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| Accardi v CSC Holdings, LLC |
| 2024 NY Slip Op 35135(U) |
| November 26, 2024 |
| Supreme Court, Suffolk County |
| Docket Number: Index No. 614926/2024 |
| Judge: Alison J. Napolitano |
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ORIGINAL

SHORT FORM ORDER

INDEX No. 614926/2024

CAL No. _____

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 74 - SUFFOLK COUNTY

PRESENT:

Hon. ALISON J. NAPOLITANO
Justice of the Supreme Court

MOTION DATE 8-23-2024
SUBMIT DATE 11-4-2024
Mot. Seq. # 01 - MG

-----X
MICHAEL ACCARDI and PATRICIA ACCARDI,

Plaintiffs,

-against-

CSC HOLDINGS, LLC, ALTICE USA, INC.,
RACHEL YONKUNAS, JENN SEELIG, ERIN COLTON, and META PLATFORMS, INC.,

Defendants.
-----X

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Upon the following papers read on this motion to dismiss; e-filed on the NYSCEF system as documents 3 - 22; it is,

Defendants News 12 Networks, LLC (incorrectly sued herein as “CSC Holdings, LLC” and “Altice USA, Inc.”), Rachel Yonkunas, Jenn Seelig, and Erin Colton, move for an order dismissing the plaintiff’s Complaint pursuant to CPLR §3211 (a) (1), (7) and (g) and Section 76-a of the New York Civil Rights Law, and awarding to defendant damages against the plaintiff pursuant to New York Civil Rights Law §§ 70-a(1). The plaintiff opposes the motion in all respects and argues that the motion must be denied in its entirety or the plaintiff’s must be given time serve an amended complaint to cure any defects.

On June 18, 2024, by summons and verified complaint, the plaintiffs commenced an action for defamation against the defendants, related to a series of published broadcasts and articles covering the eviction proceeding of the plaintiffs. The complaint alleges that the plaintiffs were legally in possession of the premises located at 100 Harper Street, Patchogue, Suffolk County, New York when the defendant Rachel Yonkunas stated that the plaintiffs were squatters by both broadcasting and posting this claim on the website and Facebook page of the defendants CSC Holdings, LLC and Altice USA, Inc. The complaint further alleges that Yonkunas called the plaintiffs both tenants and squatters and that Yonkunas and defendant Jenn Seelig claimed that the plaintiffs were squatting at 100 Harper Street, Patchogue and won’t leave. The complaint also claims that defendants Yonkunas and Seelig reported that the plaintiffs failed to appear in court when they had actually requested to appear virtually due to a death in the family. The complaint goes

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on to claim that the alleged false statements made by the defendants regarding the plaintiffs have led to threats, loss of housing, and lost business and income. The Complaint also names defendant Erin Colton and alleges that as anchor on New 12, she falsely broadcast that “a Patchogue family is fighting to remove people who they say moved into their home while they were out of state”. The plaintiffs argue that this statement was made while defendant Colton was reporting on news regarding squatters and that her statement was false and incendiary in nature against the plaintiffs.

In addition to the causes of action dealing directly with defamation, the plaintiffs allege in their complaint that the defendants allowed the following statements to be posted on their platforms and failed and refused to remove them:

- a. Bill Behrens stated “the squatters should be in jail od shot dead by the homeowner. End of Story.”
- b. Morgan Govanna posted “This guy has more stories that the Bible. He eventually burns his customers out. I believe he also is squatting in a Patchogue home that has been in the media recently. Nope, there are too many honest reputable and principled landscapers out there for any of my neighbors to waste their time with Mike.”
- c. Ed Ramos posted; “Anyone who does that is not American”.
- d. Art Boyd posted. “Kick the door down, grab em by the throat and throw them in the street.”
- e. John Lig responded to the above post. “art Boyd uh huh! Wee dew thit in Arkansaz oda tyme” sic.
- f. Jami Weber-Lugo posted, “loosk crazy”. sic
- g. Anthony Michael posted. “Kim Berly I’ll be up there next weekend lmk if you need me and a few others to make a stop.”
- h. Joanne Walsh posted, “they need biker friends. They would be encouraged to move along.”
- i. Mary Clark posted “It seems like all the crooked people have more rights these days than the good or honest citizens. Keep voting for those who allow this!”
- j. Christopher Walls posted, “The neighbors should of broken the door and pulled these squatters out and make them leave, all means necessary.”
- k. Marilyn Doyle posted, “This is when street justice needs to take over.”

The plaintiffs allege that the defendants also allowed other “posts” created by Kimberly Copenhaver that they allege to be threatening, false, and dangerous in nature, to remain visible to the public thereby subjecting the plaintiffs to threats and loss of income. The plaintiffs claim that because of the defendants’

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negligence, failure to investigate, and failure to control their own social media platforms, the plaintiffs have been threatened and were forced to be homeless.

The defendants, submitted with their motion, a copy of the pleadings as well as accompanying exhibits related to the eviction proceeding against the Accardi plaintiffs including the minutes of the proceedings, video clips of the broadcasts by News 12 and a copy of an article published by News 12 related to the eviction proceedings.

The defendants move to dismiss the entirety of the complaint claiming that the actions are protected by the New York State anti-SLAPP (Strategic Lawsuit Against Public Participation) law, under Civil Rights Law §§ 70-a and 76-a. Civil Rights Law 76-a states:

1. For purposes of this section:
 - (a) An “action involving public petition and participation” is a claim based upon:
 - (1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or
 - (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.
 - (b) “Claim” includes any lawsuit, cause of action, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.
 - (c) “Communication” shall mean any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression.
 - (d) “Public interest” shall be construed broadly, and shall mean any subject other than a purely private matter.
2. In an action involving public petition and participation, damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue.
3. Nothing in this section shall be construed to limit any constitutional, statutory or common law protections of defendants to actions involving public petition and participation.

Civil Rights Law § 74 states that “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.”

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The defendants indicate that the stories reported by News 12 are privileged because they constitute accurate reports of official proceedings. The defendants claim that their reporting was based in part upon the petition in the eviction proceeding, questions by the judge presiding over the eviction proceeding in open court, as well as determinations made by the judge.

To succeed on a motion to dismiss pursuant to CPLR §3211 for failure to state a cause of action, the court must determine whether, accepting as true the factual averments of the complaint and granting plaintiffs every favorable inference which may be drawn from the pleading, plaintiffs can succeed upon any reasonable view of the facts stated (*Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 754 NE2d 184, 729 NYS2d 425 [2001]; *see also Fowler, Rodriguez, Kingsmill, Flint, Gray & Chalos LLP v Island Prop., LLC*, 307 AD2d 953, 763 NYS2d 481 [2d Dept 2003], *Bartlett v Konner*, 228 AD2d 532, 644 NYS2d 550 [2d Dept 1996]). If the pleading states a cause of action and if, from its four corners, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion for dismissal will fail (*see Wayne S. v County of Nassau Dept. of Social Services*, 83 AD2d 628, 441 NYS2d 536 [2d Dept 1981]). The documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim (*see Estate of Menon v Menon*, 303 AD2d 622, 756 NYS2d 639 [2d Dept 2003], citing *Leon v Martinez*, 84 NY2d 83, 88, 614 NYS2d 972, 638 NE2d 511, *Roth v Goldman*, 254 AD2d 405, 406, 679 NYS2d 92).

In the context of a CPLR 3211 motion to dismiss, the Court must take the factual allegations of the complaint as true, consider the affidavits submitted on the motion only for the limited purpose of determining whether the plaintiff has stated a claim, and in the absence of proof that an alleged material fact is untrue or beyond significant dispute, the Court must not dismiss the complaint (*Wall Street Assocs. v Brodsky*, 257 AD2d 526, 684 NYS2d 244 [1st Dept 1999], citing *Guggenheimer v Ginzburg*, 43 NY2d 268, 275; *Rovello v Orofino Realty Co.*, 40 NY2d 633, 634-636). In making a determination whether the complaint sets forth a cognizable claim, evidentiary material may be considered to "remedy defects in the complaint" (*see Dana v Shopping Time Corp.*, 76 AD3d 992, 908 NYS2d 114 [2d Dept 2010], quoting *Rovello v Orofino Realty Co.*, *supra* at 40 NY2d at 636).

In *Palmieri v Thomas*, 29 AD3d 658, 658-659 [2d Dept 2006], the Court held that

Civil Rights Law § 74 provides, in relevant part, that "[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 . . . or other official proceeding." The Court of Appeals has noted that "[f]or a report to be characterized as 'fair and true' within the meaning of the statute, thus immunizing its publisher from a civil suit sounding in libel, it is enough that the substance of the article be substantially accurate" (*Holy Spirit Assn. for Unification of World Christianity v New York Times Co.*, 49 NY2d 63, 67, 399 NE2d 1185, 424 NYS2d 165 [1979]; *see McDonald v East Hampton Star*, 10 AD3d 639, 781 NYS2d 694 [2004]). Moreover, "a fair and true report admits of some liberality; the exact words of

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every proceeding need not be given if the substance be substantially stated" (*Briarcliff Lodge Hotel, Inc. v Citizen-Sentinel Publs., Inc.*, 260 NY 106, 118, 183 NE 193 [1932]).

The newspaper article upon which this defamation action is based is a substantially accurate report of the judicial proceedings in which it was determined that penal sanctions should be imposed against the plaintiff Coalition of Landlords, Homeowners & Merchants, Inc. (hereinafter the Coalition), as the attorney of record, for the assertion of duplicative and frivolous claims in the underlying lawsuits. The complained-of statements appearing in the news article were either absolutely privileged pursuant to Civil Rights Law § 74 (see *Holy Spirit Assn. for Unification of World Christianity v New York Times Co.*, *supra*; see *McDonald v East Hampton Star*, *supra*), or consisted of non-actionable opinion (see *Gross v New York Times Co.*, 82 NY2d 146, 152-153, 623 NE2d 1163, 603 NYS2d 813 [1993]; *Steinhilber v Alphonse*, 68 NY2d 283, 501 NE2d 550, 508 NYS2d 901 [1986]). Accordingly, the Supreme Court's dismissal of the complaint pursuant to CPLR 3211 (a) (1) and (7) was proper.

In *Becher v Troy Pub. Co.*, 183 AD2d 230, 233-234 [3d Dept 1992], the Court held that

The case law has established a liberal interpretation of the "fair and true report" standard of Civil Rights Law § 74 so as to provide broad protection to news accounts of judicial or other official proceedings. Thus, it has been held that "a fair and true report admits of some liberality; the exact words of every proceeding need not be given if the substance be substantially stated" (*Briarcliff Lodge Hotel v Citizen-Sentinel Publs.*, 260 NY 106, 118). In the leading modern case on Civil Rights Law § 74, *Holy Spirit Assn. for Unification of World Christianity v New York Times Co.* (49 NY2d 63), the Court of Appeals stated that: "newspaper accounts of ... official proceedings must be accorded some degree of liberality. When determining whether an article constitutes a 'fair and true' report, the language used therein should not be dissected and analyzed with a lexicographer's precision. This is so because a newspaper article is, by its very nature, a condensed report of events which must, of necessity, reflect to some degree the subjective viewpoint of its author" (*supra*, at 68). In applying the statutory standard to press coverage of legal proceedings, it was stated that: "Newspapers cannot be held to a standard of strict accountability for use of legal terms of art in a way that is not precisely or technically correct by every possible definition. Were it otherwise, the narrow and confining application of the libel laws would entirely defeat the purposes of * * * statutes like section 74 of the Civil Rights Law * * * Hence, in areas of doubt and conflicting considerations,

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it is almost always preferable to err on the side of free expression" (*Gurda v Orange County Publs. Div. of Ottaway Newspapers*, 81 AD2d 120, 133

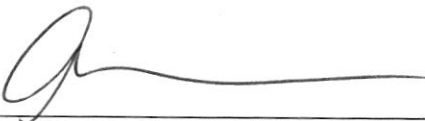
The plaintiffs in this case also claim that News 12 and Meta Platforms failed to remove third-party comments posted on various social media accounts. They claim that the defendants' failure to adhere to their own policies governing social content and to remove these comments makes them liable for negligence and defamation as it relates to the alleged threats and loss sustained by the plaintiffs. The defendants move to dismiss based on Section 230 of the Communications Decency Act, 47 U.S.C. §230 citing to the specific language stating that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" and "no cause of action may be brought and no liability may be imposed under any state or local law that is inconsistent with this section". The defendants claim that this section of law grants immunity from suit and cite to a number of federal cases that support such a finding. The plaintiffs claim that defendants failing to follow their terms of service makes them liable to the plaintiffs, effectively negating the immunity provided by the Communications Decency Act. After a review of the papers submitted by the defendants and the plaintiffs, the Court finds that the immunity provided by Section 230 does apply to the defendants in this action and the plaintiffs have not proffered any compelling argument or evidence to negate this immunity. As such, the defendants motion to dismiss the third cause of action pertaining to the failure to remove posts on social media is granted.

Upon a reading of the papers submitted and a review of the video clips of the alleged defamatory statements, the Court concludes that, accepting as true the factual averments of the complaint and granting the plaintiffs every favorable inference which may be drawn from the pleading, the plaintiffs have not pled a cause of action cognizable at law as against the defendants for defamation. The plaintiffs have failed to come forth with any information to counter the proof provided by the defendants that they are protected by Civil Rights Law 70-a, 76-a and 74. Additionally, the plaintiffs have not pled a cause of action cognizable at law as against the defendants for negligence as it relates to the allegations of defamation. The plaintiffs have failed to come forth with any information to establish otherwise. Accordingly the defendants' motion to dismiss is granted.

The defendants' remaining requests, including costs and attorney fees, are denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: November 26, 2024



HON. ALISON J. NAPOLITANO
J.S.C.

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