

Levine v Saah
2020 NY Slip Op 34180(U)
December 18, 2020
Supreme Court, New York County
Docket Number: 151119/2020
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE

PART

IAS MOTION 12

Justice

VANESA LEVINE.

Plaintiff,

- v -

INDEX NO. 151119/2020

MOTION DATE

MOTION SEQ. NO. 001

FARIS SAAH, HARVARD CLUB OF NEW YORK
CITY

**DECISION + ORDER ON
MOTION**

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4-8, 12, 15-18, 42-46

were read on this motion for injunctive relief

By order to show cause, plaintiff seeks an order requiring Stephen P. Younger, Esq., secretary of the board of trustees of defendant Harvard Club of New York City, to cease and desist and be restrained throughout the course of this case from sending “friend” requests through social media and having contact and/or in any way communicating or attempting to contact with or violate plaintiff’s privacy. Defendant Club opposes.

By summons and verified complaint, plaintiff alleges, as pertinent here, that she was a member of Club, and on February 6, 2019, she attended a lecture there. After posing a question to the lecturer, she was “subjected to a mob-like environment,” assaulted, and slandered. Thereafter, Club held an expulsion hearing, over which Younger presided, and she was expelled. She brings this action alleging, *inter alia*, fraud, deceit, and breach of fiduciary duty. (NYSCEF 5).

By affirmation dated, March 6, 2020, plaintiff's counsel states, based on his review of his law office's case file, that on March 2, 2020, Younger sent plaintiff a friend request on

Facebook. He includes in his affirmation, an email to him from plaintiff in which she states that she received the friend request, and that

[s]eeing his face and receiving his request was and is shocking and very upsetting. Why does he want to be my friend? I don't want to hear from him. I feel spied upon. I recall you telling me that you asked the club's lawyers not allow him to contact me anymore. Why is he continuing to do this? Please ask him to stop, he is stressing me out.

Plaintiff's counsel contends Younger's email is impermissible, and that as he was "instrumental" in expelling plaintiff from Club, he has no legitimate reason to send her a friend request. He further states that in April 2019, while Club was represented by counsel to investigate the events of February 6, 2019, Younger contacted plaintiff, even though she was represented by counsel. Counsel states that he contacted Club's counsel and asked that Younger cease contacting plaintiff. In September 2019, counsel contacted Club's counsel and asked that there be no further contact between Younger and plaintiff. Younger then sent plaintiff the friend request. Counsel maintains that Younger's contact violates the rules of professional conduct and that he should be ordered to cease and desist and be restrained from contacting her in the future. (NYSCEF 4).

On March 9, 2020, Younger was temporarily restrained from sending friend requests through social media, or from contacting plaintiff. (NYSCEF 12). By decision and order dated May 20, 2020, the action and motion were deemed disposed as the action was removed to federal court. (NYSCEF 16).

After this action was remanded back to this court, by order dated December 2, 2020, plaintiff's motion was restored to the calendar. (NYSCEF 40).

By affirmation dated December 11, 2020, Club's counsel opposes the motion, and contends that while Younger is a member of Club and serves as one of its board members and vice presidents, he is not a party to this action, and thus, the motion is improper. Moreover,

counsel maintains that the friend request was inadvertent and was withdrawn. Counsel attaches an undated affirmation from Younger in which he states that plaintiff has made disparaging posts on Facebook concerning Club and its members, and in February or March 2020, he viewed plaintiff's publicly accessible Facebook page to review the posts. In doing so, he unknowingly and inadvertently friend requested plaintiff. He maintains that he did it unintentionally, he did not message her, and after being contacted by a reporter concerning the friend request, he withdrew it. He claims he never received a request from plaintiff or her counsel asking him to withdraw the friend request, and maintains that he has no intention to communicate with plaintiff in the future. (NYSCEF 43). Counsel contends that nine months have elapsed since plaintiff filed her order to show cause, and there has been no communication between Younger and plaintiff. He denies that there is a threat of irreparable harm, given that the friend request was withdrawn and Younger states that he will not communicate with plaintiff in the future. The balancing of the equities likewise requires denial of the motion, as Younger is a prominent attorney whose reputation would be questioned should the injunction be granted. (NYSCEF 42).

When seeking preliminary injunction, the movant must “show a probability of success, danger of irreparable injury in the absence of an injunction, and a balance of the equities in their favor.” (*Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862 [1990]). In support of her application, the movant must submit an affidavit demonstrating “that there is a cause of action, and either that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual.” (CPLR 6312[a]).

Instead of a supporting affidavit from plaintiff, counsel submits an affirmation that is based solely based on a review of his file and not on personal knowledge. (*See Feratovic v Lun*

Wah, Inc., 284 AD2d 368, 368 [2d Dept 2001] [attorney affirmation not based on personal knowledge without evidentiary value]).

Even had the motion been properly supported by an affidavit based on personal knowledge, plaintiff fails to demonstrate that the issuance of an injunction is warranted. Plaintiff must establish that the irreparable is “imminent, not remote or speculative.” (*Family-Friendly Media, Inc. v Recorder Television Network*, 74 AD3d 738, 739 [2d Dept 2010], quoting *Golden v Steam Heat, Inc.*, 216 AD2d 440, 442 [2d Dept 1995]). As Younger’s friend request is the sole alleged attempt at “communication” with plaintiff, and the sending of a single, now withdrawn, friend request does not constitute an attempt to harass or communicate with plaintiff, it is hereby

ORDERED, that plaintiff’s motion for injunctive relief is denied.

12/18/2020

DATE

CHECK ONE:

☐

CASE DISPOSED

☐

GRANTED

☒

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

20201218133803BBAFFE6805121BA33E4DAFAEAE8D8476626953

BARBARA JAFFE, J.S.C.