Cieszkowski v Baldwin
2021 NY Slip Op 30622(U)
March 3, 2021
Supreme Court, New York County
Docket Number: 153324/2019
Judge: David Benjamin Cohen

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN **PART** IAS MOTION 58EFM

Justice

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WOJCIECH CIESZKOWSKI,

Plaintiff,

- v -

ALEXANDER BALDWIN III,

Defendant.

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INDEX NO. 153324/2019

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for DISMISS.

In this action sounding, inter alia, in assault and battery, plaintiff Wojciech Cieszkowski moves, pursuant to CPLR 3211(a)(1) and (a)(7), to dismiss the counterclaims for false imprisonment and defamation asserted by defendant Alexander Baldwin III. After a review of the parties' contentions, as well as the relevant statues and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case are summarized in the order of this Court entered December 26, 2019. Doc. 36. Additional relevant facts are set forth below.

On November 2, 2018, the defendant, an actor known professionally as Alec Baldwin, got into an altercation with the plaintiff over a parking space. The incident occurred when the plaintiff pulled into a parking spot for which the defendant maintained he was waiting. The defendant, who claims that he believed that his wife and child were standing in the spot, approached the plaintiff, and the men engaged in a physical and verbal confrontation. The

plaintiff alleges that the defendant shoved him hard and then punched him in the jaw. The defendant claims that he pushed the plaintiff lightly in the chest twice while they were shouting in each other's faces. As a result of the incident, the defendant was charged with attempted assault in the third degree under Penal Law §§ 110 and 120.00(1), as well as harassment in the second degree under Penal Law § 240.26(1). On January 23, 2019, the defendant pleaded guilty to harassment pursuant to Penal Law § 240.26(1). The assault charge has since been dropped.

Once the police arrived, the plaintiff informed them that the defendant had punched him in the jaw. The defendant was then arrested and detained for several hours while the plaintiff went to the hospital for treatment. The plaintiff informed the hospital staff that he had been assaulted and punched in the face during an argument over a parking spot. A physical examination revealed that the plaintiff had no bruises, cuts, or fractures, and he was told to go home and take a Tylenol. The plaintiff subsequently spoke to the *New York Daily News* and *New York Post*, telling reporters that he was still sore and recovering from the incident.

The plaintiff commenced the captioned action by filing a summons and complaint on March 31, 2019, alleging assault, battery, and slander per se. Doc. 1. On May 17, 2019, the plaintiff amended his complaint to allege that he was entitled to costs, attorneys' fees, and punitive damages. Doc. 15.

On November 1, 2019, the defendant commenced an action against the plaintiff in this Court under Index Number 160689/10, alleging false imprisonment and defamation *per se*. See Ind. No. 160689/19, Doc. 1. By so-ordered stipulation entered January 9, 2020, the captioned action commenced by the plaintiff and the action commenced by the defendant were consolidated for all purposes under the Index Number of the captioned action. Doc. 40.

The defendant joined issue by his verified answer filed January 31, 2020. Docs. 42, 44.

By stipulation filed February 3, 2020, the plaintiff's time to respond to the defendant's complaint was extended until February 21, 2020. Doc. 43. In lieu of answering, the plaintiff moved to dismiss the defendant's claims for false imprisonment and defamation *per se*, which claims had originally been asserted in the defendant's complaint under Index Number 160689/19. Doc. 46.[1]

LEGAL CONCLUSIONS

Standard On Motion To Dismiss

When deciding a motion to dismiss pursuant to CPLR 3211, the court should give the pleading a "liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference" (*Landon v Kroll Laboratory Specialists, Inc.*, 22 NY3d 1, 5-6 [2013]; *Faison v Lewis*, 25 NY3d 220 [2015]). However, if a complaint fails within its four corners to allege the necessary elements of a cause of action, the claim must be dismissed (*Andre Strishak & Associates, P.C. v Hewlett Packard & Co.*, 300 AD2d 608 [2d Dept 2002]). A motion to dismiss pursuant to CPLR 3211(a)(1) should not be granted unless the documentary evidence submitted is such that it resolves all factual issues as a matter of law and conclusively disposes of the claims set forth in the pleading (*Art & Fashion Grp. Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014]). Under CPLR 3211(a)(7), the court "accepts as true the facts as alleged in the complaint and affidavits in opposition to the motion, accords the plaintiff the benefit of every possible favorable inference, and determines only whether the facts as alleged manifest any cognizable legal theory" (*Elmaliach v Bank of*

[1] The plaintiff refers to the claims asserted by the defendant as counterclaims, and, although not denominated as such by the stipulation of consolidation, this Court adopts that terminology. (*See All Season Awning Corp. v Hartofelis*, 51 Misc3d 132[A] [App Term 2d Dept 2016] [where actions commenced by plaintiff and defendant were consolidated under plaintiff's Index Number, defendant's action was deemed a counterclaim]).

China Ltd., 110 AD3d 192, 199 [1st Dept 2013] [quoting *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]).

False Imprisonment

In his first counterclaim, for false imprisonment, the defendant alleges that, by calling the police and falsely reporting that he "violently assaulted" the plaintiff, leading to his [the defendant's] arrest, the plaintiff is liable for false imprisonment. In order to plead a cause of action for false arrest or false imprisonment, the defendant must show that: "(1) the [plaintiff] intended to confine the [defendant]; (2) the [defendant] was aware of the resulting confinement; (3) the [defendant] did not consent to the confinement; and (4) the confinement was not privileged" (*Rivera v County of Nassau*, 83 AD3d 1032, 1033 [2d Dept 2011]). However, the law is more nuanced where, as here, the individual against whom false imprisonment is being alleged is a civilian, and not a police officer. "In order to hold [the] civilian [plaintiff] liable for false arrest, the [defendant] must establish that the [plaintiff] did not merely report a crime to the police or participate in the prosecution, but actively importuned the police to make an arrest without 'reasonable cause [to believe] in the [defendant's] culpability'" (*Id.*; *Defilippo v County of Nassau*, 183 AD2d 695, 696 [2d Dept 1992]). "[I]f the [plaintiff] directed an officer to take the [defendant] into custody, he [would be] liable for false imprisonment; but if he merely made his statement, leaving it to the officer to act or not act as he thought proper, he [would] not [be] liable" (*Vernes v Phillips*, 266 NY 298, 301 [1935]; *see also Du Chateau v Metro-North R.R. Co.*, 253 AD2d 128, 131 [1st Dept 1999]).

The defendant fails to state a cause of action for false imprisonment. Even viewing the defendant's allegations in their most favorable light, his claim still fails to meet the aforementioned burden. Assuming, arguendo, that the plaintiff did call the police with the

malicious intention of having the defendant falsely arrested, the facts assumed are still insufficient to establish that the plaintiff actively induced the officer to arrest the defendant, rather than merely reporting the incident. "'The [plaintiff] must have affirmatively induced the officer to act, such as [by] taking an active part in the arrest and procuring it to be made sure or showing active, officious and undue zeal, to the point where the officer is not acting of his own volition'" (*Oszustowicz v Admiral Ins. Brokerage Corp.*, 49 AD3d 515, 516 [2d Dept 2008]; *quoting Mesiti v Wegman*, 307 AD2d 339, 340 [2d Dept 2003]). The defendant does not demonstrate, or even suggest, that the plaintiff in any way harassed him or pushed the police towards arresting him. Despite the defendant's claim that the plaintiff lied when he told the police that the defendant punched him, the defendant does not allege that the police used anything other than their own judgment in arresting him.

The defendant further alleges that he was falsely imprisoned during his arrest because he was unable to leave the crime scene, despite the fact that the plaintiff did not physically confine him to the site of the incident. However, this claim fails as well. In *Arrington v Liz Claiborne, Inc.*, 260 AD2d 267, 267-268 (1st Dept 1999), the Appellate Division, First Department held that "[p]laintiffs' fears that they would be arrested or fired did not constitute detaining force necessary to establish the tort of false imprisonment."

Here, the defendant feared that he would be arrested if he left the scene after the police were notified about the incident. Thus, the factual difference between this case and *Arrington*, in which the plaintiffs feared that the police would be called if they did not stay at the scene, is subtle and inconsequential. In both cases, the parties claiming false imprisonment remained on the scene because they were afraid of being arrested, and *Arrington* makes it clear that such a fear is insufficient to establish a claim for false imprisonment. A core component of a false

imprisonment claim is evidence that the party against whom the said claim is being alleged confined the other party (*see generally Broughton v State*, 37 NY2d 451 [1975]). Since the plaintiff did not confine the defendant, the plaintiff's motion to dismiss the defendant's counterclaim sounding in false imprisonment is granted.

Slander *Per Se*

The defendant's second counterclaim seeks damages for slander *per se*. Specifically, the defendant alleges four different instances of defamation by the plaintiff. First, the defendant alleges that the plaintiff defamed him when he (the plaintiff) told the police at the scene that the defendant "assaulted" him over a trivial matter by "punching" him in the "face". The defendant further alleges that he was defamed when the plaintiff made similar comments to the medical staff at the hospital. Additionally, the defendant alleges that, on the day after the incident, the plaintiff defamed him by telling the *New York Post* and *New York Daily News* that he was still "sore" and "recovering" from his injuries. Finally, the defendant alleges that the plaintiff defamed him in court when he (the plaintiff) stated, under oath, that the defendant punched him in the face.

Defamation is the making of a false statement about a person that "tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him [or her] in the minds of right-thinking persons, and to deprive him [or her] of their friendly intercourse in society" (*Rinaldi v Holt, Rinehart & Winston*, 42 NY2d 369, 379 [1977], *rearg denied*, 42 NY2d 1015 [1977], *cert denied* 434 US 969 [1977]). The elements are a (1) false statement, (2) published without privilege or authorization to a third party, (3) constituting fault as judged by, at a minimum, a negligence standard, and (4) which cause special harm or constitute defamation per se (*Frechtman v Gutterman*, 115 AD3d 102 [1st Dept 2014]).

The plaintiff argues that none of the four allegedly defamatory statements are actionable. Initially, he maintains that his statements to reporters do not support a defamation claim. "In order to establish a prima facie case of defamation, plaintiffs must show that the matter published is 'of and concerning them'" (*Three Amigos SJL Rest., Inc v CBS News Inc.*, 28 NY3d 82, 86 [2016], *quoting Julian v American Bus. Consultants*, 2 NY2d 1, 17 [1956]). "Although it is not necessary for the plaintiffs to be named in the publication, they must plead and prove that the statement referred to them and that a person hearing or reading the statement reasonably could have interpreted it as such" (*Id.*). Given the context of the parties' interaction as the basis for the publications' interest in the plaintiff's comments, the defendant has adequately pleaded that a reasonable person would view the plaintiff's comments in light of reports that the defendant punched him in the face.

The plaintiff is not entitled to dismissal of the defamation claim insofar as it arises from statements he made to the police and medical professionals. "When subject to this form of [qualified] privilege, statements are protected if they were not made with 'spite or ill will' or 'reckless disregard of whether they were false or not'" (*Stega v New York Downtown Hosp.*, 31 NY3d 661, 670 [1978], *quoting Liberman v Gelstein*, 80 NY2d 429, 437-438 [1992]). "Only those who act out of malice, rather than public interest, need hesitate before speaking" (*Toker v Pollak*, 44 NY2d 211, 222 [1978]). Taking all facts as true and considering the defendant's allegations in a light most favorable to him, this Court finds that he has adequately pleaded this claim. Specifically, the defendant has alleged that the plaintiff's statements were deliberately and falsely made to the police and medical professionals with the intention of injuring the defendant's reputation while simultaneously enhancing the chances of success of his own claims.

However, the plaintiff is entitled to absolute immunity for comments and writings he made under oath to the New York County District Attorney's office, in which he represented that the defendant punched him in the face and caused him pain. "Generally, statements made at all stages of a judicial proceeding in communications among the parties, witnesses, counsel, and the court are accorded an absolute privilege, as long as the statements may be considered in some way 'pertinent' to the issue[s] in the proceeding" (*Weinstock v Sanders*, 144 AD3d 1019, 1020 [2d Dept 2016] [citations omitted]). Since the plaintiff's statements were clearly pertinent to the criminal charges brought against the defendant and were made during the course of court proceedings, the plaintiff's motion is granted with respect to the same.

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court considers only "whether any reading of the complaint supports the defamation claim . . . the motion to dismiss must be denied if the communication at issue, taking the words in their ordinary meaning and in context, is also susceptible to a defamatory connotation" (*Davis v Boeheim*, 24 NY3d 262, 272 [2014]). Here, the defendant adequately alleges that the plaintiff made false statements, without authorization, to the police, medical professionals, and the media indicating that the defendant deliberately punched him in the face, and was still suffering the effects of those injuries. The plaintiff was not merely expressing his opinion about the incident, but instead presented his statements as a factual analysis of the situation (*see generally Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999]). Additionally, the plaintiff presents his own interpretation of the surveillance footage of the incident without disproving the allegations in the defendant's counterclaims. "If the 'documentary evidence' is submitted specifically to establish the truth of the contents, it must be of such nature and reliability as to be 'essentially undeniable' (*Fontanetta v Jane Doe 1*, 73 AD3d 78, 84-85 [2d Dept 2010]) and must 'utterly refute' (*Goshen*

v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]) [a] factual allegation that the defamatory statement is false" (*Greenberg v Spitzer*, 155 AD3d 27, 45 [2d Dept 2017]). The plaintiff must meet a high bar of proof on his motion to dismiss (*Id.* at 46) and, since he fails to definitively prove the truthfulness of his interpretation of the incident, he does not meet this burden.

Since the defendant does not allege special harm, this Court must consider whether the plaintiff's statements constitute slander *per se*, as the defendant's complaint alleges. Slander *per se* is a claim in which the alleged false statement (1) charges the plaintiff with a serious crime; (2) tends to injure the plaintiff in his or her trade, business or profession; (3) imputes to the plaintiff a "loathsome disease"; or (4) imputes unchastity to a woman (*Nolan v State*, 158 AD3d 186 [1st Dept 2018]).

The plaintiff maintains that, even if what he said was false, he did not accuse the defendant of a serious crime. "The law distinguishes between serious and relatively minor offenses, and only statements regarding the former are actionable without proof of damage" (*Liberman v Gelstein*, 80 NY2d 429, 436 [1992]). Thus, this Court must consider what constitutes a serious crime, and whether the plaintiff's statements effectively accuse the defendant of such a crime. Crimes generally considered serious are murder, burglary, larceny, arson, rape, and kidnapping (*Id.*). Although one would presumably not consider a punch in the face to be in the same category as the aforementioned felonies, courts in New York have recognized accusations of other felonies and serious misdemeanors as giving rise to defamation claims, especially when such claims involve accusations of physical injury (*Sprewell v NYP Holdings, Inc.*, 1 Misc 3d 847, 852 [Sup Ct, NY County 2003]; *see also DeFillippo v Xerox Corp.*, 223 AD2d 846, 849 [3rd Dept 1996]). Although it is unnecessary for the purposes of this

motion to decide whether the plaintiff's accusations were for a felony assault or a lesser misdemeanor charge, it is evident that the plaintiff claims that the defendant committed physical violence, and this is sufficient to allege a serious crime (*Liberman* at 436). Thus, the defendant has adequately pleaded a claim of slander *per se*.

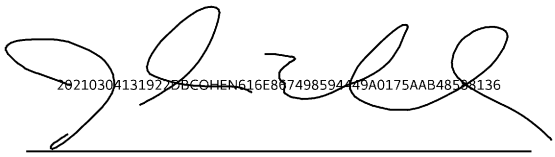
Accordingly, it is hereby:

ORDERED that the branch of the plaintiff's motion seeking to dismiss the defendant's counterclaim alleging false imprisonment is granted; and it is further

ORDERED that the branch of the plaintiff's motion seeking to dismiss the defendant's counterclaim for defamation *per se* is granted only to the extent that said counterclaim is predicated on any written and oral statements made by the plaintiff to the New York County District Attorney's Office, and is otherwise denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the parties are to appear for a preliminary conference on May 3, 2021 at 10:30 a.m. unless they complete a bar coded preliminary conference form (to be provided by the Part 58 Clerk) and email the same to the Part 58 Clerk at SFC-Part58-Clerk@nycourts.gov at least two business days prior to that date.



3/3/2021
DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE