

**Morales v Ram**

2023 NY Slip Op 32258(U)

July 5, 2023

Supreme Court, New York County

Docket Number: Index No. 158739/2022

Judge: Dakota D. Ramseur

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAKOTA D. RAMSEUR PART 34M

Justice

-----X

RUD MORALES

Plaintiff,

- v -

DORPATIE RAM,

Defendant.

-----X

INDEX NO. 158739/2022

MOTION DATE 02/28/2023

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, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISS

In October 2022, plaintiff Rud Morales commenced this action against defendant Dorpatie Ram, asserting causes of action for libel and slander related to allegations defendant made in an email she sent to members of the New York City Community Board 12 (hereinafter, "Community Board 12") ahead of a meeting to consider plaintiff's application for a liquor license. In this motion sequence (001), defendant moves to dismiss the action pursuant to CPLR 3211 (a) (1) and (a) (7), arguing that documentary evidence utterly refutes the allegations plaintiff made in her complaint and that plaintiff failed to state a cause of action. Defendant further moves the Court to impose sanctions for frivolously bringing the instant action. Plaintiff opposes both branches of the motion. For the following reasons, defendant's motion is denied in its entirety.

BACKGROUND

On October 13, 2021, defendant sent an email to members of the Community Board 12, who, on that day, would be meeting to decide upon plaintiff's application for a liquor license for one of her restaurants. In that email ("the October 13 Email"), defendant allegedly made several defamatory statements. These include:

- (1) "She used Negro Claro to obtain a liquor license then established Ms. Koli and Ganesha as separate illegal entities on the back of the venue but operated under 1 liquor license. It seems as if she's trying to repeat the exact pattern with La Catrina-dba MaLa LLC and La Ma'la LLC."
(2) "Nelson Jiminez has given her [plaintiff] over 105K in funds to invest in 3805 10th Ave Negro Claro Lounge, Alex Amano loaned her 50k for 3805 10th Ave. Richard Wong has invested over 500k in funds to Negro Claro. Rud Morales as president of Negro Claro has taken everyone's money and used it for personal uses and gain, then closed all accounts pertaining to the corporation and

- scammed everyone out of the money invested or loaned. There's numerous judgments against her from unsuspecting people that either invested or loaned her money only to be fraudulently dupped by her running a ponzi scheme.”
- (3) “This applicant has a blatant disrespect for the laws of this city and has tried every way to circumvent from doing the right thing and operate an establishment in a civilized, ethical and legal manner.”
  - (4) “[Plaintiff] closes the corporations and hides the money under family members names. Ive been trying to collect a judgment from Rud Morales since 2019 and she does not maintain funds under her name.”
  - (5) “Rud Morales has misrepresented herself and lied multiple times to the Community Board/the precinct and poor unsuspecting investors...Ma’La LLC doesn’t exist as per Dept of State Records, this business petitioning for a liquor license is not a real business. I’m a veteran banker and I’m well aware of what money laundering looks like. You have someone petitioning for a liquor license, under an entity that doesn’t exist and her neighboring restaurant has the similar name in which she’s a straw owner, not to mention there’s a history her funding these business from money with convicted drug dealers.” (Hereinafter, “Statements (1)-(5)”.) (NYSCEF doc. no. 16, Defendant’s October 13 email.)

Later that same day, defendant attended the Community Board 12 Licensing Committee’s meeting and essentially reiterated these same allegations, saying that defendant “is a liar, she has taken money from absolutely everybody” and that she is “running a Ponzi scheme.” (NYSCEF doc. no. 1, complaint.) Ultimately, the Community Board 12 recommended against granting plaintiff’s liquor license application.

### *The Instant Motion*

On this motion to dismiss under CPLR 3211, defendant contends that the allegations in the October 13 Email were presented solely as her opinions, that the nine attachments she included in the relevant email—what she considers documentary evidence—formed the basis of her opinion, and therefore, her email and statements at the meeting cannot expose her to liability for defamation. In opposition, plaintiff argues that (1) regardless of whether the allegations were presented as defendant’s opinions, the allegations are, in actuality, assertions of fact, including as to her criminality, such that defendant is not shielded from liability; and (2) none of the attachments constitute documentary evidence that utterly refutes her causes of action for libel and slander. The Court notes that defendant did not submit a reply to plaintiff’s opposition.

## DISCUSSION

### *Defendant’s Arguments under CPLR 3211 (a) (1)*

On a motion to dismiss under CPLR 3211 (a) (1), courts may grant such relief only where the “documentary evidence” is of such nature and quality—“unambiguous, authentic, and undeniable”—that it utterly refutes plaintiff’s factual allegation, thereby conclusively establishing a defense as a matter of law. (*See Phillips v Taco Bell Corp.*, 152 AD3d 806, 806-807 [2d Dept 2017].) As the First Department explained, the documentary evidence relied upon

must “definitely dispose of the plaintiff’s claim.” (*Art & Fashion Group Corp. v CyclopsProd., Inc.* 120 AD3d 436, 438 [1st Dept 2014].) Here, defendant contends that the attachments she included in her October 13 Email constitutes documentary evidence and establishes an absolute defense as a matter of law to plaintiff’s allegation. This argument—that she was merely expressing her opinion based upon judicial records, texts, and emails, and thus cannot be liable—is unpersuasive.

In *Davis v Boenheim* (24 NY3d 262 [2014]), the Court of Appeals provides a comprehensive recitation of the relevant principles that courts use to analyze whether published statements are “susceptible of a defamatory connotation” and therefore the proper subject of libel and slander claims. First, courts must first determine if the statements identify the plaintiff and tend to expose her to public contempt, hatred, or ridicule. (*Id.* at 269-270; see also *Silsdorf v Levine*, 59 NY2d 8, 14 [1983].) Here, the five statements described above indisputably do just that: they identify plaintiff and tend to injure her reputation. Next, the court must determine whether the complained-of statements are factual in nature or merely the expression of an opinion. This assessment is made by looking at the language of the statements and the surrounding context from the perspective of a reasonable person. (*Id.* at 269-270.) The three-factor test for whether a reasonable observer would consider the challenged statements to be assertions of fact asks whether the statements: (1) contain specific language with a precise meaning; (2) are capable of being proven true or false; and (3) exist as part of full, broader social context that signals to the reader or listener that what is being read or heard is likely to be fact, not opinion. (*Id.* at 270, citing to *Mann v Abel*, 10 NY3d 271, 276 [2008].)

The Court of Appeals draws a further distinction between “pure opinions” and “mixed opinions.” Whereas “pure opinions”—defined, in relevant part, as “statement[s] of opinion which [are] accompanied by a recitation of the facts upon which [they are] based”—are not actionable, an opinion that “implies that it is based upon facts which justify the opinion but are unknown to those reading it... is a ‘mixed opinion’ and is actionable (citations omitted).” (*Id.* at 269.) In treating “mixed opinions” differently from “pure opinions,” the critical distinction becomes whether the statements provide the reader with the opportunity to assess the basis upon which the opinion was reached so that the reader can draw his or her own conclusions. (*Id.*) If a speaker states an opinion but also creates the impression that it is based on withheld facts, the speaker may still be liable for defamation. (*Id.*; *Silsdorf* 59 NY2d at 14 [“The immunity afforded the expression of opinion obtains only when the facts supporting the opinion are set forth.”].)

The principles outlined above demonstrate that defendant is not entitled to dismissal. In Statements (2), (4), and (5) reproduced above, defendants describe plaintiff as having operated in a “ponzi scheme,” of defrauding various investors out of approximately \$655,000, which she then used for personal gain, of money laundering, of hiding said funds from judgments, and of using money obtained from convicted drug dealers in her businesses. These statements certainly (1) use specific language with precise meaning, (2) that is capable of being proven true or false, and (3) is surrounded by a broader context that signals to the reader that the statements therein are meant to be understood as factual in nature. These statements have all hallmarks of “facts” as described in *Davis v Boenheim*, not opinions.

But even *assuming arguendo* that the allegations are a certain type of “opinion,” they are certainly not “pure” as opposed to “mixed” opinions and liability may still attach. Put differently, though defendant may have used the phrase “it is my belief” to describe her opinion that plaintiff was using the liquor license approved for one of her businesses in others, this does not absolve defendant of liability for the specific allegation (or for the four others) since the supposed basis for this belief is not contained in the attachments and requires the reader to infer its truth from the existence of other, private facts that defendant withheld.

As described above, the attachments do not support the various allegations of criminality defendant made against plaintiff. The first attachment appears to be a New York City Department of Building report concerning plaintiff’s Negro Claro business, but the significance of such a report is unstated; the second attachment is a corporation search of the New York Department of State records search allegedly showing that Ma’la LLC had not been incorporated in the state, but the search has no date or time stamp, and provides no indication of plaintiff’s use of one liquor license at her other establishments (or any other crime); attachment three contains meeting minutes from a Community Board 12 meeting, again the significance is not stated; attachment four is a promissory note indicating that plaintiff borrowed money from Alex Amano for \$50,000, but there is no indication that she failed to pay the note back; attachment five is the default judgment defendant references in Statement (4) but does not include any facts that suggest she has had difficulty enforcing the judgment; attachment six is a text message and email with unclear implications for any of the five allegations described above; and attachment seven is a verified complaint filed by Nelson Jimenez, but any resolution of the matter was not included. (NYSCEF doc. no 17.) The Court need not describe the remaining attachments as they also do not form a basis on which to infer criminality, a “ponzi scheme,” or fraud. Lastly, by the very terms of the email—specifically, her claim to expertise in the statement “I’m a veteran banker and I’m well aware of what money laundering looks like”—invokes defendant’s special knowledge and implies a special relationship with facts and considerations outside the purview of the members of Community Board 12 to whom the email was sent. As such, the attachments that purport to be the basis of her opinion do not provide the audience with the opportunity to assess the basis upon which defendant supported her opinions. As such, if not outright considered statements of fact, the above discussion reveals they are certainly not pure opinions that would shield defendant from liability.

#### *Defendant’s Argument under CPLR 3211 (a) (7)*

Defendant contends plaintiff has not properly pled a cause of action for libel and slander because the statements are not clearly enumerated in the complaint and “not sufficient to give notice of the[ir] substance.” The Court notes that causes of action for libel and slander must be pled with particularity (*see* CPLR 3016), but even under this more exacting standard than defendant assumes, dismissal is not warranted. The complaint describes the exact words that make out its libel claims (NYSCEF doc. no. 1 at ¶ 19-24 [describing the five statements the Court has cited to here]) as required. (*Abe’s Rooms Inc. v Space Hunters, Inc.* (38 AD3d 690, 693 [2d Dept 2007]; *Romanello v Intesa Sanpaolo S.P.A.* (97 AD3d 449 [1st Dept 2012] [holding that allegations of “statements to the effect that” and “or other words synonymous therewith” were not sufficiently particular to make out a cause of action for defamation or

slander].) As such, plaintiff has stated a cause of action for both libel and slander. Further, since there is no basis to dismiss the action, defendant has not shown that sanctions are warranted.


Accordingly, for the foregoing reasons, it is hereby

ORDERED that defendant Dorpatie Ram’s motion to dismiss pursuant to CPLR 3211 (a) (1) and (a) (7) is denied; and it is further

ORDERED the branch of defendant’s motion for sanctions is denied; and it is further

ORDERED that the parties shall appear at 60 Centre Street, Courtroom 341 at 10 a.m. on July 25, 2023, for a preliminary conference with the Court.

This constitutes the Decision and Order of the Court.

  
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**DAKOTA D. RAMSEUR, J.S.C.**

7/5/2023  
DATE

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