

Stancuna v Cable News Network, Inc.

2023 NY Slip Op 30632(U)

March 3, 2023

Supreme Court, New York County

Docket Number: Index No. 100373/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02TR

Justice

-----X	INDEX NO.	<u>100373/2022</u>
VERNON STANCUNA,		08/05/2022,
		08/05/2022,
Plaintiff,		08/10/2022,
		09/19/2022,
- v -		10/27/2022,
CABLE NEWS NETWORK, INC. D/B/A CNN,	MOTION DATE	<u>11/14/2022</u>
		001 002 003
Defendant.	MOTION SEQ. NO.	<u>005 006 007</u>

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 20, 21, 35, 36, 37, 38, 49, 50

were read on this motion to/for ORDER/JUDGMENT NUNC PRO TUNC.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 18, 19, 22, 23, 39, 40, 41, 42, 43, 44, 51, 52

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 17, 30, 31, 53, 54

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 46, 48, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 91, 92

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 107, 108

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 105, 109, 110, 111, 112, 113, 114

were read on this motion to/for EXTEND - TIME.

In Motion Sequence No. 001 of this tort action, Plaintiff Vernon Stancuna (“Plaintiff”), who is self-represented, moves to dismiss the Affirmative Defenses interposed in the Answer

filed by Defendant Cable News Network, Inc. d/b/a CNN (“Defendant”). In Motion Sequence #002, Plaintiff moves to compel discovery and for sanctions. In Motion Sequence #003, Plaintiff moves for a hearing to adjudicate Motion Sequence #002. In Motion Sequence #005, Plaintiff again moves to compel discovery, and Defendant cross-moves to strike Plaintiff’s discovery demand and for an in camera inspection of certain discovery. In Motion Sequence #006, Defendant moves to dismiss the action pursuant to CPLR 3211(a)(5) as time-barred by the one-year statute of limitations on assault and battery claims and pursuant to CPLR 3211(a)(7) for failure to state a claim; to strike Plaintiff’s Complaint or compel service of a Bill of Particulars; and to strike paragraph 4 of the Complaint as scandalous and prejudicial. Plaintiff cross-moves for an order denying Defendant’s motion to dismiss. In Motion Sequence #007, Plaintiff moves for an extension of time to reply to the motion to dismiss until 60 days after the completion of discovery. The motions are consolidated for disposition.

Plaintiff commenced this action on April 4, 2022. The Complaint alleges that in April 2020, Plaintiff traveled to various hospitals and “make-shift medical centers” in New York City “to personally observe, verify, report on and video record New Yorker’s [sic] experiences during the COVID pandemic” (NYSCEF Doc. No. 96, Complaint ¶ 3), and that on April 11, 2020 Plaintiff was filming footage “for later broadcasting on his Facebook internet pages” near the Javits Center when he was “viciously and violently attacked by a CNN news crew” (*id.* ¶ 5). The Complaint states: “[i]t is more probable than not, that if Mr. Stancuna’s video recordings were not inhibited and/or destroyed by the CNN news crew, those recording [sic] would have shown circumstances in direct conflict with CNN’s news narrative of April of 2022 [sic]: ‘thousands of New Yorker’s [sic] overwhelming the medical services available for COVID treatment and thus dying by the thousands’” (*id.* ¶ 7).

Plaintiff alleges that Defendant was negligent in allowing its employees to block Plaintiff's ability to walk on a city sidewalk, knock him to the ground, prevent him from recording "the true nature of the COVID pandemic," and attempting to destroy his recording devices (*id.* at ¶ 8). The Complaint states that because of Defendant's negligence, Plaintiff was physically injured, his smart phone was damaged, and his ability to report the news on Facebook was interrupted (*id.* at ¶ 9-10). The Complaint seeks damages of \$250,000.

When considering a motion to dismiss pursuant to CPLR 3211(a), the court must accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Vig v New York Hairspray Co., L.P.*, 67 AD3d 140, 144-145 [1st Dept 2009]).

Defendant seeks dismissal based on CPLR 3211(a)(5) on the grounds that the action is one for assault and battery, which are subject to a one-year statute of limitations (CPLR § 215[3]). In opposition, Plaintiff contends that he has asserted a negligence cause of action, and therefore the action is timely (*see* CPLR § 214).

Despite Plaintiff's assertion that the action sounds in negligence, the Complaint alleges that he was "viciously and violently attacked" by an employee of Defendant, and his cause of action and the damages sought arise out of that purported attack. Therefore, "[c]ontrary to Plaintiff's contentions and regardless of how the complaint characterized the action, the conduct of Defendant's employee cannot be deemed negligent under any fair construction of the complaint" (*Palker v MacDougal Rest. Inc.*, 96 AD3d 629, 630 [1st Dept 2012] [where defendant's employee pushed plaintiff down a flight of stairs, "Plaintiff clearly based his action on an alleged offensive touching. Hence, Defendant can be liable, if at all, only for assault and

not for negligence.”]; *see also Trott v Merit Dept. Store*, 106 AD2d 158, 160 [1st Dept 1985]).

The purported assault is alleged to have occurred on April 11, 2020, and the action was commenced on April 4, 2022. Therefore, even accounting for the pandemic-precipitated 228-day toll on statutes of limitations (*see Murphy v Harris*, 210 AD3d 410 [1st Dept 2022]), the action was not timely filed and must be dismissed.

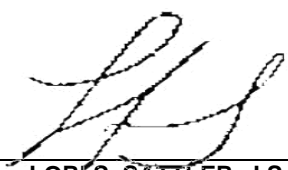
Accordingly, it is hereby:

ORDERED that the motion to dismiss is granted and the complaint is dismissed in its entirety; and it is further

ORDERED that all other relief sought is denied.

This constitutes the Decision and Order of the Court.

3/3/2023
DATE


LORI S. SATTLER, J.S.C.

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