

Burnette v Anson

2020 NY Slip Op 35242(U)

January 31, 2020

Supreme Court, Dutchess County

Docket Number: Index No. 52818/2016

Judge: Christi J. Acker

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the 30-day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

-----X
MARY BURNETTE,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 52818/2016

LAURA ANSON and GEORGE CONANT,

Defendants.

-----X
ACKER, J.S.C.

The following papers, numbered 1 to 25, were read on Defendant Laura Anson’s (“Defendant Anson”) motion for the following relief: (1) an Order granting consolidation of this action along with Defendant Anson’s Ulster County Action; (2) an Order pursuant to CPLR §3103 prohibiting Plaintiff from disseminating the discovery materials or from posting such materials on the internet or on other social media; and (3) an Order sanctioning Plaintiff’s counsel for frivolous conduct:

Notice of Motion-Affirmation of Russell A. Schindler, Esq.-Exhibits A-I..... 1-11
Affirmation in Opposition of Thomas F. Vasti, III, Esq.-Exhibits 1-13..... 12-25

Given that this is the tenth motion made in the instant matter, familiarity with the history of this action is assumed for purposes of this Decision and Order. Initially, the Court notes that the parties have consented to the consolidation of this matter with the matter of *Laura Anson v. Mary Burnette*, Ulster County Supreme Court, Index No. 18-3657. By Order of Consolidation

dated August 20, 2019, the Court ordered that the Ulster County action was consolidated with the instant action, which would retain the same caption. It was further ordered that Defendant Anson's cause of action for malicious prosecution would be deemed a counterclaim against Plaintiff Mary Burnette ("Plaintiff"). As such, Defendant Anson's motion for consolidation is denied as moot.

The remainder of relief requested by Defendant Anson is denied. After the motion was briefed and prior to issuing this Decision and Order, the Court engaged in numerous conferences with parties and counsel seeking a mutual agreement that all parties would refrain from publicly discussing this case on social media platforms, websites and public access television. Although there appeared to be progress toward such an agreement, it was ultimately determined that the Court should issue a decision on Defendant Anson's request for a protective order.

The Court previously entertained a similar request for relief from Plaintiff that sought, *inter alia*, an injunction restraining Defendant George Conant ("Defendant Conant") from making offensive and defamatory comments about Plaintiff. By Decision and Order dated December 20, 2018 ("December 20, 2018 Order"), Plaintiff's request for this relief was denied because she had not met the high burden necessary for restraint of speech. *See, e.g., Dennis v Napoli*, 2015 WL 4885340, *10 [Supreme Court, NY County 2015].

In the instant motion, Defendant Anson moves for the requested relief pursuant to CPLR §3103(a). That section provides that "[t]he court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device [emphasis added]." Notably, Defendant Anson is not seeking a protective order regarding the

use of any disclosure device. Instead, she seeks to enjoin Plaintiff from posting about this case on Facebook and various websites and also from e-mailing Defendant Anson's parents and non-party Jules Taylor. As the requested relief does not implicate the use of a disclosure device within the meaning of CPLR §3103(a), Defendant Anson's request for relief under that section is denied.

Moreover, even considering Defendant Anson's requested relief without reference to CPLR §3103(a), such relief would be denied for the same reasons that Plaintiff's similar requests were denied in the December 20, 2018 Order. The allegations detailed by Defendant Anson in the instant application do not rise to the level which would warrant the restraint of Plaintiff's speech and actions.¹

Finally, Defendant Anson also seeks sanctions against Plaintiff's counsel, Thomas F. Vasti, III, Esq., for frivolous conduct. Defendant Anson alleges that Mr. Vasti has knowingly asserted material factual statements that are false, in contravention of Rule 3.1(b)(3) of the Rules of Professional Conduct (22 NYCRR 1200.0). Upon reviewing the factual allegations in support of the motion and Mr. Vasti's extensive submissions in opposition, the Court finds that Defendant Anson has not demonstrated that Mr. Vasti asserted material factual statements that are false. Therefore, Defendant Anson's motion for sanctions is denied.

Accordingly, it is hereby

ORDERED that Defendant Anson's motion for consolidation is denied as moot; and it is

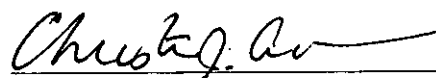
¹ The Court, again, strongly recommends that the parties come to a mutual agreement that during the pendency of this action, they shall cease and desist from publicly disseminating information about this case on social media, public access television and/or other internet platforms, or through e-mail correspondence with non-parties. The Court has also previously recommended that the parties not contact any witnesses identified by opposing parties, other than during depositions. See EN 4 December 20, 2018 Order.

further,

ORDERED that the remainder of Defendant Anson's motion is DENIED.

The foregoing constitutes the Decision and Order of the Court.

Dated: Poughkeepsie, New York
January 31, 2020



CHRISTI J. ACKER, J.S.C.

To: To all parties via ECF