

Napoli v James

2022 NY Slip Op 31923(U)

June 16, 2022

Supreme Court, New York County

Docket Number: Index No. 161529/2018

Judge: Lori Sattler

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02TR

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MARIE NAPOLI,	INDEX NO.	<u>161529/2018</u>
Plaintiff,	MOTION DATE	<u>02/16/2022</u>
- v -	MOTION SEQ. NO.	<u>005</u>
CLIFFORD JAMES, LAW OFFICES OF CLIFFORD JAMES,		
Defendant.	DECISION + ORDER ON MOTION	

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HON. LORI SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 223, 224 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Plaintiff Marie Napoli (“Plaintiff”) moves for leave to renew the Decision and Order entered June 2, 2020 (Marin, J.) (“June 2, 2020 Order”), which dismissed her complaint seeking damages for alleged malicious prosecution, and upon renewal moves to vacate said dismissal. Defendants Clifford James and the Law Offices of Clifford James (collectively, “Defendants”) oppose the motion. Defendants’ cross-motion for an order staying a decision on this motion pending the outcome of Plaintiff’s appeal taken from the June 2, 2020 Order is moot as the appeal has been decided.

A longer recitation of the facts and circumstances leading to the instant action and several other related actions are set forth in detail in prior orders of the Court and those facts are incorporated by reference herein. The facts relevant to this motion are as follows. In 2011, nonparty Vanessa Dennis was hired as an associate at Napoli Bern Ripka Shkolnik LLP (“Napoli

Bern”), where Plaintiff and her husband Paul Napoli practiced law. Ms. Dennis and Mr. Napoli purportedly had an affair, and after Plaintiff learned of the affair, Ms. Dennis was terminated.

In 2014, Ms. Dennis commenced an action against Plaintiff, Mr. Napoli, Marc Bern, and Napoli Bern in New York County Supreme Court alleging defamation, trespass, and intentional infliction of emotional distress (“Dennis Action”). Defendants represented Ms. Dennis in that action. The Complaint filed in the Dennis Action alleges, *inter alia*, that following the affair Plaintiff engaged in a wide-ranging effort to contact Ms. Dennis’s family, friends, employers, and professional contacts via letter, e-mail, text message, and on social media.

The Court in the Dennis Action issued an order restraining Plaintiff from sending such communications and from posting related content to social media (*Dennis v Napoli*, 2015 NY Slip Op 31540[U] [Sup Ct, New York County 2015, Kern, J.], *affd* 148 AD3d 446 [1st Dept 2017]) (“Preliminary Injunction”). In that order, the Court specifically detailed some of Plaintiff’s conduct, writing:

In the various letters, texts and Facebook messages written by Marie, she continuously refers to plaintiff as a “sex addict,” “predator” and “slut” and asserts that plaintiff had multiple affairs and engaged in lewd conduct with her husband by showing him pornography and discussing her masturbation habits with him. . . . Marie continues to send offensive unsolicited communications to the wives of the managing partners at plaintiff’s current firm. These communications refer to plaintiff as a “slut” and “sexual predator” and claim that plaintiff is a self-admitted “sex addict” who was molested by her father. Moreover, Marie has posted derogatory comments under photos on plaintiff’s Facebook page. These pictures depict plaintiff with her classmates at the Trial Lawyers College and three of her professors. Several of these people are also tagged in the photos and, thus, Marie’s comments can be seen by these classmates and professors and anyone they are “friends” with on Facebook. In her comments, Marie again refers to plaintiff as a “slut” and claims that plaintiff was fired from the Firm for being a “slut.”

(*Dennis*, 2015 NY Slip Op 31540[U], *23-24). The Dennis Action was subsequently transferred to Supreme Court, Nassau County, and the Preliminary Injunction was continued by that Court.

Ultimately the action was discontinued by Ms. Dennis.

In 2018, Plaintiff commenced the instant action against Defendants, who represented Ms. Dennis in the Dennis Action, alleging that their representation constituted malicious prosecution and a violation of Judiciary Law § 487. Defendants moved to dismiss, and the motion was granted in the Court's June 2, 2020 Order (*Napoli v James*, 67 Misc3d 1224[A] [Sup Ct, New York County 2020, Marin, J.]). The Court found that Plaintiff failed to satisfy the element of a cause of action for malicious prosecution requiring "the absence of probable cause for the . . . proceeding" (*id.*, citing *Facebook, Inc. v DLA Piper LLC (US)*, 134 AD3d 610, 613 [1st Dept 2015]). The Court found that prior judicial rulings demonstrated the existence of probable cause sufficient to defeat a malicious prosecution claim, specifically citing the Preliminary Injunction, the Appellate Division's affirmance of that order, and orders issued by the Nassau County Supreme Court denying Plaintiff's motion to vacate the Preliminary Injunction along with a subsequent motion to reargue. The Court further found that Plaintiff failed to state a claim under Judiciary Law § 487. Plaintiff appealed the June 2, 2020 Order and the Appellate Division affirmed (*Napoli v James*, 204 AD3d 413 [1st Dept 2022]).

Plaintiff now moves for leave to renew the June 2, 2020 Order and vacate this action's dismissal. Plaintiff claims that after this matter was dismissed, discovery in another action she filed, this one against Marc Bern ("Bern Action"), revealed that representations Defendants made in the Dennis Action were false, and that Defendants knew they were false when they were made. Plaintiff argues that because those false statements led to the issuance of the Preliminary Injunction, and because the Preliminary Injunction was the basis for the finding in this matter that Plaintiff failed to state a claim for malicious prosecution, the dismissal should be vacated, and her action restored.

A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination and shall contain a reasonable justification for the failure to present such facts (CPLR 2221[e]). Plaintiff contends that the new facts she now presents, which stem from emails and deposition testimony obtained in discovery in the Bern Action, only became known to her after the June 2, 2020 Order was issued.

Plaintiff contends the Bern Action discovery demonstrates that Defendants had been in possession of a text message conversation between Ms. Dennis's husband and Plaintiff in which the husband says, "If you find out anything else let me know," "thank you for the information," and "[w]ould definitely be interested to hear it." Plaintiff argues that while Defendants claimed in the Dennis Action that Plaintiff's contact with Ms. Dennis's husband was "unwelcomed," Defendants' possession of these text messages prove they knew they were making a misrepresentation. Plaintiff further contends she has learned that when the Dennis Action was filed Defendants had been in possession of an email from Ms. Dennis stating that she visited Pathways, a sex addiction therapy and treatment center. Plaintiff argues this proves her statements to others that Ms. Dennis was a sex addict were true, and that Defendants therefore knew a defamation claim was meritless. Plaintiff also includes excerpts from depositions of former Napoli Bern employees taken in the Bern Action, whose accounts of Ms. Dennis and Mr. Napoli Plaintiff contends bolster her claim of malicious prosecution.

The record establishes that the Preliminary Injunction in the Dennis Action, the orders that continued and upheld it, and the June 2, 2020 Order in this action considered numerous communications sent by Plaintiff to several third parties along with public posts and private messages on Facebook and LinkedIn. At best, the information now presented shows only that Defendants knew that one of those third parties did not explicitly tell Plaintiff that her messages

were unwelcome. Likewise, the email in which Ms. Dennis says she went to Pathways is not evidence that Plaintiff’s many statements about Ms. Dennis, including that she is a “slut” and “sexual predator,” were true, and in any event, defamation was only one of the claims asserted in the Dennis Action. These purported new facts, along with the others raised in Plaintiff’s papers which relate only to a small fraction of the allegations made in the Dennis Action, are insufficient to support a change in the Court’s prior determination that Plaintiff cannot sustain a claim for malicious prosecution or pursuant to Judiciary Law § 487.

Accordingly, for the reasons set forth herein, Plaintiff’s motion is denied.

All other relief sought not addressed herein is denied. This constitutes the Decision and Order of the Court.

6/16/2022
DATE


LORI SATTLER, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

CHECK IF APPROPRIATE: