

Gatollari v Bendjillali
2022 NY Slip Op 30118(U)
January 18, 2022
Supreme Court, New York County
Docket Number: Index No. 152877/2021
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

MUSTAFA GATOLLARI

Plaintiff,

- v -

IKRAM BENDJILLALI,

Defendant.

-----X

INDEX NO. 152877/2021

MOTION DATE 07/30/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISSAL

Plaintiff Mustafa Gatollari, an allegedly "seasoned professional actor," brings this action against Defendant Ikram Bendjillali, setting forth claims for intentional infliction of emotional distress ("IIED") and defamation. In motion sequence 001, Defendant moves to dismiss the complaint for failure to state a claim. The motion is fully submitted.

Background

As set forth in the complaint, Plaintiff alleges that Defendant took acting classes for about a year, that on February 3, 2021, during a class session in Central Park, she "made statements to the entire class that the program in which she was enrolled was a cult and that the plaintiff was a part of this cult, as well as obtaining financial gain and further improper conduct." (NYSCEF Doc No. 1, Complaint, at ¶¶ 5-6.) Further, Plaintiff alleges that Defendant advised him "that he should take care because of potential harm by people she knows" and that she "undertook a course of libel and slanderous conduct on social medial platforms to disparage the plaintiff and make slanderous statements stating that the plaintiff was a part of a con." (Id. at ¶¶ 7-8.)

Defendant moves to dismiss, arguing that Plaintiff fails to specifically identify the allegedly defamatory statements at issue; that any of the statements would not be actionable; that Plaintiff has not alleged that the statements were false, and Plaintiff has not alleged that Defendant acted with actual malice, which is required for defamation cases involving the public interest. (NYSCEF Doc No. 9, Def.'s Memo, at 8-13.) Defendant also argues that the IIED claim as duplicative of the defamation claim and failing to rise to the requisite level of extreme and outrageous conduct. (*Id.* at 14.) Finally, Defendant requests attorneys' fees pursuant to recent amendments to New York's anti-SLAPP statutes. (*Id.* at 15.)

In opposition, Plaintiff elaborates upon his barebones complaint, alleging that he referred Defendant to an acting class taught by David Vadim, that Defendant participated in the class until she became angry that Vadim did not cast her in a certain production, that she loudly addressed the class "repeatedly calling the class a scam and a cult," threatened to come back with "her boys," and then posted 32 text images on her Instagram story detailing the class. (NYSCEF Doc No. 13, Opposition, at 1-8; NYSCEF Doc No. 17, Posts.)

For the reasons that follow, Defendant's motion to dismiss is granted.¹

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

¹ On October 12, 2021, in related litigation under Index No. 151687/2021, *David Vadim v Ikram Bendjillali*, the Hon. Lynn Kotler granted Defendant's motion to dismiss the complaint of David Vadim, which had also set forth claims for IIED and defamation based on the same 32-image Instagram story. (NYSCEF Doc No. 21.)

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].)

“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].)

Plaintiff’s allegation fail to state a claim for defamation. Defendant’s Instagram story primarily dealt with Defendant’s frustration with her acting teacher. The only statement that was “of and concerning” Plaintiff was Defendant’s statement that she believed that he received a kickback from Vadim for having referred her to the class. (Posts at 5.) This sole statement is not defamatory, as it would not tend 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*, 87 NY2d at 751), as referral programs are

commonplace and not generally frowned upon. Plaintiff also fails to allege that he suffered any special harm, and the court notes that the statement does not constitute defamation per se, as an allegation that he received a referral payment would not injure him in his profession of acting.

The claim for IIED must also be dismissed as Defendant’s alleged behavior utterly fails to rise to the level of “extreme and outrageous conduct, which so transcends the bounds of decency as to be regarded as atrocious and intolerable in a civilized society.” (*Freihofer v Hearst Corp.*, 65 NY2d 135 [1985].) Thus, it is hereby

ORDERED that Defendant’s motion sequence 001 to dismiss the complaint is granted, Plaintiff’s complaint is dismissed, and the Clerk is directed to enter judgment accordingly, together with costs and disbursements.

1/18/2022
DATE


WILLIAM PERRY, J.S.C.

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