

Griffith v Daily Beast

2021 NY Slip Op 33924(U)

July 13, 2021

Supreme Court, New York County

Docket Number: Index No. 100114/2020

Judge: Phillip Hom

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHILLIP HOM PART IAS MOTION 2

Justice

-----X

MEGAN GRIFFITH,

Plaintiff,

- v -

THE DAILY BEAST, NOAH SHACHTMAN, MAXWELL TANI

Defendant.

-----X

INDEX NO. 100114/2020

MOTION DATE N/A, N/A

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 70, 72 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

The following e-filed documents, listed by NYSCEF document number (Motion 004) 67, 68, 69, 71, 73 were read on this motion to/for STAY

Upon the listed documents and after oral argument, it is Ordered Defendants' motion for reargument is denied, Defendants' motion for renewal is granted and Defendants' Motion to Stay Discovery is granted.

Background

Defendants move under CPLR §2221(d) for an order granting reargument on their motion to dismiss Plaintiff's First Amended Complaint, arguing the Court overlooked or misapprehended law and facts, or alternatively, for an order under CPLR §2221(e) for renewal, arguing there has been a change in law that would change the prior determination.

On August 24, 2020, Defendants moved under CPLR §§3211(a) (1) and (a) (7) to dismiss the First Amended Complaint, arguing that Plaintiff Megan Griffith ("Griffith") had not pled and would not be able to show that Defendants were grossly irresponsible in publishing the alleged

defamatory article and that the article is “substantially true” (E23 at 8). Griffith opposed the motion arguing that she has sufficiently pled facts establishing that the statements at issue were essentially false and defamatory. Griffith also argues that the First Amended Complaint contains sufficient facts to establish that Defendants acted with gross irresponsibility (E 35 at 11-12).

The Court issued an Order and Decision on March 23, 2021 denying the motion to dismiss. Defendants move for reargument and/or renewal on the March 23, 2021 Order and Decision.

Reargument

A motion for reargument allows a party to demonstrate that the court overlooked or misapprehended the law or facts pertinent to the original motion (*See* CPLR 2221[d][2]; *see also Delgrosso v 1325 Limited Partnership*, 306 AD2d 241 [2d Dept. 2003]; *Foley v Roche*, 68 AD2d 558 [1st Dept. 1979] *app denied by* 56 NY2d 507 [1982]). Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided or to present arguments different from those originally presented. (*See Gellert & Rodner v Gem Community Management, Inc.*, 20 AD3d 388 [2d Dept. 2005]; *see also McGill v Goldman*, 261 AD2d 593 [2d Dept. 1999]; *Foley v Roche, supra.*)

Defendants move for reargument stating the Court misapprehended the CPLR because it did not consider certain documentary evidence under CPLR 3211(a)(1) and (7). Griffith had originally attached the documentary evidence consisting of communications between her and her former employees to her complaint and, although she did not attach them, she referenced them in her First Amended Complaint. Defendants argue that the documentary evidence should be considered because it was attached to the original complaint. However, once an amended

complaint is served, it supersedes the original complaint and becomes the only complaint in the case. (*Halmar Distribs., Inc. v Approved Mfg. Corp.*, 49 AD2d 841 [1st Dept 1975]).

Even though an amended complaint supersedes a complaint, statements in the original complaint may be introduced as admissions against plaintiff (5 New York Civil Practice: CPLR P 3025.10a [2021]). The emails may qualify as documentary evidence if they meet the “essentially undeniable” test (*Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431 [1st Dept 2014] [affirming trial court decision not dismissing causes of action for fraudulent misrepresentation and negligent misrepresentation based on documentary evidence because the emails did not conclusively establish a defense to the claims]). While the messages in the present case have some probative value, they do not support a motion to dismiss under CPLR §3211(a)(7) because they are not without ambiguity and fail to conclusively rebut Griffith’s defamation claims. They were properly not considered incorporated into the First Amended Complaint.

Defendants also argue the Court neglected to address Defendants’ “gross irresponsibility” argument. The Court of Appeals in *Chapadeau v Utica Observer-Dispatch, Inc.*, 38 NY2d 196 (1975) held that the grossly irresponsible standard was appropriate where a private person alleges defamation in an article that is arguably of legitimate public concern. The Court of Appeals defined this standard as where defendants act without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties. The Court of Appeals affirmed the Appellate Division decision granting summary judgment to defendant newspaper holding that consulting two authoritative sources and not publishing the article until it had been checked by at least two other people other than the writer showed the newspaper did not act with gross irresponsibility (*Id.* at 200).

Griffith has pled that although Defendants did not contact her directly for comment, they contacted her employer just 40 minutes prior to publishing the alleged defamatory article. On a CPLR §3211 motion to dismiss a complaint, a court must take the allegations in the complaint as true and resolve all reasonable inferences in favor of plaintiff. (*Cron v Hargro Fabrics*, 91 NY2d 362 [1998]). Whether Defendants acted without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties cannot be determined at this early stage of the case. On a motion to dismiss, the Court's role is limited to determining whether the complaint states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (*Guggenheimer v. Ginzburg*, 43 NYS2d 268, 275 [1977]). The Court finds Griffith pled facts which may indicate defendants acted with gross negligence.

Accordingly, Defendants' motion to reargue is denied

Renewal

Under CPLR §2221(e), a party moving for leave to renew must show either new facts not offered on the prior determination or a change in the law that would change the prior determination and a reasonable justification for the failure to present such facts on the prior motion.

Defendants argue they should be allowed to renew their motion to dismiss because of a November 10, 2020 change in New York State's anti-SLAPP law. Among other things, the amended anti-SLAPP law broadened the definition of an "action involving public petition and participation," allows for the awarding of attorneys' fees and costs under certain circumstances, expanded the evidence a court may consider in a motion to dismiss a case under the law and

stays discovery, pending hearings and motions in the action until the motion to dismiss is decided (New York State Senate Bill 52A of 2020).

Defendants wrote a March 22, 2021 letter informing the Court of the change in law, however, the Court did not review the letter before issuing its March 24, 2021 Order. Defendants stated during the oral argument that they did not bring the change in law to the Court's attention sooner because they were not sure that it would apply retroactively and wanted to see how Courts would determine that issue. The Court decisions holding that the new law was retroactive were decided shortly before the Court issued its March 24, 2021 Order (*Palin v. N.Y. Times Co.*, 17-cv-4853, 2020 WL 7711593 (S.D.N.Y. Dec. 29, 2020); *Coleman v. Grand*, 18-cv-5663, 2021 WL 768167 (E.D.N.Y. Feb. 26, 2021); *Sackler v. Am. Broad. Cos.*, 2021 WL 969809 (Sup. Ct. N.Y. Cty. March 9, 2021). Griffith argues the motion to renew should be denied because the anti-SLAPP amendments do not apply retroactively, but all of the decisions so far have held that the change in law is retroactive.

Defendants have demonstrated that there has been a change in law affecting this case. The Court finds that their explanation that they were waiting to see if the courts applied the law retroactively is a reasonable justification for failing to address the change in law sooner.

Accordingly, Defendants motion to renew is granted .

Staying Proceedings

Defendants also move for a protective order and to stay all proceedings until the Court rules on their motion to Renew and Reargue under CPLR §§2201 and 3103. Senate Bill S52A added new subdivision CPLR§ 3211(g)(3), which stays all discovery, pending hearings, and motions in an action if a motion to dismiss is made under the anti-SLAPP provisions until notice

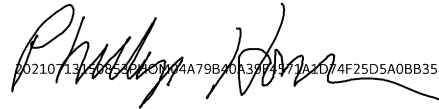
of entry of the order deciding the motion to dismiss. The new subdivision also provides that the Court may order specified discovery limited to issues raised in the motion to dismiss if the non-moving party shows by affidavit or declaration under penalty of perjury that, for specified reasons, it cannot present facts essential to justify its opposition.

The Court, under CPLR §3211(g)(3), orders all discovery stayed pending the determination of Defendants' renewed motion to dismiss.

Conclusion

Defendants motion for reargument is denied, the motion for renewal is granted and the motion to stay discovery is granted. The Court shall schedule a Microsoft Teams Conference with the parties to devise a briefing schedule on the motion to renew. An invitation will be sent to all parties under separate cover.

This constitutes the Decision and Order of the Court.


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7/13/2021
DATE

PHILLIP HOM, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE