

Taffet v Fire Is. News Inc.
2021 NY Slip Op 34306(U)
June 4, 2021
Supreme Court, Nassau County
Docket Number: Index No. 1258/2019
Judge: Helen Voutsinas
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 19**

Present: Hon. Helen Voutsinas

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JORDAN TAFFET,

Plaintiff,

Index No.: 1258/2019

-against-

Motion Sequence No. : 003

**FIRE ISLAND NEWS INC. and TIMOTHY BOLGER
and SOSHANNA MCCOLLUM and LORNA LUNIEWSKI
and CRAIG LOW and CHRIS MERCOGLIANO and
LAURA MERCIGLIANO,**

Short Form Order

Defendants.

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The following papers were read on this motion:

Notice of Motion, Affirmation and Affidavit in Support, Exhibits
And Memorandum of Law in Support..... 1
Affirmation in Opposition..... 2
Reply Memorandum of Law..... 4

Defendants Fire Island News Inc., Timothy Bolger, Shoshanna McCollum, Lorna Luniewski, Craig Low, Chris Mercogliano and Laura Mercogliano move for an order pursuant to CPLR §3212 and Civil Rights Law §74 granting summary judgment dismissing plaintiff Jordan Taffet's complaint. The motion is decided as hereinafter provided.

Plaintiff Jordan Taffet, pro se, commenced this action by filing a verified complaint on or about November 27, 2019. In his complaint, plaintiff asserts four (4) causes of action: defamation per se, defamation by implication, intentional infliction of emotional distress and negligent infliction of emotional distress.

Plaintiff's claims are based upon the publication of an article entitled "*Short Term Rental Home Risks Rise With Popularity*" in the May 24, 2019 edition of the Fire Island News (Volume 63, Issue One)(the "Article"). The Article, which was also posted to the website <http://fireisland-news.com>, makes reference to plaintiff's July 18, 2009 arrest and October 29, 2010 conviction of for unlawful surveillance in the second degree. The individual defendants are either editors, reporters, publishers and/or owners of the Fire Island News.

Defendants contend that they are entitled to summary judgment dismissing the complaint because the statements contained in the Article concerning plaintiff's arrest and conviction are a true, fair and accurate report of a judicial proceeding, and are thereby privileged and protected pursuant to Civil Rights Law §74. Defendants assert that plaintiff's October 29, 2010 conviction was affirmed in *People v. Taffet*,

109 AD3d 941 [2d Dept 2013] and that his appeal to the Court of Appeals was denied in *People v. Taffet*, 38 NY3d 116 [2016].

In opposition, plaintiff argues that defendants have failed to establish their prima facie entitlement to summary judgment, and that Civil Rights Law §74 does not afford defendants an absolute defense under the circumstances of this case. Plaintiff further argues that the summary judgment motion is premature, having been made before any discovery has been exchanged.

The Article

The Article provides, in part, as follows:

Short Term Rental Home Risks Rise With Popularity

The surge of vacationers using increasingly popular online marketplaces to rent homes for short stays has brought with it a rising tide of cautionary tales for renters and homeowners in recent years.

From bait and switch scams to creepy hosts spying on renters with hidden cameras, the list of horrors guests have endured runs long.

* * * *

Here's what renters and hosts should know before vacation season returns:

RENTER BEWARE

Media accounts of renters finding hidden cameras that the host set up to spy on unsuspecting victims - often in bedrooms, bathrooms, and showers - aren't only based on incidents that happen in far away places.

Jordan Taffet, who authorities have described as one of the most notorious rowdy group home renters in Ocean Beach, was arrested on July 18, 2009, and convicted a year later of second-degree unlawful surveillance: use/install imaging device for sexual arousal, a felony, court records show.

He was sentenced Oct. 29, 2010, to five years of probation, although he faced up to four years in prison. His appeal on that conviction was denied, records show.

* * * *

The article goes on to inform about various local code regulations regarding short term rentals, such as requirements for minimum rental periods and prohibitions against rentals to groups of people that aren't related. Under the heading "TAX TROUBLE", the Article discusses the failure of hosts/landlords and online rental platforms to collect and pay the lodging tax and legislative efforts to

remedy the problem. Under the heading “VERIFY EVERYTHING”, the Article discusses the dangers of scammers posing as hosts/landlords tricking renters through online ads to wire deposits for properties the scammers don’t own.

Plaintiff’s Verified Complaint

Plaintiff alleges in his complaint that the Article contains false statements and implications regarding plaintiff, specifically that plaintiff was never charged with “renters finding hidden cameras that the host set up to spy”, and that any references to “hidden cameras” concerning plaintiff are false. Plaintiff states that his conviction stemmed from a single incident in which he held a camera in his hand, above a partially enclosed outdoor shower for 40 seconds, as a joke, while a close friend of 18 years was showering, and while others were at the house including plaintiff’s then girlfriend. He alleges that the act was a spontaneous incident between close friends and did not concern any found “hidden cameras” whatsoever. Plaintiff asserts that police and court records unambiguously show that plaintiff held the camera in his hand, and that the camera itself and plaintiff were obviously friends. He admits that this incident was found to constitute “unlawful surveillance”, however there were no “hidden cameras” no “set up” hidden cameras, and no renters “finding hidden cameras”, as the Article states and implies of and concerning the plaintiff.

Plaintiff alleges that he has managed numerous rental properties over twenty years in both Long Island and Fire Island, and has had in excess of 10,000 guests stay in one of his rental properties. He states further that he has spent every summer for the past twenty years enjoying, working, and staying in Fire Island.

Plaintiff alleges that defendants fabricated false statements and implications, that plaintiff used “hidden cameras”, “set up” hidden cameras, and “renters finding” hidden cameras, none of which has any basis in truth or actual events. He claims that the Article is grossly and substantially inaccurate, and does not fairly or truly represent any judicial proceeding, nor represent any actually occurring event. He states that a rudimentary investigation or cursory review of police or court records would have revealed that plaintiff was never charged with setting up hidden cameras. He asserts that the false statements are especially vile, and imply that plaintiff spied on naked children and teenagers in his rental properties. He alleges that, as a result of the publication, he will forever be known in the Fire Island community as the “creepy landlord who renters found hidden cameras set up to spy”.

Plaintiff further alleges that his rental business competes with some of the defendants’ rental businesses, and that the timing of the Article at the start of the 2019 summer rental season, with its false statements and implications, reveals malice and ulterior motive against plaintiff by defendants.

Plaintiff also alleges that defendants also falsely misquoted the penal statute in the Article. The relevant statute is Penal Law § 250.45, which provides, in pertinent part:

A person is guilty of unlawful surveillance in the second degree when:

1. For his or her own, or another person's amusement, entertainment, or profit, or for the purpose of degrading or abusing a person, he or she intentionally uses **or** installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent; or
2. For his or her own, or another person's sexual arousal or sexual gratification, he or she intentionally uses **or** installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent; or
3. (a) For no legitimate purpose, he or she intentionally uses **or** installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person in a bedroom, changing room, fitting room, restroom, toilet, bathroom, washroom, shower or any room assigned to guests or patrons in a motel, hotel or inn, without such person's knowledge or consent. [emphasis added]

Plaintiff asserts that, in the Article, the word "or" is removed and replaced it with a "/" symbol, which falsely states and implies to readers that plaintiff was convicted of installing hidden devices. According to plaintiff, this small change, combined with the lack of context, or description of plaintiff's actual actions, prevents readers from understanding that "or" means plaintiff was never convicted of installing hidden cameras, but rather the using a camera.

Civil Rights Law §74

Defendants' motion for summary judgment is premised solely on Civil Rights Law §74, which provides as follows:

A civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding or other official proceeding, or for any heading of the report which is a fair and true headnote of the statement published.

This section does not apply to a libel contained in any other matter added by any person concerned in the publication; or in the report of anything said or done at the time and place of such a proceeding which was not a part thereof.

The Court of Appeals has explained that a "a true and fair report" requires "that the substance of the article be substantially accurate." (*Holy Spirit Ass'n for Unification of World Christianity v. New York Times Co.*, 49 NY2d 63, 67 [1979]). And "the language used therein should not be dissected and analyzed with a lexicographer's precision." (*Id* at 68). Moreover, "there [is] no requirement that the publication report the plaintiff's side of the controversy." (*Cholowsky v. Civiletti*, 887 NYS2d 592, 596 [2d Dept 2009]).

However, in *James v Gannett Co., Inc.*, 40 NY2d 415, 419-20 [1976], the Court of Appeals held:

The court must decide whether there is a reasonable basis for drawing the defamatory conclusion. If the contested statements are reasonably susceptible of a defamatory connotation, then it becomes the jury's function to say whether that was the sense in which the words were likely to be understood by the ordinary and average reader. In analyzing the words in order to ascertain whether a question of fact exists for resolution upon trial, the court will not pick out and isolate particular phrases but will consider the publication as a whole. The publication will be tested by its effect upon the average reader. The language will be given a fair reading and the court will not strain to place a particular interpretation on the published words. The statement complained of will be read against the background of its issuance with respect to the circumstances of its publication. It is the duty of the court, in an action for libel, to understand the publication in the same manner that others would naturally do. The construction which it behooves a court of justice to put on a publication which is alleged to be libelous is to be derived as well from the expressions used as from the whole scope and apparent object of the writer.' [internal citations and quotations omitted]

The Court finds also finds *Stepanov v Dow Jones & Co., Inc.*, 120 AD3d 28 [1st Dept 2014] instructive. In that case, the First Department held (120 AD3d at 37-38):

We adopt the standard advanced by defendant and accepted by the motion court. To survive a motion to dismiss a claim for defamation by implication where the factual statements at issue are substantially true, the plaintiff must make a rigorous showing that the language of the communication as a whole can be reasonably read both to impart a defamatory inference and to affirmatively suggest that the author intended

or endorsed that inference. We believe this rule strikes the appropriate balance between a plaintiff's right to recover in tort for statements that defame by implication and a defendant's First Amendment protection for publishing substantially truthful statements (citing *Armstrong v. Simon & Schuster, Inc.*, 85 NY2d 373, 381 [1995]).

After careful review and consideration of the papers submitted, the Court finds that defendants have failed to establish their prima facie entitlement to summary judgment based upon the privilege and protections of Civil Rights Law §74.

It is well established that a proponent of a summary judgment motion must make a prima facie case of entitlement to judgment as a matter of law when there are no material issues of fact (*Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]). Summary judgment is a drastic remedy that is awarded only when it is clear that no triable issue of fact exists. (*Id.* at 325; *Andre v. Pomeroy*, 35 NY2d 361). Summary judgment is the procedural equivalent of a trial (*Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 AD2d 572 [2d Dept 1989]). Thus, the burden falls upon the moving party to demonstrate that, on the facts, it is entitled to judgment as a matter of law (*see, Whelen v. G.T.E. Sylvania Inc.*, 182 AD2d 446 [1st Dept 1992]). The court's role is issue finding rather than issue determination (*see, e.g., Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]; *Gervasio v. Di Napoli*, 134 AD2d 235, 236 [2d Dept 1987]; *Assing v. United Rubber Supply Co.*, 126 AD2d 590 [2d Dept 1987]).

In deciding a summary judgment motion the court must draw all reasonable inferences in favor of the nonmoving party (*Nicklas v. Tedlen Realty Corp.*, 305 AD2d 385 [2d Dept 2003]), and the evidence must be construed in a light most favorable to the party opposing the motion (*Benincasa v. Garrubbo*, 141 AD2d 618 [2d Dept 1988])). "[E]ven the color of a triable issue forecloses the remedy". (*Rudnitsky v. Rabbins*, 191 AD2d 488, 489 [2d Dept 1993]).

The movant, in this matter defendants, have the initial burden of proving entitlement to summary judgment, and failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*See Winegrad v. N.Y.U. Medical Center*, 64 NY2d 851 [1985]).

Here, defendants have not submitted to the Court any records or documentary evidence as to the details of the criminal charges that had been made against plaintiff or the details of his conviction which would be necessary for the Court to properly evaluate whether the publication was a "fair and true report" of the underlying judicial proceeding.

Defendants submit the affidavit of defendant Craig Low, the publisher of Fire Island News, in support of the motion. However, in his affidavit, Mr. Low merely quotes the portion of the Article that appears under the heading "Renter Beware" and states that "[a]s explained to me, Civil Rights Law §74 provides a complete defense to publication of a fair and true report of any judicial proceeding like the reporting in the Article." The affidavit provides no further facts or information and is insufficient to establish defendants' prima facie case.

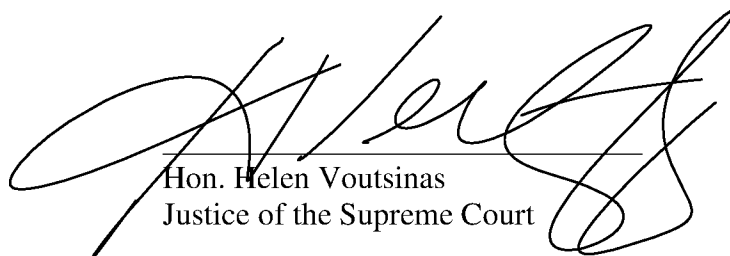
In light of plaintiff's sworn allegations, the Article, considered as a whole, is reasonably susceptible of a defamatory connotation concerning plaintiff, and thus it is a question for the jury whether the ordinary and average reader would understand the meaning as such. (See *James v. Gannett Co.*, supra, at 419).

The Court must view the evidence in a light most favorable to the plaintiff, as the nonmoving party, and draw all reasonable inferences in favor of plaintiff. Based upon the plaintiff's sworn allegations and the record before it, this Court finds that defendants have failed to make a prima facie showing of entitlement to judgment as a matter of law.

Accordingly, defendants' motion for summary judgment is **DENIED**.

This constitutes the decision and order of the Court.

Dated: June 4, 2021
Mineola, NY



Hon. Helen Voutsinas
Justice of the Supreme Court

ENTERED

Jun 10 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE