

Corey v City of New York

2023 NY Slip Op 34260(U)

December 7, 2023

Supreme Court, New York County

Docket Number: Index No. 151459/2023

Judge: Judy H. Kim

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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JESSICA COREY,

Plaintiff,

- v -

CITY OF NEW YORK, ERIC ADAMS, JULIE WON,

Defendants.

-----X

INDEX NO. 151459/2023

MOTION DATE 09/26/2023

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, 17, 18, 19, 20, 21

were read on this motion to DISMISS

Upon the foregoing documents, defendants' motion to dismiss this action is granted.

Plaintiff is a police officer in the New York City Police Department ("NYPD"). In February 2021, she was appointed as Commanding Officer of the NYPD's Hate Crime Unit and was promoted to the rank of Inspector in June 2021. On October 5, 2021, a male subway passenger verbally accosted and spat on an Asian American woman, a "Ms. Lee," which she was able to partially capture on video. After an investigation, an Assistant District Attorney "determined that no hate crime had occurred."

During a television interview on February 15, 2022, defendant Eric Adams, the Mayor of New York City, was asked by ABC News correspondent CeFaan Kim about New York City's handling of hate crimes against Asian-Americans, and Ms. Lee's assertion that plaintiff was unsympathetic to Ms. Lee during their phone call, telling her she should not have recorded the incident. In response, Adams stated that this was the first time he had been informed of any

concerns about plaintiff's response, adding:

“I don't want a leader in that area that starts off with saying why something is not a possible hate crime. It would be troubling to me to see if someone is not clear on the direction I want my hate crime unit to perform. I don't know what the criterias [sic] were under other administrations, but we have a new day, and we're going to have a new way.”

Plaintiff asserts that, as a result of this statement, she was removed as Commanding Officer of the Hate Crime Unit and reassigned, and that she has suffered extreme embarrassment, mental anguish, and reputational damage and will continue to suffer professional and financial damages, inter alia, in the form of lost promotional opportunities and post-NYPD employment opportunities.

Plaintiff now brings this action asserting a claim of defamation per se against Adams¹. Defendants' motion is granted as the statement at issue is protected by the absolute privilege afforded to him as Mayor of New York City.

DISCUSSION

The elements of defamation: “(1) the publishing of a false statement to a third party; (2) without authorization or privilege; (3) which constitutes fault, judged at a minimum negligence standard; (4) that causes special harm or amounts to defamation per se” (Metrosearch Recoveries, LLC v City of New York, 2017 NY Slip Op 32072[U], 5-6 [Sup Ct, New York County 2017] [internal citations omitted], affd as mod, 169 AD3d 512 [1st Dept 2019]).

In this case, Adams' statements at issue here are protected by the absolute privilege. This privilege is “reserved for communications made by individuals participating in a public function, such as executive, legislative, judicial or quasi-judicial proceedings” and “immunizes a

¹ In her opposition to this motion, plaintiff voluntarily withdraws all claims against the City and Julie Won (See Paltzik Affirm. in Opp. at ¶25).

communicant from liability in a defamation action” for all statements made while acting in their official capacity in order to “ensure that such persons’ own personal interests—especially fear of a civil action, whether successful or otherwise—do not have an adverse impact upon the discharge of their public function” (Rosenberg v MetLife, Inc., 8 NY3d 359, 365 [2007] [internal citations and quotations omitted]).

Adams’ remarks were a clear exercise of his authority as Mayor of New York City, insofar as he was addressing questions about how the New York City Police Department, an agency under his control, responds to bias complaints (See Metrosearch Recoveries, LLC v City of New York, 169 AD3d 512 [1st Dept 2019] [Comptroller’s press conference addressing plaintiff’s communications with public that falsely invoked authority of Comptroller’s office was “sufficiently related to the performance of [Comptroller’s] duties that the statements made therein were absolutely privileged”). Accordingly, the Mayor’s statements are protected by absolute privilege (See id.).

Even if this were not the case, Adams’ statement was a non-actionable expression of pure opinion. The New York State Court of Appeals has set forth a four-factor analysis to determine whether a statement falls within this category: “(1) an assessment of whether the specific language in issue has a precise meaning which is readily understood or whether it is indefinite and ambiguous; (2) a determination of whether the statement is capable of being objectively characterized as true or false; (3) an examination of the full context of the communication in which the statement appears; and (4) a consideration of the broader social context or setting surrounding the communication including the existence of any applicable customs or conventions which might signal to readers or listeners that what is being read or heard is likely to be opinion, not fact”

(Steinhilber v Alphonse, 68 NY2d 283, 292 [1986]). This analysis supports the conclusion that the statement in question was an expression of pure opinion: Adams made a general statement of policy (i.e., that he is categorically opposed to minimizing or failing to respond to acts of discrimination) and, to the extent he addressed allegations concerning plaintiff's handling of the bias investigation, his response was couched as a hypothetical statement or, at most, a conditional statement. Accordingly, it cannot be characterized as true or false. Moreover, examining the interview in the broader context in which it was conducted further supports the conclusion that this was a general statement about the Mayor's policy toward bias investigations rather than an informed discussion of any specific investigation, as Adams acknowledged that he was not aware of the facts underlying Ms. Lee's allegations as to the investigation but responding to the version of events as recounted by the reporter conducting the interview.

Accordingly, it is

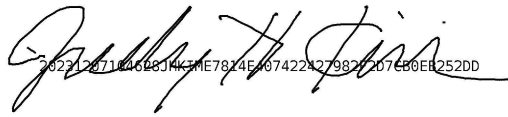
ORDERED that defendants' motion to dismiss this action is granted and it is hereby dismissed; and it is further

ORDERED that, within ten days of the date of this decision and order, counsel for defendants are directed to serve a copy of this decision and order, with notice of entry, upon plaintiff as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the

“Efiling” page on this Court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the Court.



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12/7/2023

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE