asserts a claim against defendants for defamation *per se* based on defendants' filing of a criminal complaint against

plaintiffs and certain statements and images they posted on Facebook regarding plaintiffs' alleged criminal conduct. Defendants have not asserted any arguments with respect to the eleventh cause of action. Accordingly, the eleventh cause of action will not be dismissed.

The twelfth cause of action, improperly labeled the eleventh cause of action, in the amended complaint (Amended Compl. Paras. 98-101), asserts a claim for tortious interference with prospective business relations. Likewise, the thirteenth cause of action, improperly labeled the twelfth cause of action (Amended Compl. Paras. 102-106), asserts a claim for tortious interference with business relations. However, plaintiffs have failed to plead a specific relationship with an identified third-party that has been breached. *Mehrhof v. Monroe-Woodbury Central School District*, 168 A.D.3d 713, 714 (2d Dep't 2019). Accordingly, the twelfth and thirteenth causes of action must be dismissed.

The fourteenth cause of action, improperly labeled the thirteenth cause of action (Amended Compl. Paras. 107-111), alleges that defendants violated the City Human Rights Law by filing false criminal complaints against plaintiffs with the police, putting plaintiffs at risk of deportation. However, plaintiffs have failed to allege which provision of the City Human Rights Law has been violated. Accordingly, the fourteenth cause of action will be dismissed.

Finally, plaintiffs' cross-motion to reargue its prior motion for a default judgment must be denied as it is completely lacking in merit.

Accordingly, it is


ORDERED that the motion to dismiss is granted to the extent that the tenth cause of action, the twelfth cause of action (improperly labeled 11th cause of action in the amended complaint paras. 98-101), the thirteenth cause of action (improperly labeled 12th cause of action in the amended complaint paras. 102-106), and the fourteenth cause of action (improperly

labeled 13th cause of action in the amended complaint paras. 107-111), in the amended complaint are dismissed, and is otherwise denied; and it is further

ORDERED that the cross-motion to reargue is denied; and it is further

ORDERED that defendants shall file an answer to the remaining causes of action in the amended complaint within ten days of service of notice of entry of this order and the lifting of the restriction to filings in essential function matters only.

4/30/20
DATE


PAUL A. GOETZ, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE