

**De Vito v Carter**

2023 NY Slip Op 30050(U)

January 6, 2023

Supreme Court, New York County

Docket Number: Index No. 154689/2022

Judge: Lori S. Sattler

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. LORI S. SATTLER PART 02TR**

*Justice*

-----X

JENNA DE VITO

Plaintiff,

- v -

MICHELLE CARTER,

Defendant.

-----X

**INDEX NO. 154689/2022**

**MOTION DATE 10/06/2022**

**MOTION SEQ. NO. 001**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for DISMISS.

In this action alleging defamation, tortious interference, and intentional infliction of emotional distress, Defendant Michelle Carter moves for an Order pursuant to CPLR 3211(a) (5) and (7) dismissing Plaintiff Jenna De Vito’s Complaint in its entirety with prejudice. Plaintiff opposes the motion.

Plaintiff was formerly employed by Chanel as the manager of its flagship boutique located in Saks Fifth Avenue (“SFA”) (Complaint ¶ 4). She claims that she had a stellar employment record with Chanel, managed a multi-million dollar accessories business with twenty-six employees, ranked second in sales for the company, and served as liaison between Chanel and SFA (Complaint ¶ 7). She claims to have received excellent performance reviews and that because of her achievements for the company she was “selected to multiple coveted and trusted Chanel committees” and task forces (Complaint ¶¶ 9-10)

Defendant is or was a Chanel sales associate working at the SFA boutique. According to Plaintiff, Defendant was her subordinate and the two worked together for four years (Complaint ¶ 12). Plaintiff contends that she reported Defendant for commissions fraud which resulted in

an investigation (Complaint ¶ 16). Plaintiff claims to have provided proof of this fraud to Chanel (Complaint ¶ 18). She further states that she placed one of Defendant's clients on a "Do Not Sell List" thus impacting Defendant's commissions. She also contends that she warned Chanel of other inappropriate complaints regarding the boutique including discrimination, defamation, hostile work environment and retaliation (Complaint ¶ 25).

It is against this backdrop that Plaintiff alleges that Defendant sent a defamatory email about her to Chanel and SFA's corporate offices. Although she does not produce the email or any of the statements contained in it, she maintains that it characterized her as a racist and stated that she treated Black employees in a discriminatory manner while favoring white employees (Complaint ¶ 30). Plaintiff alleges she was subsequently fired on or about June 12, 2021 because of a "smear campaign" by Defendant and in order for "Chanel to cover up the widespread hate and hostility within its organization" (Complaint ¶¶ 45, 46). She contends that she has been "de facto barred" from the fashion industry "because [Defendant] had falsely characterized [Plaintiff] as a racist . . ." (Complaint ¶ 47). Plaintiff commenced this action alleging two instances of defamation, tortious interference with her employment contract, and intentional infliction of emotional distress ("IIED").

Defendant contends that the action must be dismissed. She claims that Plaintiff's first cause of action for defamation is time barred because the purported email, which she denies sending, was sent over one year prior to the action's commencement. Defendant further asserts that the first and second causes of action are insufficiently pled as Plaintiff fails to allege facts with specificity as required by CPLR 3016(a). Defendant maintains neither the email nor the allegedly defamatory statements in it are attached to or included in her Complaint. With respect to the second cause of action for defamation by statement, Defendant argues that Plaintiff fails to

identify the specific person or persons to whom Defendant made purportedly defamatory statements and instead generally alleges that they were people in the fashion industry. Lastly, Defendant claims that Plaintiff's defamation claims must fail because her purported statements are not actionable under New York law.

Defendant further maintains that the Court should dismiss the third and fourth causes of action. She contends that the third cause of action for tortious interference is insufficiently pled and only duplicates the defamation claims. Finally, Defendant argues that the last cause of action for IIED is time barred because it is based on the email, that this claim also duplicates the defamation causes of action, and that the allegations in the Complaint fail to set forth a cognizable claim for IIED.

In response, Plaintiff contends that the defamation claims are not time barred because the alleged email was viewed up to the date of Plaintiff's termination and therefore falls under the republication exception to the statute of limitations. She further contends that she cannot be penalized for insufficiently pleading exact phrases due to an "active attempt" by Defendant and Chanel to prevent her from seeing the email. Plaintiff asserts that the tortious interference claim is sufficiently pled when viewed in a light most favorable to her because Defendant's purportedly false statements caused her to be terminated. She also claims that her IIED cause of action must stand as it can be differentiated from the defamation claim because Defendant's purported statements continued after her termination and because Defendant's conduct was extreme and outrageous.

"On a motion to dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations, the defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired" (*Benn v Benn*, 82 AD3d 548 [1st Dept

2011], quoting *Island v ADC, Inc. v Baldassano Architectural Group, P.C.*, 49 AD3d 815, 816 [2d Dept 2008] [internal quotation marks omitted]). Furthermore, the “court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff” when considering a motion to dismiss pursuant to CPLR 3211(a)(5) (*id.*). The statute of limitations for a defamation action is one year (CPLR § 215[3]).

Plaintiff maintains that the email is not time barred because it was republished. Although the statute of limitations for defamation begins to run upon the first publication of a defamatory statement (*Firth v State of New York*, 98 NY2d 365, 369 [2002]), the republication of a defamatory statement causes the statute of limitations to run anew (*see Martin v Daily News L.P.*, 121 AD3d 90, 103 [1st Dept 2014]). An exception to the single publication rule, republication is found where “‘the subsequent publication is intended to and actually reaches a new audience,’ ‘the second publication is made on an occasion distinct from the initial one,’ ‘the republished statement has been modified in form or in content,’ and ‘the defendant has control over the decision to republish’” (*id.*, quoting *Hoesten v Best*, 34 AD3d 143, 150-151 [1st Dept 2006]).

Here, Plaintiff acknowledges that the purported email was sent more than one year prior to the commencement of the action but argues that the email was viewed and utilized in her employer’s decision-making process until her termination on June 12, 2021 and therefore should be found to have been republished up to that date. This argument is unavailing as Plaintiff does not allege in her Complaint that Defendant subsequently sent the email to any other person outside of Chanel or SFA management or that it was seen by any third party after the email was first sent (*see Hoesten*, 34 AD3d at 151). Accordingly, the Court finds that the first cause of action for defamation must be dismissed pursuant to CPLR § 215(3). The Court notes that even

if it were to have found that the first cause of action accrued within the statute of limitations, it would be dismissed for failure to state a cause of action because Plaintiff fails to set forth with particularity the alleged defamatory statements contained in the email as required by CPLR 3016(a).

Plaintiff's second cause of action for defamation is dismissed for failure to state a cause of action. "In an action for libel or slander, the particular words complained of should be set forth in the complaint, but their application to the plaintiff may be stated generally" (CPLR 3016[a]). The Complaint alleges only that Defendant defamed Plaintiff when she "stated as fact that Plaintiff was terminated from her job at Chanel because she was a racist who treated black employees discriminatorily, thus attributing unlawful conduct to Plaintiff" (Complaint ¶ 61). Thus, Defendant fails to set forth the particular words used as required by the CPLR. Further, Plaintiff does not set forth the individuals to whom the alleged statements were made, instead stating that they were made to "fashion industry employees," and sets forth no time period when these statements were made (*Dillon v City of New York*, 261 AD2d 34, 40 [1st Dept 1999] [citations omitted] ["The complaint also must allege the time, place and manner of the false statement and specify to whom it was made"]).

Plaintiff's third cause of action asserts that Defendant tortiously interfered with her employment contract with Chanel because the purportedly defamatory and untrue allegations in the email were intended to induce Chanel to fire her. In a tortious interference case, "the plaintiff must show the existence of its valid contract with a third party, defendant's knowledge of that contract, defendant's intentional and improper procuring of a breach, and damages" (*White Plains Coat & Apron Co., Inc. v Cintas Corp.*, 8 NY3d 422, 426 [2007]). Here, Plaintiff does not assert that Defendant intentionally and improperly procured a breach of the contract and

therefore fails to demonstrate the requisite elements of a tortious interference claim. The allegations in the Complaint are vague, conclusory, and based on speculation that Defendant knew of the contract and that any actions purportedly taken by Defendant contributed to Plaintiff's termination. Dismissal pursuant to CPLR 3211(a)(7) is therefore warranted. Additionally, Plaintiff's tortious interference claims must fail when they are merely a repetition of her defamation claims (*Curren v Carbonic Sys., Inc.*, 58 AD3d 1104, 1109 [3d Dept 2009]). Accordingly, the Court finds that Plaintiff fails to state a cause of action with respect to tortious interference and dismisses her third cause of action.

The Court grants Defendant's motion to dismiss with respect to the Plaintiff's fourth cause of action for IIED. The cause of action is time barred as IIED is an intentional tort governed by the one-year statute of limitations set forth in CPLR § 215(3) (*Gallagher v Directors Guild of AM., Inc*, 144 AD2d 261, 262 [1st Dept 1988]). As the defamation claims were barred so too are the IIED claims arising from the same alleged conduct.

Accordingly, for the reasons set forth above it is hereby:

ORDERED that this action is dismissed.

1/6/2023  
DATE

  
LORI S. SATTLER, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: