

**Milici v NYP Holdings, Inc.**

2020 NY Slip Op 34069(U)

July 10, 2020

Supreme Court, New York County

Docket Number: 156633/2019

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

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MICHAEL MILICI and JAMES GRANT,

Index No. 156633/2019

Plaintiffs

- against -

DECISION AND ORDER

NYP HOLDINGS, INC. d/b/a NEW YORK  
POST, SHAWN COHEN, JOHN and JANE DOES  
1-3,

Defendants

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LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiffs sue to recover damages for libel in articles published by defendant NYP Holdings, Inc. d/b/a New York Post, about a federal criminal prosecution against plaintiffs.

Defendant Cohen authored the articles published April 16 and June 24, 2016. The New York Post and Cohen move to dismiss the complaint based on documentary defense, expiration of the applicable statute of limitations, and failure to state a claim.

C.P.L.R. § 3211(a)(1), (5), and (7). In a stipulation dated December 16, 2019, plaintiffs conceded that the applicable statute of limitations bars claims arising from the two articles Cohen authored, a second article published June 24, 2016, and

articles published June 26, 2016, and May 1, 2018. C.P.L.R. § 215(3). For the reasons explained below, the court grants defendants' motion to dismiss the claims arising from the final two articles published November 5 and 8, 2018.

## II. THE CLAIMED LIBELOUS ARTICLES

Regarding the article published November 8, 2018, plaintiffs fail to allege defendants' specific defamatory words as required by C.P.L.R. § 3016(a), Offor v Mercy Med. Ctr., 171 A.D.3d 502, 503 (1st Dep't 2019); Shawe v. Kramer Levin Naftalis & Frankel LLP, 167 A.D.3d 481, 483 (1st Dep't 2018); LoFaso v. City of New York, 66 A.D.3d 425, 426 (1st Dep't 2009); BCRE 230 Riverside LLC v. Fuchs, 59 A.D.3d 282, 283 (1st Dep't 2009), or the essential facts showing defendants' statements exposed plaintiffs "to public contempt, ridicule, aversion or disgrace, . . . or an evil opinion" of them or deprived them of "friendly intercourse in society." Frechtman v. Gutterman, 115 A.D.3d 102, 104 (1st Dep't 2014); Dillon v. City of New York, 261 A.D.2d 34, 37-38 (1st Dep't 1999) (citations omitted). See Thomas H. v. Paul B., 18 N.Y.3d 580, 584 (2012); Sandals Resort Intl. Ltd. v. Google, Inc., 86 A.D.3d 32, 38 (1st Dep't 2011).

Plaintiffs allege that the article dated November 5, 2018, defamed them by falsely stating that federal prosecutors "will

also call to the stand Gabi Grecko, the hooker on the plane, who is expected to tell the jury she performed sex acts on" plaintiffs. Aff. of Joel Kurtzberg Ex. 1 (V. Compl.) Ex. F, at 2. A statement of an opinion is not actionable as defamation. Stega v. New York Downtown Hosp., 31 N.Y.3d 661, 674 (2018); Davis v. Boenheim, 24 N.Y.3d 262, 269 (2014); Steinhilber v. Alphonse, 68 N.Y.2d 283, 289 (1986). An expectation of what may occur is a non-actionable prediction that does not convey actual facts and thus equates to an opinion, Immuno AG. v. Moor-Jankowski, 77 N.Y.2d 235, 255 (1991); Shawe v. Kramer Levin Naftalis & Frankel LLP, 167 A.D.3d at 482, even if the prediction does not subsequently occur. Shawe v. Kramer Levin Naftalis & Frankel LLP, 167 A.D.3d at 482. Thus, stating the expectation of Grecko's testimony about her sexual acts with plaintiffs does not convey actual facts and equates to an opinion.

When an opinion implies that it is based on facts that justify the opinion, but are undisclosed to the reader, the statement may be actionable as mixed opinion and fact, not because the opinion may be defamatory, but because it implies that the author knows facts unknown to the reader that support the opinion and are defamatory. Davis v. Boenheim, 24 N.Y.3d at 269; Gross v. New York Times Co., 82 N.Y.2d 146, 153-54 (1993);

Glazier v. Harris, 99 A.D.3d 403, 404 (1st Dep't 2012). The opinion about Grecko's expected testimony, however, does not imply that it is based on undisclosed facts. Steinhilber v. Alphonse, 68 N.Y.2d at 289-90; Frechtman v. Gutterman, 115 A.D.3d at 105-106; Sandals Resorts Intl. Ltd. v. Google, Inc., 86 A.D.3d at 43. To the extent that the hyperlink to the article published June 26, 2016, constitutes implied facts, it constitutes disclosed facts rendering the statement an opinion. Sandals Resorts Intl. Ltd. v. Google, Inc., 86 A.D.3d at 43.

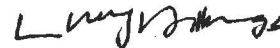
Plaintiffs maintain that the article published November 5, 2016, implies an unknown source for Grecko's expected testimony, but an unknown source is not a fact detrimental to plaintiffs as required to show an actionable mixed opinion. Davis v. Boheim, 24 N.Y.3d at 269; Steinhilber v. Alphonse, 68 N.Y.2d at 289; Frechtman v. Gutterman, 115 A.D.3d at 106; Sandals Resorts Intl. Ltd. v. Google, Inc., 86 A.D.3d at 40. Plaintiffs' allegations regarding a relationship between Cohen and Grecko that influenced his articles and subsequently caused Cohen to be fired do not affect the status of the defamatory statement as an opinion.

### III. CONCLUSION

Consequently, the court grants the motion by defendants NYP Holdings, Inc. d/b/a New York Post, and Cohen to dismiss

plaintiffs' claims as follows. The statute of limitations bars the claims based on the articles dated April 16, June 24, and June 26, 2016, and May 1, 2018. C.P.L.R. §§ 215(3), 3211(a)(5). The allegations based on the article published November 8, 2018, fail to state a claim because they do not specify a defamatory statement. C.P.L.R. §§ 3016(a), 3211(a)(7). The allegations based on the article published November 5, 2018, fail to state a claim because the alleged defamatory statement is an opinion. C.P.L.R. § 3211(a)(7). This decision constitutes the court's order and judgment. The Clerk shall enter a judgment accordingly.

DATED: July 10, 2020




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LUCY BILLINGS, J.S.C.

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J.S.C.