

Taffet v Fire Is. News Inc.
2023 NY Slip Op 35135(U)
April 11, 2023
Supreme Court, Nassau County
Docket Number: Index No. 001258-2019
Judge: Conrad D. Singer
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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
COUNTY OF NASSAU

P R E S E N T : HON. CONRAD D. SINGER,
Justice

TRIAL PART: 21

-----X
JORDAN TAFFET,

Index No.: 001258-2019

Motion Seq. No.: 010

Motion Submitted: 01/25/2023

Plaintiff,

-against-

DECISION AND ORDER ON
MOTION

FIRE ISLAND NEWS INC., TIMOTHY BOLGER,
SHOSHANNA MCCOLLUM, LORNA LUNIEWSKI,
CRAIG LOW, CHRIS MERCOGLIANO, and
LAURA MERCOGLIANO,

Defendants.
-----X

The following papers were read on this motion:

Notice of Motion and Supporting Papers [Seq. 010].....X
Affidavit in Opposition to Summary Judgment Motion [Seq. 010].....X
Reply Affirmation and Supporting Papers [Seq. 010]X

Upon the foregoing papers, the motion filed by the defendants, FIRE ISLAND NEWS INC. ["FIRE ISLAND NEWS"], TIMOTHY BOLGER ["BOLGER"], SHOSHANNA MCCOLLUM ["MCCOLLUM"], LORNA LUNIEWSKI ["LUNIEWSKI"], CRAIG LOW ["LOW"], CHRIS MERCOGLIANO ["CHRIS MERCOGLIANO"], and LAURA MERCOGLIANO ["LAURA MERCOGLIANO"] [collectively, "Defendants"], for an Order pursuant to CPLR 3212 and Civil Rights Law § 74, dismissing the Verified Complaint filed by the plaintiff, JORDAN TAFFET ["plaintiff"], is determined as hereinafter follows:

The *pro se* plaintiff commenced this action by filing a Verified Complaint on November 27, 2019. The plaintiff asserts the following four causes of action against the defendants: 1) defamation per se; 2) defamation by implication; 3) intentional infliction of emotional distress; and 4) negligent

infliction of emotional distress. The plaintiff's claims arise from an article entitled "*Short-Term Rental Home Risks Rise with Popularity*", which was published in the May 24, 2019 edition of the FIRE ISLAND NEWS [Volume 63, Issue One] [hereinafter, the "Article"]. The Article was also posted to the newspaper's website, <http://fireisland-news.com>, in or about May of 2019. The Article refers to the plaintiff's July 18, 2009 arrest and October 29, 2010 conviction for unlawful surveillance in the second degree, Penal Law § 250.45. The individual defendants are either editors, reporters, publishers, and/or owners of defendant FIRE ISLAND NEWS.

The portion of the Article which refers to the plaintiff is as follows:

"RENTER BEWARE

Media accounts of renters finding hidden cameras that the host set up to spy on unsuspecting victims - often in bedrooms, bathrooms, and showers - aren't only based on incidents that happen in far away places.

Jordan Taffet, who authorities have described as one of the most notorious rowdy group home renters in Ocean Beach, was arrested on July 18, 2009, and convicted a year later of second-degree unlawful surveillance: use/install imaging device for sexual arousal, a felony, court records show.

He was sentenced Oct. 29, 2010, to five years of probation, although he faced up to four years in prison. His appeal on that conviction was denied, records show". (Exhibit 1 to Defendants' Motion)

The present motion is the defendants' second motion for summary judgment dismissal of the Verified Complaint. They previously moved in January of 2021 for an Order pursuant to CPLR 3212 and Civil Rights Law § 74 dismissing the plaintiff's Verified Complaint. [See Motion Seq. 003, NYSCEF Doc. Numbers 010 through 32]. In their prior summary judgment motion they argued that the plaintiff's Verified Complaint should be dismissed because they are entitled to a complete defense pursuant to Civil Rights Law § 74 as the subject Article was a "fair and true report" of the underlying criminal judicial

proceedings against the plaintiff.¹ The defendants now advance a somewhat modified argument in support of their present summary judgment motion, this time arguing that the plaintiff's defamation claims should be dismissed pursuant to Civil Rights Law § 74, and that the plaintiff's infliction of emotional distress claims should be dismissed due to the failure to state a viable claim.

By Short Form Order entered June 4, 2021, the Court [Voutsinas, J.] denied the defendants' prior motion for summary judgment, finding that the defendants failed to make a prima facie showing of entitlement to summary judgment, as they failed to submit to the Court any records or documentary proof establishing that the Article was a "fair and true report" of the underlying judicial proceeding. [See Short Form Order ["SFO"] entered June 10, 2021, NYSCEF Doc. No. 32, p. 6] Judge Voutsinas further held that, "[i]n light of plaintiff's sworn allegations, the Article, considered as a whole, is reasonably susceptible of a defamatory connotation concerning the plaintiff, and thus it is a question for the jury whether the ordinary and average reader would understand the meaning as such". (SFO, NYSCEF Doc. No. 32, p. 7).

After the Court denied the defendants' prior summary judgment motion, the defendants obtained the plaintiff's underlying criminal case file for the subject incident through a FOIL request submitted to the Suffolk County District Attorney's Office [the "District Attorney's Office"]. The defendants argue that the policy against successive summary judgment motions does not bar this Court from deciding the merits of their second summary judgment motion, because the denial of their prior summary judgment

¹ Civil Rights Law § 74 provides as follows:

"A civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding or other official proceeding, or for any heading of the report which is a fair and true headnote of the statement published.

This section does not apply to a libel contained in any other matter added by any person concerned in the publication; or in the report of anything said or done at the time and place of such a proceeding which was not a part thereof." (Civil Rights Law § 74).

motion was due to the existence of certain factual issues and those factual issues are now resolved due to the defendants obtaining the plaintiff's criminal file and submitting those documents as evidence in support of their second summary judgment motion.

A successive motion for summary judgment "should not be entertained in the absence of good cause, such as a showing of newly discovered evidence". (*Wells Fargo Bank, N.A. v Osias*, 205 AD3d 979, 981 [2d Dept 2022] [citations omitted]). A "narrow exception" to the general prohibition against successive summary judgment motions permits the Court to entertain a successive summary judgment motion when it is "substantively valid and the granting of the motion will further the ends of justice and eliminate an unnecessary burden on the resources of the courts". (*Wells Fargo Bank*, 205 AD3d at 981-982). In this case, the defendants' second summary judgment motion is not based upon "newly discovered evidence". To the contrary, the defendants knew that the documents in the plaintiff's criminal file existed before they moved for summary judgment the first time, as evidenced by the fact that they submitted their FOIL request to the District Attorney's Office in November of 2020, *before* they moved for summary judgment the first time. "Successive motions for the same relief burden the courts and contribute to the delay and cost of litigation." (*Wells Fargo Bank*, 205 AD3d at 982). In moving for summary judgment, the defendants should have anticipated having to "lay bare" their proof, and should not have expected that they would "readily be granted a second or third chance" to obtain summary judgment. (*Id.*).

Not only did these defendants fail to present "good cause" for the Court to entertain their second summary judgment motion, but it does not appear that their second summary judgment motion is "substantively valid" in light of the issues of fact that still remain and preclude the Court from dismissing the plaintiff's Verified Complaint. As the proponents of a summary judgment motion, the defendants must demonstrate entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate

any material issues of fact (*See, Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]; *see also, Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *see also, Zuckerman v. City of New York*, 49 NY2d 557 [1980]). “This burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party.” (*Cach, LLC v. Khan*, 188 AD3d 1135, 1136 [2d Dept. 2020]).

Just as Judge Voutsinas held in the prior Short Form Order, this Court must view the evidence in the light most favorable to the non-moving plaintiff, and draw all reasonable inferences in favor of the plaintiff. Even considering the criminal file documents that the defendants obtained from the District Attorney’s Office, this Court agrees with Judge Voutsinas’s determination that, “the Article, considered as a whole, is reasonably susceptible of a defamatory connotation concerning plaintiff, and thus it is a question for the jury whether the ordinary and average reader would understand the meaning as such”. (NYSCEF Doc. No. 32, citing to *James v. Gannett Co.*, 40 NY2d 415, 419 [1976]).

As the defendants have failed to establish “good cause” for the Court to entertain its successive summary judgment motion, and in light of their failure to satisfy the “heavy burden” required to succeed on a summary judgment motion, the defendants’ motion is DENIED, in its entirety.

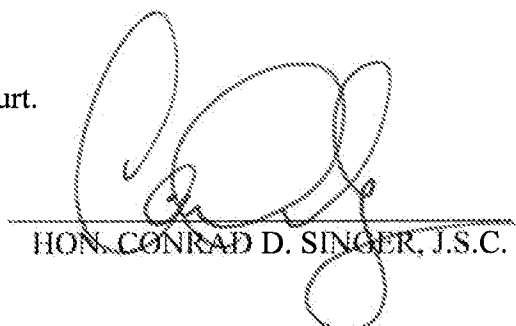
Accordingly, it is hereby,

ORDERED that defendants’ motion for an Order pursuant to CPLR § 3212 and Civil Rights Law § 74 dismissing the plaintiff’s Verified Complaint is **DENIED**, and it is further

ORDERED that all other requests for relief not specifically addressed herein shall be deemed **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: April 11, 2023
Mineola, New York



HON. CONRAD D. SINGER, J.S.C.

ENTERED

Apr 14 2023

NASSAU COUNTY
COUNTY CLERK'S OFFICE