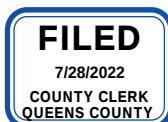


Tsai v Chia-Hao Lin
2022 NY Slip Op 35127(U)
July 27, 2022
Supreme Court, Queens County
Docket Number: Index No. 711767/2022
Judge: Robert J. McDonald
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SHORT FORM ORDER



SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

- - - - - x

SYLVIA TSAI, Index No.: 711767/2022

Plaintiff, Motion Date: 7/14/2022

- against - Motion No.: 23

CHIA-HAO LIN A/K/A MAVERICK LIN, Motion Seq.: 1

Defendant.

- - - - - x

The following electronically filed documents read on plaintiff's Order to Show Cause with Temporary Restraining Order, requesting a preliminary injunction, restraining and enjoining defendant from using, distributing, disseminating, connecting, providing the link thereof, or providing related search keywords thereof, for a defamatory review that relates to plaintiff; and for an Order directing defendant to pay reasonable attorney's fees in an amount no less than \$10,000.00:

Papers
Numbered:

Affirmations-Exhibits-Order to Show Cause.....EF 2-17

On June 7, 2022, this Court granted plaintiff's Temporary Restraining Order, which prohibited defendant from using, distributing, disseminating, connecting, providing the link, or providing related search keywords relating to a review posted on Yelp.

Plaintiff submits an affirmation in support, which contains the relevant portion of the Yelp review posted on June 3, 2022. It states:

"[...]and it turned out she sent 60-day notice in error while she was supposed to send a 90-day notice to a tenant who have moved in on a property for more than 2 years. When I challenged her about this issue, she doesn't even know this exact law to explain this new law in 2019 and started bullshitting again. OMG, she is just as good as the grandma next door who knows NOTHING ABOUT LAW."

The elements of defamation are 1) a false statement that is 2) published without privilege or authorization 3) to a third party 4) constituting fault as judged by, at a minimum, a negligence standard and 5) it must either cause special harm (economic or financial loss) or constitute defamation per se [see *Dillon v. City of New York*, 261 A.D.2d 34, 38 (N.Y.A.D. 1st Dept. 1999)]. Certain statements are considered defamation per se if they tend to injure another in his or her trade, business, or profession (see *Liberman v. Gelstein*, 80 N.Y.2d 429, 605 N.E.2d 344, 590 N.Y.S.2d 857, 21 Media L. Rep. 1079).

Defamation comes in two forms: libel and slander. Libel is the relevant form in this action, as the subject review was written rather than oral. The tort of libel arises from the publication of a statement about an individual that is both false and defamatory [see *Brian v. Richardson*, 87 N.Y.2d 46, 50, 637 N.Y.S.2d 347, 660 N.E.2d 1126)]. Since falsity is a *sine qua non* of a libel claim, and since only assertions of fact are capable of being proven false, a libel action cannot be maintained unless it is premised on published assertions of fact (see *Gross v. New York Times Co.*, 603 N.Y.S.2d 813, 623 N.E.2d 1163; *Immuno AG. v. Moor-Jankowski*, *supra*; see also, *Milkovich v Lorain Journal Co.*, 497 U.S. 1, 17-21, 110 S.Ct. 2695, 2704-2707, 111 L.Ed.2d 1).

Distinguishing between opinion and fact is a difficult task, but the relevant caselaw points to several factors to be considered: (1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal ... readers or listeners that what is being read or heard is likely to be opinion, not fact (see *Brian v. Richardson*, 87 N.Y.2d 46, 51, 637 N.Y.S.2d 347, 660 N.E.2d 1126 [1995]).

Plaintiff argues that the review is defamatory, as it contains a false statement, and its posting on Yelp has negatively affected her professional/business reputation and goodwill. She states:

"This review from Defendant contains an obviously false statement, as it is more than clear that I knew very well about the Housing Stability & Tenant Protection Act Of 2019, specifically the rule change on the newly required thirty/sixty/ninety day notice requirement under the new RPL 226-c. In fact, I was one of the few attorneys who started educating the Chinese-speaking community about this new law back in mid-2019. This Yelp review is incongruent with the reality. It is also absurd to doubt my professionalism based on this false accusation."

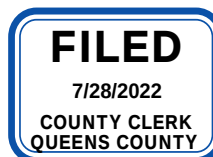
In support of her statement, plaintiff points to events, e-mail blasts, seminars, workshops, news articles, and CE training she has participated in pertaining to landlord/tenant laws. However, plaintiff does not submit copies of the decisions defendant is referring to (where 60/90 day notices were allegedly sent in error) to dispute the falsity of the statements made in his review. Further, defendant's reference to a conversation he had with plaintiff, during which he allegedly challenged plaintiff on the issue, at which time plaintiff was not able to articulate the exact law, has not been proven to be false by plaintiff through her submission of a statement, and references to her reputation for being well versed on landlord/tenant matters. Given the above, this Court finds that plaintiff has not offered evidence sufficient to prove falsity of defendant's statements.

Further, the remaining portion of defendant's review comparing plaintiff to a "grandma next door who knows nothing about law" amounts to the type of name-calling or general insults that are treated as non-defamatory (see *Gross v. New York Times Co.*, 82 N.Y.2d 146, 153, 603 N.Y.S.2d 813, 623 N.E.2d 1163 [1993]). A reasonable reader could conclude that the statement is one of opinion, rather than an objective fact, considering that plaintiff is a licensed attorney. Given the full context of the communication, this Court finds that portion of the review is a non-actionable opinion rather than an actionable statement of fact.

No opposition has been filed.

Given that plaintiff has not submitted sufficient evidence to prove the falsity of defendant's statements, and since the remaining portion of the Yelp review is non-actionable, the preliminary injunction and request for attorney's fees are hereby denied.

Dated: July 27, 2022
Long Island City, N.Y.



Robert J. McDonald

ROBERT J. MCDONALD, J.S.C.