

Yehoshua v Khahaifa

2023 NY Slip Op 31911(U)

May 26, 2023

Supreme Court, Kings County

Docket Number: Index No. 504424/22

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 35 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 26th day of May, 2023.

P R E S E N T:

HON. KAREN B. ROTHENBERG,
Justice.

-----X
AMELIA YEHOShUA,

Plaintiff,

- against -

Index No. 504424/22

WESLII KHAHAIFA and DAVID FARBER,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) _____ 6-11

Opposing Affidavits (Affirmations) _____ 15-25

Reply Affidavits (Affirmations) _____ 28-30

Sur-Reply Letters _____ 33, 35, 34

Upon the foregoing papers in this defamation action, defendants Weslii Khahaifa (Khahaifa) and David Farber (Farber) (collectively, defendants) move (M.S. 1) for an order: (1) pursuant to CPLR 3211 (a) (4), (a) (5) and (a) (7), dismissing the amended complaint with prejudice, or, alternatively, staying this action until the resolution of the first filed Federal lawsuit, pursuant to CPLR 2201 or 3211 (a) (4). Plaintiff’s opposing documents have been sealed, pursuant to a so ordered stipulation (see NYSCEF Doc Nos. 31-32).

Plaintiff Amelia Yehoshua (Yehoshua or plaintiff), a former trial attorney with the New York City Transit Authority (NYCTA) until her termination in January 2020,

amended her verified complaint. The amended complaint asserts claims against defendant Khahaifa, plaintiff's former manager and the Borough Litigation Chief in the New York County Trial Unit of the NYCTA, and defendant Farber, the General Counsel of the Metropolitan Transit Authority (MTA) and NYCTA (NYSCEF Doc No. 3 at ¶¶ 2-5 and 9-10). The amended complaint alleges that:

“the words and actions of the Defendant KHAHAIFA, acting on her own behalf, were part of a racially motivated, anti-Semitic scheme to terminate the Plaintiff from her public attorney position at the N[YCTA]. Within this scheme, the Defendant KHAHAIFA's sole motivating factor in defaming the Plaintiff was her malice toward the Plaintiff in her determined efforts to destroy her career, have her terminated from her employment as an Executive Agency Counsel, and make it impossible for her to effectively resume her career as an employee of the M[TA] and/or the N[YCTA] . . . or as an attorney within the State of New York

* * *

“for years, the Plaintiff had consistently complained about the Defendant's hostility, harassment and unequal treatment by Defendant KHAHAIFA to the aforesaid Defendant herself, and Plaintiff's supervisor, Lawrence Heisler, Executive Assistant General Counsel and previous head of the Torts Division of the N[YCTA]. This hostility, harassment, and unequal treatment included statements, in addition to hostile conduct, borne out of the fact that the Plaintiff sometimes had to leave work early (including trials or other appearances before the courts) as a Sabbath observer and member of the Jewish faith. The Plaintiff specifically avers that Defendant's conduct and hostility toward her were of an anti-Semitic nature, and that certain statements by the Defendant, KHAHAIFA was specifically due to the Plaintiff exercising her religious right to leave early on Friday to celebrate the Jewish Sabbath

The amended complaint alleges that plaintiff was transferred and given a new supervisor, however, defendant Khahaifa still “defamed and slandered the Plaintiff with malice, while Defendant FARBER defamed and slandered the Plaintiff by . . . his negligent and/or reckless conduct in republishing the statement[s of several New York County Supreme Court Justices] without properly inquiring as to their accuracy, and never even asking the Plaintiff her own position as to the falsity of the statements”.

Notably, the amended complaint specifically alleges that Farber continued the defamation by republishing a Mach 29, 2021 Notice of Disciplinary Charges based on Khahaifa’s “false and defamatory statements . . . that numerous judges did not want the Plaintiff in their courtrooms since 2017”.

The amended complaint asserts causes of action against both defendants for libel, slander and defamation, it seeks punitive damages based on Khahaifa’s malicious defamatory statements and Farber’s reckless and/or intentional republication of the libel, slander and defamation in March 2021 (first through fifth causes of action) and tortious interference with plaintiff’s employment for NYCTA (sixth cause of action).

On July 19, 2021, about seven months before commencing this defamation action, Yehoshua commenced a Federal Action asserting retaliation, discrimination and harassment claims against Khahaifa and the NYCTA in the United States District Court for the Eastern District of New York (EDNY) captioned *Yehoshua v Manhattan and Bronx Surface Transit Operating Authority, New York City Transit Authority and Weslii Khahaifa*, EDNY index No. 21-CV-04055. The amended complaint in the Prior Pending Federal Action states that it is “an action to recover damages for retaliation[,]”

discrimination and harassment on the basis of religion in the terms, conditions, and privileges of employment . . .”.

On April 6, 2022, defendants filed this pre-answer motion to dismiss the complaint, pursuant to CPLR 3211 (a) (4), (a) (5) and (a) (7), or, alternatively staying this action pending the resolution of the Prior Pending Federal Action, pursuant to CPLR 2201 and/or 3211 (a) (4). Defense counsel’s affirmation submits: (1) the amended complaint; (2) the amended complaint in the Prior Pending Federal Action; (3) a decision in *Garcia v Metropolitan Transportation Authority and New York City Transit Authority*, 2018 NY Slip Op. 32996 (N.Y. Sup. Ct. 2018); and (4) portions of the trial transcript in the *Garcia* case (*Garcia* was a matter before Justice Sokoloff and is referenced by plaintiff as defamatory).

Defendants also submit a memorandum of law in support of their dismissal/stay motion arguing that “this litigation is merely an extension of the Federal Litigation”. Defendants note that the amended complaint specifically alleges “[t]hat the within defamation and interference with contract claims arise out of the underlying claims that led to the wrongful illegal termination of the Plaintiff . . .” and that Khahaifa and Farber, based on conduct challenged in the [Amended] Complaint, “caused, actually participated in, and aided and abetted the conduct *giving rise to* the retaliation, discrimination, and harassment claims set forth in a federal complaint”. Defendants assert that the defamatory statements alleged in the amended complaint in this case “mirror” plaintiff’s allegations in the Prior Pending Federal Action:

“including, but not limited to: (i) whether Khahaifa made any statements about Yehoshua, what those statements were, to whom those statements were made, and whether those statements formed the basis of the June 2020 or March 2021 Notices about which Yehoshua complains; (ii) whether any statements actually made by Khahaifa were false, and if so, what Khahaifa’s motivations were in making those statements; (iii) whether any statements actually made by Khahaifa were true, and therefore constitute legitimate non-discriminatory business reasons for adverse employment actions, and cannot support the tort claims levied against her; and (iv) whether Farber or NYCTA took any disciplinary action against Yehoshua without having first conducted an investigation, whether such action was justified, and if not, whether such decision was motivated by discriminatory, retaliatory, or other unlawful animus” (*id.* at 7).

Defendants argue that “[r]esolution of these questions central to the Federal Litigation will streamline, if not fully resolve, the issues presented in the [Amended] Complaint” in this defamation action.

Plaintiff, in opposition, submits an attorney affirmation with exhibits, most of which were produced in response to plaintiff’s discovery demands in the Federal Action, and in addition, a memorandum of law.

“Defendants’ arguments for a dismissal or a stay must fail [because] although Yehoshua and Khahaifa are parties in both the state and federal actions, there is no ‘substantial identity of the parties’ between the actions. David Farber is a defendant in the state defamation case, whereas he is not a party to the federal case. Likewise, the Manhattan and Bronx Surface Transit Operating Authority, and the N[YCTA] are both defendants in the federal lawsuit but are not named as parties in the state case”.

Plaintiff asserts that a stay would be an unwarranted “delay of justice” because she seeks different relief in this action and in the Prior Pending Federal Action. Plaintiff also

generally argues that “[g]iven the disparate legal theories advanced in the two matters involved here, there is little chance that a determination in the federal case would result in a resolution of the state case”. Notably, plaintiff does not address the common factual issues in this and the Prior Pending Federal Action that defendants identified.

Defendants, in reply, assert that plaintiff failed to rebut, and thus, concedes that this defamation action and the Prior Pending Federal Action arise “out of the same subject matter and alleged series of wrongdoings[,]” “require resolution of the same questions of fact[,]” resolution of the Prior Pending Federal Action “will resolve issues central to this matter . . .” and that “the first-filed rule and principles of judicial economy compel dismissal of the instant action”.

Discussion

CPLR 2201 provides that “[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” The Second Department has long held that a stay pending the conclusion of a prior pending action is warranted, in the court’s discretion, where “[t]he parties in the two actions are *virtually* identical, the issues to be resolved overlap, and . . . the imposition of a stay further avoids the risk of inconsistent adjudications, duplication of proof, and the potential waste of judicial resources” (*El Greco Inc. v Cohn*, 139 AD2d 615, 616 [1988] [emphasis added]).

Here, defendants have demonstrated good cause for a stay of this defamation action pending the conclusion of the Federal Action, particularly in light of the indisputable fact that this action and the Federal Action arise out of the same underlying facts and

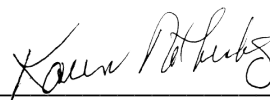
circumstances regarding disciplinary charges against plaintiff and her termination from her employment with NYCTA. There is a substantial overlap of issues and sufficient identity of the parties in this and the Federal Action, to wit: the plaintiff and defendant Khahaifa. Furthermore, both actions involve the same alleged defamatory statements about plaintiff's employment, and thus, the resolution of the Federal Action may resolve dispositive factual issues in this defamation action.

Indeed, a stay is warranted to prevent potentially inconsistent rulings regarding the veracity of defendants' alleged defamatory statements regarding plaintiff's work performance and her termination from the NYCTA. Given the substantial identity between the two matters, this court finds, in the exercise of its discretion, that a stay is warranted to preserve judicial resources and further the interest of justice by preventing inequitable results. Accordingly, it is hereby

ORDERED that defendants' motion seeking a stay of this action, pursuant to CPLR 2201, pending a resolution in the Prior Pending Federal Action is granted, and this action is hereby stayed until this court receives written notice from the parties that the Prior Pending Federal Action has been resolved on the merits or otherwise; defendants' dismissal motion is denied.

This constitutes the decision and order of the court.

E N T E R,



J. S. C.