

Mo v Libo Zhou
2021 NY Slip Op 32614(U)
December 9, 2021
Supreme Court, New York County
Docket Number: Index No. 156545/2018
Judge: William Perry
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. WILLIAM PERRY

PART

23

Justice

-----X

HUGH MO

Plaintiff,

- v -

LIBO ZHOU,

Defendant.

-----X

INDEX NO. 156545/2018MOTION DATE 06/24/2021MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 were read on this motion to/for DISMISS

This is an action by Plaintiff Hugh Mo against Defendant Libo Zhou for defamation stemming from alleged statements made by Defendant after he had discharged Plaintiff as his attorney in a criminal matter. In motion sequence 002, Defendant moves to dismiss the complaint. Plaintiff cross-moves for leave to amend the complaint. The motion and cross-motion have been fully submitted.

Background

The facts of this case are recited at length in this court's decision and order dated April 27, 2020, which granted Plaintiff's motion to dismiss six counterclaims set forth in Defendant's answer, leaving Defendant with only one counterclaim remaining, for breach of contract. (NYSCEF Doc No. 34.)

As relevant here and as set forth in the complaint, Plaintiff alleges that the following statements made by Defendant in certain blog posts were defamatory per se:

- a. "In fact, Hugh Mo always takes advantage of Chinese clients who are unfamiliar with American law. Frequently, he extorts and blackmails his clients."

b. "He takes money from plaintiffs and, at the same time, from defendants. Afterwards, he frequently gets sued by his clients in court."

c. "When Sang Lan sued Kao-Sung Liu, Hugh Mo represented Kao-Sung Liu and he extorted and blackmailed Kao-Sung Liu. Afterwards, Kao-Sung Liu sued Hugh Mo for a refund of his sky-high attorney fees."

d. "This time, the usual trick was repeated in our case. What the unbearable thing was: in order to extort more attorney fees Hugh Mo intentionally made the case more complicated. While the case should have been dismissed, he stretched it out in order to get to the jury trial stage and enticed my wife to sign an agreement to provide \$500,000 additional attorneys fee once the case goes to jury trial."

e. "I always thought that Hugh Mo, who kept professing to be my friend, would provide free legal services to me. It never occurred to me that Hugh Mo intended to earn 'black heart' money, without regard of the minimum professional ethics of lawyers, and would unscrupulously make the case more complicated to torment me. At the end of my forbearance, I finally decided to change lawyer."

f. "By the way, I published 'The Prime Culprit in Zhou Libo Case Had a Shocking Background' yesterday. In the blog posting, I mentioned that 'on January 19, 2017, the second day after the incident, a Chinese lawyer told Person XX to relocate his guns (I have the evidence) and took USD\$30,000 cash from xx.' The lawyer who took the \$30,000 from Person XX is Hugh Mo."

g. "After I got into trouble, Hugh Mo charged attorney fees from me. Also, as my attorney, he charged protection fee from Person XX who had framed me."

h. "To protect Person XX, he tormented Zhou Libo in order to increase his attorneys' fees. Then, he went back to Person XX to get more money."

i. "Hugh Mo's extortion and blackmail of legal fees have seriously violated New York lawyers' canons of ethics. My current lawyer has already received a response from the Attorney Grievance Committee and has sent a letter to Hugh Mo."

j. "In fact, I am not worried that the \$200,000 attorney fees that you had extorted and blackmailed from me would not be returned. You dare not returning the money to me. However, you should be concerned whether you will be disbarred by the Attorney Grievance Committee."

k. "Over the years, Hugh Mo claims the fake status of being a so-called NYPD Deputy Commissioner to dupe Chinese who do not know the American judicial system."

l. "He is an American 'Evil Tiger' who uses his Chinese identity to specifically defraud Chinese. As a matter of fact, Hugh Mo was merely in an honorary position

in the NYPD. He never joined the police force and never had a badge number which all police officers should have."

m. "Relying on his non-uniformed status, Hugh Mo has duped how many Chinese people and even government officials over the years?"

n. "Every Chinese citizen who has had interactions with or retained you as a lawyer are familiar with your character and reputation. After having contacts with you and knowing your morality, we all come to realize the darkness and hopelessness of the American judicial system. It is you who do damage to the feelings of the Chinese and American people."

o. "I expose and denounce you to alert all Chinese not to be defrauded and victimized by you."

p. "No wonder you always treat your Chinese clients as guinea pigs."

q. "From here on, I appeal to all of Hugh Mo's clients who have been extorted and blackmailed not to remain silent and to reach out to my Sina.com.cn blog and expose his evil doing. Let's look at the true color of Hugh Mo, so we can protect more Chinese people from being victimized by him."

(NYSCEF Doc No. 1, Complaint, at 13-15, the "Statements"; *see also* NYSCEF Doc Nos. 3 and 5, the Blog Posts.)

In sum, Plaintiff sets forth one cause of action for defamation per se, alleging that the Statements made by Defendant have caused him to suffer damages to his "reputation, career, business, and his actual and prospective clients' relationships ... [resulting in damages] in an amount not less than Ten Million Dollars[.]" (*Id.* at ¶ 70.)

Now, Defendant moves to dismiss the complaint, arguing that Statements K, L, and M "are not actionable because those statements were concerned about Plaintiff as a public figure when he was a NYPD Deputy Commissioner [and thus] Plaintiff Mo is required to plead actual malice with sufficient specificity." (NYSCEF Doc No. 43, Def.'s Memo, at ¶ 17.) Defendant states that those statements "are opinions of [Defendant's] subjective view of Plaintiff who at one time held an honorary position in the NYPD and anyone having an honorary position in the Police Department is not a real police officer in [Defendant's] view. Relying on his nonuniformed status, [Plaintiff]

has duped many Chinese people and even government officials over the years. Those statements are not actionable as a matter of law.” (*Id.* at ¶ 18.)

Next, Defendant argues that Statements A, B, C, D, E, I, J, N, O, P, and Q are non-actionable statements because they are “opinions” and are “all related to the fact that Defendant was not happy with the fact that his wife had entered into a retainer agreement [with Plaintiff] for legal service for \$200,000 for Defendant’s criminal representation, which Defendant thought the representation should be free.” (*Id.* at ¶¶ 19, 24.) Further, Defendant alleges that the portions of his Statements which refer to “Person XX” were actually “statements made by Person XX during an interview on social media” and thus Defendant cannot be held liable for the statements “made by Person XX to the public.” (*Id.* at ¶ 27.) In support, Defendant submits a Chinese transcript of the purported interview accompanied by its English translation, which is titled “Libo Zhou Interview” and reflects dialogue alternating between Zhian Wang and “XX”. (NYSCEF Doc No. 52, Transcript.)

Plaintiff, argues in opposition that the Statements were specifically intended to damage his reputation and constitute libel per se, as Defendant 1) accused Plaintiff of the serious crime of being part of a conspiracy to frame Defendant, his former client, in a criminal proceeding, and 2) injured him in his business and profession as an attorney. (NYSCEF Doc No. 55, Opposition at 26.) Further, Plaintiff argues that although he is neither a public figure nor a limited-purpose public figure and is thusly not required to demonstrate that the Statements were made with actual malice, he meets this burden as well. (*Id.* at 37-40.)

Plaintiff also cross-moves to amend the complaint to add additional instances of defamatory statements made by Defendant that postdate the Statements set forth in the complaint, including statements made during a November 11, 2019 comedy performance at Carnegie Hall.

(*Id.* at 40-42; NYSCEF Doc No. 65, Cross-Motion; NYSCEF Doc No. 69, Redlined Cmplt.) The proposed amended complaint also seeks to add a cause of action for intentional infliction of emotional distress (“IIED”). (*Id.* at 29.)

In reply, Defendant mainly recites his memo verbatim (NYSCEF Doc No. 61, Reply, at 2-8) while also arguing that Plaintiff is a public figure. (*Id.* at 8-10.) Defendant also opposes the cross-motion, arguing that the proposed amended complaint and the added cause of action for IIED rest “largely on alleged statements made by [Defendant] during his Carnegie Hall performance which were not included in the original complaint [and thus] Defendant cannot be said to have notice of this new occurrence[.]” (NYSCEF Doc No. 70, Opposition to Cross-Motion, at ¶ 5.) Defendant argues that the cause of action for IIED would also be duplicative of the cause of action for defamation. (*Id.* at ¶ 9.)

Discussion

On a pre-answer motion to dismiss a complaint for failure to state a cause of action, pursuant to CPLR 3211 [a] [7], “the court should accept as true the facts alleged in the complaint, accord plaintiff the benefit of every possible inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory.” (*Frank v DaimlerChrysler Corp.*, 292 AD2d 118, 121 [1st Dept 2002].) However, “factual allegations that do not state a viable cause of action, that consist of bare legal conclusions, or that are inherently incredible or clearly contradicted by documentary evidence are not entitled to such consideration.” (*Skillgames, LLC v Brody*, 1 AD3d 247, 250 [1st Dept 2003].)

Defamation “is defined as 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 in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society.’”

(*Foster v Churchill*, 87 NY2d 744, 751 [1996].) “The elements are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and, it must either cause special harm or constitute defamation per se.” (*Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999].) Statements charging a person with “committing a serious crime or that would tend to cause injury to a person’s profession or business” are defamatory per se and damages are presumed. (*Geraci v Probst*, 15 NY3d 336, 344 [2010], citing *Liberman v Gelstein*, 80 NY2d 429, 435 [1992].)

“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.” (*Stephanov v Dow Jones & Co., Inc.*, 120 AD3d 28, 34 [1st Dept 2014].) “Whether particular words are defamatory presents a legal question to be resolved by the court in the first instance.” (*Laguerre v Maurice*, 192 AD3d 44, 50 [2d Dept 2020].)

Here, the court finds that the Statements are susceptible of a defamatory connotation. Further, they constitute defamation per se because they 1) accuse Plaintiff of accepting a \$30,000.00 bribe to relocate the gun of “Person XX” as part of a larger conspiracy to set Defendant up for the criminal charges of drug and gun possession; and 2) because they would tend to cause harm to Plaintiff’s profession as an attorney. (See Complaint at ¶ 57 [“he extorts and blackmails his clients [and then] gets sued by his clients,” “he extorted and blackmailed [former client] Kao-Sung Liu,” “he stretched [the criminal case] out [for more money],” “he [disregarded] the minimum professional ethics of lawyers ... to torment me,” he lied about being a former police officer, etc.].) As such, Plaintiff need not plead special damages. (*Christopher Lisa Matthew Policano, Inc. v North Am. Precis. Syndicate, Inc.*, 129 AD2d 488, 490 [1st Dept 1987].)

Defendant's main argument in support of dismissal is that the Statements are merely his opinions, and were "related to the fact that [he] was not happy with the fact that his wife had entered into a retainer agreement for legal service for \$200,000" when Defendant thought that Plaintiff should give him free representation instead. (Def.'s Memo at ¶¶ 18-23, 24.) This argument fails.

Courts rely upon the following factors in delineating between statements of fact and opinion:

(1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal readers or listeners that what is being read or heard is likely to be opinion, not fact.

(*Brian v Richardson*, 87 NY2d 46, 51 [1995] [internal quotation marks and citations omitted].)

Defendant's Statements were clearly published as assertions of fact—the title of the first blog post is even "The *Truth* of Zhou Libo's Incident"—and Defendant solicited and encouraged his millions of social media followers to come forward with further allegations of Plaintiff's impropriety. (Blog Posts [emphasis added].) Any of those potential millions of readers "could have [reasonably] concluded that the statements were conveying facts about the Plaintiff." (*Bacon v Nygard*, 189 AD3d 530, 530-31 [1st Dept 2020].) The specificity of the allegations, taken together with the overall tone of the Blog Posts and the context of their publication, cannot be said to be mere opinion. (See *Crime Victims Center, Inc. v Logue*, 181 AD3d 556, 557 [2d Dept 2020].)

Finally, Plaintiff is not a general purpose public figure. (*Gottwald v Sebert*, 148 NYS3d 37, 43 [1st Dept, Apr 22, 2021] ["A person can only be a general-purpose public figure if he [or she] is a 'celebrity'; his [or her] name a 'household word' whose ideas and actions the public in fact follows with great interest and 'invite[s] attention and comment'"].) Nor is Plaintiff a limited

purpose public figure, as he has not demonstrated the required level of involvement with the public regarding the particular controversy at hand. (*Id.* at 44.) Even if Plaintiff were to be considered a public figure, this would not result in the dismissal of the complaint, as Plaintiff pleads actual malice. (Complaint at ¶¶ 64, 67.) Accordingly, Defendant's motion is denied.

Cross-motion to amend

"A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances." (CPLR 3025[b].) "The authority to grant leave to amend is committed to the sound discretion of the trial court." (*Fainas-Wehrmann v Continental Owners Corp.*, 2020 WL 507077, at *1 [Sup Ct, NY County 2020].)

Plaintiff's cross-motion to amend the complaint is granted to the extent that Plaintiff seeks to include statements made by Defendant during his November 11, 2019 appearance at Carnegie Hall. (Redlined Cmplt at 25-26.) Defendant's argument that the cross-motion should be denied because the November 11, 2019 performance was not mentioned in the original complaint filed on July 14, 2018 is obviously illogical and lacks merit. (NYSCEF Doc No. 70 at ¶ 6.) Further, although Defendant recites the word "prejudice," he fails to demonstrate any prejudice as a result of the proposed amendment.

To the extent that Plaintiff seeks to add a cause of action for IIED (Redlined Cmplt at 29-30), the cross-motion is denied in part, as the cause of action is palpably insufficient and patently devoid of merit (*Fainas-Wehrmann*, 2020 WL 507077, at *2). Plaintiff's allegations "do not evince conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized

community.” (*Trujillo . Transperfect Glob., Inc.*, 164 AD3d 1161, 1162 [1st Dept 2018].) Further, it would be duplicative of the cause of action for defamation. (*Fleischer v NYP Holdings, Inc.*, 104 AD3d 536, 538 [1st Dept 2013].) Thus, it is hereby

ORDERED that Defendant’s motion sequence 002 to dismiss the complaint is denied; and it is further

ORDERED that Plaintiff’s cross-motion for leave to amend the complaint is granted in part and denied in part as outlined above; and it is further

ORDERED that within 20 days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry and the amended complaint in conformity herewith; and it is further

ORDERED that Defendant shall answer the amended complaint or otherwise respond thereto within 20 days from the date of said service.

12/9/2021

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

WILLIAM PERRY, J.S.C.