

**Combier v Portelos**

2022 NY Slip Op 33615(U)

October 20, 2022

Supreme Court, New York County

Docket Number: Index No. 156880/2021

Judge: David B. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DAVID B. COHEN**

**PART 58**

*Justice*

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**INDEX NO. 156880/2021**

ELIZABETH BETSY COMBIER,

Plaintiff,

**MOTION SEQ. NO. 002**

- v -

FRANCESCO PORTELOS, ANGELA PORTELOS, LYDIA  
HOWRILKA, UFT SOLIDARITY, and JOHN DOE AND JANE  
DOES #1-100,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for DISMISSAL.

In this tort action by plaintiff Elizabeth Betsy Combiel, defendants Francesco Portelos (“Mr. Portelos”), Angela Portelos (“Ms. Portelos”), and Lydia Howrilka (“Ms. Howrilka”) (collectively “movants”) move, pursuant to CPLR 3211(a)(5) and (a)(7), to dismiss the complaint. Plaintiff opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

**FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff commenced the captioned action by filing a summons and complaint on July 22, 2021. Doc. 1. Plaintiff filed an amended complaint on September 9, 2021. Doc. 2. In her amended complaint, plaintiff, who owns a company which “help[s] teachers in need of advice on resolving issues with harassment in the workplace” claimed, in essence, that movants, who are involved in the operation of a website called “UFT [United Federation of Teachers] Solidarity” engaged in a fraudulent scheme to blackball plaintiff and to distort and lie about her for the

purpose of promoting and/or or enriching themselves. Doc. 2. This scheme allegedly included defamatory emails and postings on the website.

As a first cause of action, plaintiff alleged defamation, defamation per se, libel, libel per se, slander, slander per se, and false light. As a second cause of action, plaintiff alleged negligent infliction of emotional distress (“NIED”). As a third cause of action, plaintiff alleged intentional infliction of emotional distress (“IIED”). As a fourth cause of action, plaintiff alleged invasion of privacy/false light. As a fifth cause of action, plaintiff sought permanent injunctive relief. As a sixth cause of action, plaintiff alleged fraud. As a seventh cause of action, plaintiff alleged aiding and abetting the commission of a tort.

Movants now seek an order, pursuant to CPLR 3211(a)(5) and (a)(7), dismissing the amended complaint. Doc. 35. In support of the motion, they argue, inter alia, that the complaint fails to state a cause of action. Doc. 36.

In opposition, plaintiff argues that the motion must be denied since movants “openly and blatantly lied about [p]laintiff in a campaign of terror designed to prevent her from employment as an advocate for employees of the [New York City] Department of Education.” Doc. 42. Additionally, plaintiff maintains that the motion must be denied as procedurally improper since pro se defendant Mr. Portelos, who is not an attorney, purports to represent Ms. Portelos and Ms. Howrilka, as well as himself. Doc. 42.

### LEGAL CONCLUSIONS

In considering a CPLR 3211 (a) (7) motion to dismiss, a court must determine whether the pleading states a cause of action. “The motion must be denied if from the pleadings’ four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*Richbell Info. Servs., v Jupiter Partners*, 309 AD2d 288, 289 [1st Dept 2003], quoting *511*

*W. 232nd Owners Corp. v Jennifer Realty Corp.*, 98 NY2d 144, 151-152 [2002]). The pleadings are afforded a liberal construction, and the courts “accord plaintiff[ ] the benefit of every possible favorable inference” (*Leon v Martinez*, 84 NY2d 83, 87 [1994]; *see also Nonnon v City of New York*, 9 NY3d 825, 827 [2007] [dismissal warranted only if pleading failed to allege facts that fit within any cognizable legal theory]). Although factual allegations in a complaint are afforded a favorable inference, bare legal conclusions and inherently incredible facts are not entitled to preferential treatment (*Matter of Sud v Sud*, 211 AD2d 423, 424 [1st Dept 1995]). The plaintiff’s claims herein are addressed *seriatim* below.

### **Defamation**

Although plaintiff alludes to numerous occasions on which movants allegedly defamed her, her defamation claim must be dismissed since it is not pleaded with the requisite specificity (*See* CPLR 3016[a]). Specifically, plaintiff fails to set forth “the particular words complained of” (*Board of Managers of the Alfred Condominium v Miller*, 202 AD3d 467, 469 [1<sup>st</sup> Dept 2022] [citations omitted]). Nor does she plead with any specificity the “time, place and manner of the purported defamation” (*Offor v Mercy Med. Ctr.*, 171 AD3d 502, 503 [1st Dept 2019] [citations omitted]).

### **NIED and IED**

Plaintiff’s NIED and IED claims are dismissed as duplicative of her defamation claim (*See Gardner v. Gotham Per Diem*, 2022 NYLJ LEXIS 458, \*14 [Sup Ct New York County, May 10, 2022] [Jaffe, J.] citing *Matthaus v Hadjedj*, 148 AD3d 425, 425 [1st Dept 2017]; *Akpinar v Moran*, 83 AD3d 458, 459 [1st Dept 2011]; *Hirschfeld v Daily News, L.P.*, 269 AD2d 248, 249 [1st Dept 2000]; *see also Schnur v Balestriere*, \_\_\_AD3d\_\_\_, 2022 NY Slip Op 05297, \*1-2, 2022 NY App Div LEXIS 5170 [1st Dept, Sept. 27, 2022] [citations omitted]). In

any event, the conduct alleged was not "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" (*Murphy v American Home Prods. Corp.*, 58 NY2d 293, 303 [1983]).

### **Invasion of Privacy/False Light**

Since New York does not recognize plaintiff's cause of action for false light and invasion of privacy, this claim is also dismissed (*See Pitcock v Kasowitz, Benson, Torres & Friedman, LLP*, 2009 NY Slip Op 32262[U], \*16 [Sup Ct, NY County 2009] citing *Messinger v Gruner + Jahr Printing & Publ'g*, 94 NY2d 436 [2000]; *Kane v Orange County Publications*, 232 AD2d 526 [2d Dept 1996]).

### **Fraud**

Plaintiff's fraud claim is dismissed on the ground that it is vague, conclusory and not pleaded with the specificity required by CPLR 3016(b) (*See Dau v 16 Sutton Place Apt. Corp.*, 205 AD3d 533, 535 [1st Dept 2022]).

### **Permanent Injunction**

Plaintiff's claim seeking a permanent injunction is dismissed as well. An injunction is "a form of relief that may be granted against a defendant when its proponent establishes the merits of its substantive cause of action against that defendant" (*Hejailan-Amon v Amon*, 160 AD3d 481, 483-484 [1st Dept 2018] quoting *Weinreb v 37 Apts. Corp.*, 97 AD3d 54, 59 [1st Dept 2012]). Since all of plaintiff's substantive causes of action are dismissed, there is no basis upon which to support injunctive relief herein.

### **Aiding and Abetting Tortious Conduct**

Plaintiff's cause of action for aiding and abetting the commission of a tort is also dismissed since there is no underlying tort upon which to support such a claim, which "stands or falls with the underlying tort" (*Dickinson v Igoni*, 76 AD3d 943, 945 [2d Dept 2010] [citations omitted]; *see also Bd. of Mgrs. of the St. Tropez Condominium v JMA Consultants*, 2021 NY Slip Op 31646[U], \*3 [Sup Ct, NY County 2021] [Borrok, J.]).

The parties' remaining contentions are either without merit or need not be addressed given the findings above.

Accordingly, it is hereby:

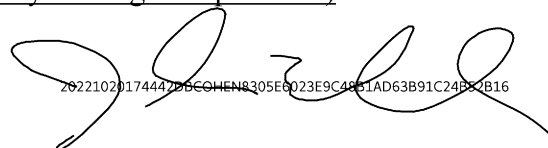
ORDERED that the motion of defendants Francesco Portelos, Angela Portelos, and Lydia Howrilka to dismiss the complaint is granted and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order, with notice of entry, upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).



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10/20/2022  
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED  DENIED

GRANTED IN PART  OTHER

APPLICATION:  SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE