

Wengui Guo v Guan Liang
2020 NY Slip Op 31883(U)
June 16, 2020
Supreme Court, New York County
Docket Number: 151428/2018
Judge: W. Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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WENGUI GUO

Plaintiff,

- v -

GUAN LIANG,

Defendant.

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INDEX NO. 151428/2018

MOTION DATE 02/15/2019

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is granted.

Plaintiff commenced this action alleging that defendant defamed him by disseminating falsehoods to ruin his reputation. According to plaintiff, defendant's attacks on him were directed and orchestrated by the Chinese government and the Chinese Communist Party to destroy his personal life and standing in the community, thereby under-mining his efforts to bring the rule of law to China and expose Chinese corruption at the highest levels of government.

Plaintiff alleges that beginning in August 2017, defendant organized public protest rallies, designed to threaten him with violence, cause him harm, create anxiety and cause distress.

Plaintiff claims that during those rallies, defendant publicly, recklessly called him a liar, criminal, and a rapist. Defendant also stated that plaintiff had engaged in immoral personal activities and conducted illegal business practices. In addition to defendant's speeches at the rallies, plaintiff stated that defendant recruited members of the public to hold posters and distribute palm-cards reiterating defendant's statements about plaintiff.

Plaintiff also claims that defendant held a “press conference” during which, defendant repeated his defamatory statements about him and then published a video of the event to various internet sites.

Defendant now makes this pre-answer to dismiss the complaint and the three causes of action pleaded therein for defamation, defamation *per se*, and intentional infliction of emotional distress.

Defendant argues that the complaint fails to state a cause of action for defamation as a matter of law. Specifically, defendant asserts that, (1) the alleged defamatory statements attributed to him are non-actionable expressions of opinion that cannot support a cause of action for defamation, (2) even if the alleged defamatory statements could be construed in whole or in part as statements of fact, plaintiff is, by his own admission, a limited purpose public figure who must, yet cannot, plead facts showing actual malice by defendant and, (3) that the complaint demonstrates that alleged defamatory statements were made in response to plaintiff’s repeated public attacks in the media regarding China and China’s elected officials.

Defendant also states that because plaintiff was actually convicted of criminal fraud in China and imprisoned for two years and is presently being sued in China and the United States for financial fraud, his words regarding these facts cannot be deemed defamatory.

According to defendant, in order to plead actual malice, plaintiff must allege that defendant’s statements were made with knowledge or reckless disregard of their falsity and not just out of spite, hostility or an intention to harm plaintiff. He argues that the complaint fails to meet these threshold requirements.

Defendant states initially that because plaintiff was actually convicted of criminal fraud in China and imprisoned for two years and is presently being sued in China and the United States for

financial fraud, his words could not be deemed defamatory and the fact that plaintiff is subject to two Interpol “Red Notices” (International Arrest Warrants) further shows that his statements cannot be defamatory

Defendant further argues that the complaint is facially deficient for its failure to plead special damages. Defendant claims that plaintiff’s conclusory assertions that he has suffered mental anguish, emotional distress, and harm to his reputation do not meet the requirement that he plead facts showing economic or monetary loss as a result of the alleged defamatory statements.

Finally, defendant states that the third cause of action for intentional infliction of emotional distress is deficient on its face, as a matter of law and, in any event, cannot be based on the same facts as a cause of action for defamation and therefore must be dismissed as duplicative

In opposition to the motion, plaintiff argues that he has, in fact, properly stated a cause of action for defamation. Plaintiff argues that defendant’s statements, if proven false, form the predicate for a maintainable defamation action. *Gross v. New York Times*, 82 NY2d 146 (1993). Plaintiff states that the complaint is sufficient, as the contested statements therein are reasonably susceptible of a defamatory connotation and that a reasonable view of the complaint satisfies the legal mandate for such pleading. *Davis v. Boenheim*, 24 NY3d 252 (2014).

Plaintiff argues that the statements alleged in the complaint and his affidavit show that the defaming words are far beyond mere name calling or general insults. He asserts that defendant’s statements are not the innocent expression of defendant’s political opinion. An opinion that “implies that it is based upon facts which justify an opinion but are unknown to those reading or hearing it, is a ‘mixed opinion and is actionable.” As in this matter, plaintiff states that defendant’s statements implied that defendant had information unknown to others which appeared to justify his statements and appeared “well placed to have information about the charges” and the context from

which he spoke suggested that he “spoke with authority that his statements were based on facts. *Bach v. Congregation Yetev Lev D’Satmar, Inc.*, 265 AD2d 360 (1999).

Plaintiff states that defendant organized the rallies, protests and the press conference representing himself as someone with direct knowledge of plaintiff’s character and personal knowledge of the alleged criminal acts committed by plaintiff in China. Moreover, plaintiff asserts that defendant’s defamatory statements were orchestrated and directed by the Chinese government and the Chinese Communist Party in an effort to destroy his reputation and undermine his efforts to expose Chinese corruption and bring the rule of law in China.

Plaintiff argues that defendant’s statements were not akin to those emerging from a “heated political debate”, where the listeners were cognizant of the controversy between the parties beforehand and were given the opportunity to participate in the event. *Melius v. Glacken*, 24AD3d 959 (2012). Here, plaintiff states that it cannot be assumed that the audience had knowledge of the veracity of defendant’s defamatory statements and thus could only believe what they heard and read as true.

Plaintiff asserts that distinguishing between facts and opinion, is a question of law for the court and that a “reasonable reader” could conclude that defendant’s statements conveyed facts about him. Therefore, the defamatory statements made by defendant that plaintiff is a liar, criminal and rapist are actionable.

Defamation is “the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace or induce an evil opinion of him the minds of right-thinking persons and to deprive him of their friendly intercourse in society” *Foster v. Churchill*, 87 NY2d 744 (1996). To prove a claim for defamation, a plaintiff must show: (1) a false statement that is (2) published to a third party (3) without privilege or authorization, and that (4) causes harm

(see, *Dillon v. City of New York*, 261 AD2d 34 (1999)). Because the falsity of the statement is an element of the defamation claim, the statement's truth or substantial truth is an absolute defense (see, *Konrad v. Brown*, 91 AD3d 545 (2012)). On a motion to dismiss a defamation claim, the court must decide whether the statements, considered in the context of the entire publication are "reasonably susceptible of a defamatory connotation," such that the issue is worthy of submission to a jury. *Silsdorf v. Levine*, 59 NY2d 8 (1983). Defendant states that plaintiff has not sufficiently pled this claim.

In the case at bar, plaintiff has sufficiently pled a claim for defamation which withstands this motion to dismiss under CPLR 3211 (7)(a). Plaintiff has shown that the within contested statements are reasonably susceptible of a defamatory connotation. *Weiner v. Doubleday & Co.*, 74 NY2d 586 (1989). In making this determination, the court has given the disputed language a fair reading in the context of its publication as a whole. The court has also given the language a natural reading, tested against the understanding of the average reader. *Aronson v. Wiersma*, 65 NY2d (1985). Based on the court's finding, the issue of whether the statements are defamatory are worthy of submission to a jury. The court has considered the content of the words as a whole, their tone and their apparent purpose and the court has reviewed the over-all context of the words. *Brian V. Richardson*, 87 NY2d 46 (1995).

Here, defendant's words purport to carry authority, suggesting to the average reader/listener the words were based on facts undisclosed to such listener. Further, if the court accepts defendant's argument that his words were merely opinion, an opinion that "implies that it is based upon facts which an opinion but are unknown to those reading or hearing it ... is a 'mixed opinion' and is also actionable". *Davis supra*.

Defendant is considered to be a Chinese activist. He is the president of the East American Chinese Association and the president of New York Confederation of Chinese Associations. By virtue of these titles, a reasonable listener could infer that defendant's words carry great weight, authority, and importance, especially when the words relate to alleged criminal behavior in China, the home country of the parties and the intended listeners.

As stated above, in the case at bar, it cannot be assumed that defendant's audience had knowledge of the veracity his statements. These statements were not made in private, but made to an audiences at protest rallies, and to the press, where those who attend did not know the basis of defendant's statements. Contrary to defendant's arguments, the alleged defamatory statement attributed to him are actionable and support a cause of action for defamation. Even if such defamatory statements were to be ultimately construed in whole or in part as statements of fact, plaintiff has satisfactorily pled those facts to support his claim. Specifically, defendant's statements in news interviews wherein he claims to have personal knowledge of acts and deeds regarding plaintiff, which by the way is not true, gives rise to a claim of actual malice.

The complaint also demonstrates that the alleged defamatory statements were not merely made in response to plaintiff's public remarks regarding his criticism of China and its elected officials, but perhaps arise out of another motive. Just because plaintiff was arrested and convicted of crimes in China, does not mean that all of defendant's statements related to such information cannot be held to be defamation.

Based upon the aforementioned, the court finds that plaintiff has sufficiently stated a cause of action for defamation.

The complaint also states a cause of action for defamation *per se* arising out of defendant's statements made at the rallies, protests and on posters and placards calling plaintiff a "rapist",

Sovik v. Healing Network, 244 AD2d 985 (1997); *Gottwald v. Geragos*, 2017 NY Misc. Lexis 1424 (2017). Likewise, defendant's statements referring to plaintiff as a liar and criminal also give rise to a cause of action for defamation *per se*. These words have been held to affect a person in his or her profession by imputing to him any kind of fraud, dishonesty, misconduct, or unfitness in conducting one's profession and therefore may be actionable. *Affrex, Ltd v. General Elec. Co.*, 161 AD2d 855 (1990); This has been held to be especially true in the context of a pre-answer to dismiss, where it was held that "in the absence of a more complete record, a statement that the plaintiff was a "thief" in his business dealings could be actionable and should not have been dismissed on a 3211(a)(7) motion to dismiss. *Suarez v. Angelet*, 90 AD3d 906 (2011). As defendant's statements amount to defamation *per se*, there is no need to prove special damages. The law presumes that the making of such statements inflict harm to plaintiff's reputation entitles the defamed plaintiff to damages. *November v. Time Inc.*, 175NY2d 175 (1963).

Finally, that portion of the motion requesting that plaintiff's cause of action for intentional infliction of emotional distress be dismissed is granted. Plaintiff's complaint has not demonstrated the required level of extreme outrageousness needed to state such a cause of action, see *Se Sesto v. Slaine*, 171 F. Supp.3d 194 (S.D.N.Y. 2016). The court further finds that this cause of action is duplicative of the first cause of action, as it repeats and realleges all of the prior allegations in the complaint and does not add any new allegations to this third cause of action.

Defendant's motion to dismiss is denied to the extent that plaintiff's cause of action for intentional infliction of emotional distress is granted.

This constitutes the decision and order of the Court.

6/16/20 DATE	 W. FRANC PERRY, J.S.C.																									
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