

Stewart v Bynum

2024 NY Slip Op 35136(U)

November 25, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 617241/2022

Judge: David T. Reilly

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**SUPREME COURT OF THE STATE OF NEW YORK
I.A.S. PART 30 SUFFOLK COUNTY**

**PRESENT:
HON. DAVID T. REILLY, JSC**

INDEX NO.: 617241/2022

TAHISHA STEWART, RHONDA MOUTON, X

**Manners & Malone, PLLC
Attorneys for Plaintiffs
950 Jericho Turnpike
Westbury, NY 11590**

Plaintiff(s),

-against-

**JOSEPH BYNUM, AUDREY LEWIS
BRITTNEY C. RUSSELL, FRIENDSHIP BAPTIST
CHURCH OF ROSLYN, INC.,**

**Brittney C. Russell, Esq.
Defendant and Attorney for Defendants
Joseph Bynum & Audrey Lewis
P.O. Box 50
Roslyn Heights, NY 11577**

Defendant(s).

X

MOTION DATE: 02/08/23
SUBMITTED: 11/06/24
MOTION SEQ. NO.: 1-4
MOTION DEC: 001 MotD
002 MD
003 MD
004 MG

Upon the reading and filing of the following papers in this matter: NYSCEF Doc. Nos. 3-9; 12-25; 27-39; 41-56
(~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that Motion Seq. Nos. 001 through 004 are consolidated for purposes of this determination; and it is further

ORDERED that defendants' motion to dismiss plaintiffs' complaint (Mot. Seq. No 001) pursuant to CPLR 3211(a)(5), 3211(a)(7) and CPLR 3016(a) is determined as set forth herein; and it is further

ORDERED that plaintiffs' application to disqualify defendant Brittany C. Russell, Esq. as the attorney for defendants (Mot. Seq. 002) is denied without prejudice to renew as referenced

below; and it is further

ORDERED that defendants' motion to strike plaintiffs' reply to Mot. Seq. No. 003 (Mot. Seq. 003) is denied; and it is further

ORDERED that plaintiffs' application for the redaction of certain documents, noticed as NYSCEF Doc. Nos. 28 and 32 (Mot. Seq. 004), is granted to the extent indicated below.

Plaintiffs commenced this action with the filing a summons with notice on August 27, 2022 with the Clerk of the Court claiming damages for causes of action sounding in defamation, intentional infliction of emotional distress, and prima facie tort. On November 15, 2022 plaintiffs filed their complaint. It is alleged in the complaint that defendant Friendship Baptist Church of Roslyn, Inc. is a New York religious corporation having a place of worship at 56 Orchard Street, Roslyn Heights, New York. At some point in time prior to August 27, 2021 the senior pastor of the church passed away. At the time of the pastor's death plaintiff Stewart was the sole trustee of the church and plaintiff Rhonda Mouton was its Chief Development Officer.

Plaintiffs allege that on or after August 27, 2021 defendants, in an effort to take control of the church, stated to others that plaintiffs committed the crime of burglary by breaking and entering into the church to remove documents, files and furniture from the late pastor's office. Plaintiff Stewart further alleges that defendants falsely claimed that she had issued checks in the name of the church which constituted unlawful expenditures. Plaintiffs maintain defendants published these allegations by use of Facebook, emails, and oral transmission to disseminate these allegations to other members of the church community. Plaintiffs further allege that on August 29, 2021 defendants Joseph Bynum (hereinafter, Bynum) and Audrey Lewis (hereinafter, Lewis) blocked them from the church while defendants were attempting to install themselves and others into positions of authority in the church establishment and hierarchy.

Plaintiffs further aver that, on or about November 20, 2021, defendant Brittney C. Russell Esq. (hereinafter, Russell) repeated these false allegations as part of a "litigation update" to other members of the church and the surrounding community indicating that there was video evidence of the alleged crimes committed. Plaintiffs claim to be damaged from the actions of defendants by, among other things, being subject to public humiliation, lost business, lost good will and damaged future employment prospects.

Defendants have moved by notice of motion for an Order dismissing the subject complaint pursuant to CPLR 3211(a)(7) [failure to state a cause of action], CPLR 215 [failure to file within one year of the alleged defamation] and CPLR 3016(a) [failure to set forth the particular words of defamation] (Mot. Seq. 001). In addition, defendants seek to enter judgment with the Clerk of the Court against the plaintiffs for statutory costs and disbursements and request sanctions pursuant to 22 NYCRR §130-1.1[c].

First, in addressing defendants' motion, delineated as a motion pursuant to CPLR 215, CPLR 3211(a)(5) states that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that... the cause of action may not be maintained because of ... statute of limitations." "A party moving to dismiss a complaint as barred by the applicable statute of limitations must establish, prima facie, that the period in which to commence the action has expired" (*Murray v. Charap*, 150 AD3d 752, 54 NYS3d 28 [2d Dept 2017]). "The burden then shifts to the nonmoving party to raise a question of fact as to the applicability of an exception to the statute of limitations, as to whether the statute of limitations was tolled, or as to whether the action was actually commenced within the applicable limitations period (*Id.*, at 753; *see Lewis v KMT Group, Inc.*, 173 AD3d 1153, 101 NYS3d 625 [2d Dept 2019]).

Here, defendants claim that the actions complained of by plaintiffs occurred on August 27, 2021 and, inasmuch as the summons with notice was not filed until August 27, 2022, the plaintiffs' claims are barred by the one year statute of limitations applicable to claims for defamation (*see* CPLR 215). Plaintiffs argue that the defamatory acts occurred between August 27, 2021 and November 20, 2021 and that the defamation acts were continuous in nature.

The Court finds that defendants have failed to meet their burden with respect to CPLR 3211(a)(5). The time to commence an action for defamation (libel/slander) is one year. This action was commenced when the summons with notice was filed on August 27, 2021, one year from when plaintiffs were first allegedly defamed (*see* General Construction Law §20). The timeliness of the action is measured from the date of the filing of the summons with notice, not the subsequent filing of the complaint. In addition, it is properly alleged that the acts of defamation occurred continuously until November 20, 2021 when defendant Russell published a "litigation update" to members of the church. Accordingly, defendants' motion to dismiss the defamation claim pursuant to CPLR 3211(a)(5) is denied.

In considering a party's motion to dismiss for failure to state a cause of action pursuant to CPLR §3211(a)(7), the pleadings must be given a liberal construction, the allegations must be accepted as true and the stated claims must be given every possible favorable inference in determining whether or not they fit into any cognizable legal theory (*Chanko v. Am. Broad. Companies Inc.*, 27 NY3d 46, 52, 49 NE3d 1171, 1175 [2016]; *Goshen v. Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326, 774 N.E.2d 1190 [2002]; *Leon v Martinez*, 84 NY2d 83, 88 [1994]). Bare legal conclusions, however, are not presumed to be true and do not receive the benefit of such favorable inference (*Grant v. DiFeo*, 165 AD3d 897, 86 NYS3d 575 [2d Dept. 2018]; *TMCC, Inc. v. Jennifer Convertibles, Inc.*, 176 AD3d 1135, 111 NYS3d 102 [2d Dept. 2019]). The Court may also consider affidavits submitted to remedy any defects in the complaint in ascertaining whether or not a cause of action exists (*Chanko, supra*; *Leon supra*). "If the court considers evidentiary material, the criterion then becomes 'whether the proponent of the pleading has a cause of action, not whether he has stated one'" (*Sokol v. Leader*, 74 AD3d 1180, 1180–82, 904 NYS2d 153 [2d Dept. 2010] (*quoting Guggenheimer v Ginzburg*, 43 NY2d at 275); *Porat v. Rybina*, 177 AD3d 632, 633, 111 NYS3d 625 [2d Dept. 2019]). "Yet, affidavits submitted by a defendant 'will almost never warrant

dismissal under CPLR§ 3211 unless they establish conclusively that [the plaintiff] has no cause of action” (*Sokol, supra; Porat, supra*). The analysis goes to whether or not a colorable cause of action exists, not whether or not such claim is ultimately likely to prevail on the merits.

With respect to defamation, that cause of action is defined as the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion, or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society (*Foster v Churchill*, 87 NY2d 744, 642 NYS2d 583 [1996]). “Defamation is the injury to one’s reputation, either by written expression (libel) or oral expression (slander)” (*Penn Warranty Corp. v DiGiovanni*, 10 Misc 3d 998, 810 N.Y.S.2d 807 [Sup Ct, NY County 2005], citing *Morrison v National Broadcasting Co.*, 19 NY2d 453, 280 N.Y.S.2d 641 [1967]). To properly plead a cause of action for defamation one must allege: (1) a false statement; (2) published without privilege or authorization to a third party; (3) amounting to fault as judged by, at a minimum, a negligence standard; and (4) either causing special harm or constituting defamation *per se* (*Udell v NYP Holdings, Inc.*, 169 AD3d 954, 94 NYS3d 314 [2d Dept 2019], citing *Stone v Bloomberg L.P.*, 163 AD3d 1028, 83 NYS3d 78 [2d Dept 2018]).

Three factors distinguish an actionable statement of fact from a non-actionable opinion: “(1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal . . . readers or listeners that what is being read or heard is likely to be opinion, not fact” (*Brian v Richardson*, 87 NY2d 46, 51,637 N.Y.S.2d 347 [1995], quoting *Gross v New York Times Co.*, 82 NY2d 146, 153, 603 N.Y.S.2d 813 [1993]). “[R]hetorical hyperbole’ or ‘vigorous epithet’ will not suffice” (*Finkel v Dauber*, 29 Misc 3d 325, 328, 906 N.Y.S.2d 697 [Sup Ct, Nassau County 2010], quoting *Greenbelt Cooperative Publishing Assn. v Bresler*, 398 U.S. 6, 90 S. Ct. 1537 [1970]). “Distinguishing between fact and opinion is a question of law for the courts, to be decided based on what the average person hearing or reading the communication would take it to mean” (*Davis v Boenheim*, 24 NY3d 262, 269, 998 N.Y.S.2d 131 [2014] [internal citations and quotation marks omitted]; *Zuckerbrot v Lande*, 75 Misc 3d 269, 289 [Sup Ct, NY County 2022]). The Court of Appeals makes a distinction between a statement of opinion that implies a factual basis that is not disclosed to the reader and an opinion that is accompanied by a recitation of facts on which it is based (see *Gross v. New York Times*, *supra*). The former is actionable, the later is not (*Intellect Art Multimedia, Inc. v Milewski*, 24 Misc 3d 1248[A], 2009 NY Slip Op 51912[U] [Sup Ct, NY County 2009]).

Defendants assert that plaintiffs failed to state in the complaint the actual defamatory words underlying their claim (see CPLR 3016(a)). Plaintiffs aver that the complaint references the particular words which were used to defame the plaintiffs, ie: “crime,” “breaking and entering the church grounds and removing documents, files and furniture, ...” and the claimed possession of a “video” depicting the illegal entry into the church grounds. Plaintiffs also noted in its complaint statements such as “...still under criminal investigation” and “unlawful [i.e. criminal] expenditures.” Plaintiffs

have supplemented their pleadings with an affidavit from Ms. Stewart (*see* NYSCEF Doc 13) further evidencing the allegations.

In order to properly defend against a defamation claim it is critical that the complaint provide the actual words claimed to have defamed an individual. Here, the pleadings, as supplemented by Stewart's affidavit and other papers, adequately set forth the particular defamatory words. Given the claimed exclusion of the plaintiffs from the church, further details of the alleged statements may be within the knowledge of the defendants and not the plaintiffs. Nevertheless, plaintiffs have set forth in sufficient detail the time and place of the alleged defamatory statements as known by them to afford defendants an opportunity to investigate and defend against the claims. The Court believes that plaintiffs could and should be more precise in their pleadings and therefore grants leave to amend the complaint to conform to the mandates of this decision without the need to reference to other evidentiary documents. Therefore, this portion of defendants' motion to dismiss pursuant to CPLR 3211(a)(7) is denied.

Defendants assert, as another basis for dismissal, that the alleged defamatory statements were made during the course of other litigation involving the parties. At some point defendant Russell claims that while she was representing the Church and others she commenced an action against Mouton and others (*see Friendship Baptist Church of Roslyn Inc. et. al v. Mouton et. al* (Nassau County Supreme Court 613146/2021)¹). Defendants admit that during the course of the Nassau County Supreme Court litigation Russell updated church leaders and members regarding all matters associated with the Church including plaintiffs' activities. Russell claims she has absolute privilege and defendants Lewis and Bynum have common interest privilege.

In *Davidoff v Kaplan*, 217 AD3d 918, 192 NYS3d 154 [2d Dept 2023] the Appellate Division explained:

A statement made at any stage of a judicial proceeding in communications among the parties, witnesses, counsel, and the court, regardless of the motive with which it was made, "is absolutely privileged if, by any view or under any circumstances, it may be considered pertinent to the litigation" (*Martirano v. Frost*, 25 N.Y.2d 505, 507, 307 N.Y.S.2d 425, 255 N.E.2d 693; *see Front, Inc. v. Khalil*, 24 N.Y.3d 713, 718, 4 N.Y.S.3d 581, 28 N.E.3d 15; *Weinstock v. Sanders*, 144 A.D.3d 1019, 1020, 42 N.Y.S.3d 205; *Rabiea v. Stein*, 69 A.D.3d 700, 700, 893 N.Y.S.2d 224). "The test of pertinency to the litigation is extremely liberal, so as to embrace anything that may possibly or plausibly be relevant or pertinent" (*Weinstock v. Sanders*, 144 A.D.3d at 1020, 42 N.Y.S.3d 205; *see Grasso v. Mathew*, 164 A.D.2d 476, 479, 564 N.Y.S.2d 576; *Klein v. McGauley*, 29 A.D.2d 418, 420, 288 N.Y.S.2d 751), and "any doubt should be resolved in favor of upholding the privilege" (*Dachowitz v. Kranis*, 61 A.D.2d 783, 783, 401 N.Y.S.2d 844; *see Grasso v. Mathew*, 164 A.D.2d at 479,

¹According to plaintiffs, this action has been discontinued.

564 N.Y.S.2d 576).

In *Saint Annes Dev. Co. v. Russ*, 157 AD3d 919, 66 NYS3d 913 [2d Dept 2018]) the appellate court stated:

The common-interest privilege is an exception to the traditional rule that the presence of a third party waives the attorney-client privilege (*see Hyatt v. State of Cal. Franchise Tax Bd.*, 105 A.D.3d 186, 205, 962 N.Y.S.2d 282; *Aetna Cas. & Sur. Co. v. Certain Underwriters at Lloyd's, London*, 176 Misc.2d 605, 611, 676 N.Y.S.2d 727 [Sup. Ct. N.Y. County], *affd* 263 A.D.2d 367, 692 N.Y.S.2d 384; *In re Quigley Co.*, 2009 WL 9034027, *2–3, 2009 Bankr LEXIS 1352 [Bankr. S.D.N.Y.]). To fall within that exception, the privileged communication must be for the purpose of furthering a legal, as opposed to a commercial, interest common to the client and the third party (*see Hyatt v. State of Cal. Franchise Tax Bd.*, 105 A.D.3d at 205, 962 N.Y.S.2d 282; *Delta Fin. Corp. v. Morrison*, 69 A.D.3d 669, 894 N.Y.S.2d 437; *U.S. Bank N.A. v. APP Intl. Fin. Co.*, 33 A.D.3d 430, 431, 823 N.Y.S.2d 361). “The legal interest that those parties have in common must be identical (or nearly identical), as opposed to merely similar” (*Hyatt v. State of Cal. Franchise Tax Bd.*, 105 A.D.3d at 205, 962 N.Y.S.2d 282; *see United States v. Doe*, 429 F.3d 450, 453 [3d Cir.]; *F.D.I.C. v. Ogden Corp.*, 202 F.3d 454, 461 [1st Cir.]). Moreover, the communication must “relate to litigation, either pending or anticipated, in order for the exception to apply” (*Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 27 N.Y.3d 616, 620, 36 N.Y.S.3d 838, 57 N.E.3d 30; *see Hyatt v. State of Cal. Franchise Tax Bd.*, 105 A.D.3d at 205, 962 N.Y.S.2d 282).

Both of these privileges represent a defense to plaintiffs’ complaint, but not a basis to dismiss the action pursuant to CPLR 3211(a). Defendants assert broad privilege claims, however it is not clear to the Court if each and every alleged statement was made in the course of litigation or as part of a struggle for directional leadership of the church. The Court is aware of claimed changes in the church’s leadership positions, but does not have an understanding of the processes followed to support actual authority to commence litigation. A privilege arising from a judicial proceedings must be analyzed against the factual background upon which it is being asserted. In this case, to dismiss the complaint based on privilege would be imprudent without understanding the boundaries of that other litigation and the interrelationship between the parties, the church and the litigation. On the record presented this Court denies that portion of defendants’ motion to dismiss based on privilege.

Defendants also move to dismiss plaintiffs’ prima facie tort claim since the conduct alleged by plaintiffs is actionable under a traditional tort theory. Even if plaintiffs seek traditional tort remedies, they will not be foreclosed from pleading, as alternative relief, a cause of action for prima facie tort (*see Frehofer v Hearst Corp.*, 65 NY2d 135, 490 NYS2d 735 [1985]). At this early stage

of the litigation the Court denies defendants motion to dismiss on this theory and allows plaintiffs' prima facie tort claim to stand as an alternate cause of action. However, this Court finds that the plaintiffs have failed to plead with any specificity the special damages claimed to have been sustained by the plaintiffs. Defendants motion to dismiss plaintiffs prima facie tort claim is granted in part, by directing the plaintiff's to re-plead this cause of action with greater specificity, but is otherwise denied. The Court determines that plaintiffs have a cause of action for prima facie tort.

With respect to plaintiffs' claim of intentional infliction of emotional distress, the elements of such a cause of action are: (1) extreme and outrageous conduct; (2) the intent to cause, or the disregard of a substantial likelihood of causing, severe emotional distress; (3) causation; and (4) severe emotional distress. The subject conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Furthermore, conclusory assertions are insufficient to set forth a cause of action sounding in the intentional infliction of emotional distress (*Klein v. Metropolitan Child Servs., Inc.*, 100 AD3d 708, 954 NYS2d 559 [2d Dept 2021]).

The Court is cognizant of the disruption in a church when there is a passing of a pastor and conflagration of dissent which destroys harmony and understanding in the faith of the church community. The distress experienced by church members is real, but as a matter of law does not meet the standards set to establish a claim for intentional infliction of emotional distress. Detailing by example why the conduct alleged is not extreme and outrageous will disrespect those bound in the faith of the church who seek justice. Nevertheless, this Court, as a matter of law, must grant defendants motion to dismiss plaintiff's cause of action for intentional infliction of emotional distress.

As to plaintiff's request for punitive damages,

[P]unitive or exemplary damages have been allowed in cases where the wrong complained of is morally culpable, or is actuated by evil and reprehensible motives, not only to punish the defendant but to deter him, as well as others who might otherwise be so prompted, from indulging in similar conduct in the future" (*See, e.g., Toomey v. Farley*, 2 N Y 2d 71, 83; *Krug v. Pitass*, 162 N. Y. 154, 161; *Hamilton v. Third Ave. R. R. Co.*, 53 N. Y. 25, 28; *Oehlhof v. Solomon*, 73 App. Div. 329, 333-334.)"

(*see Abraham v. Torati*, 219 AD3d 1275, 197 NYS3d 235 [2d Dept 2023], citing *Walker v. Sheldon*, 10 NY2d 401, 223 NYS2d 488 [1961]).

Here, based on the submissions before the Court it is determined that plaintiffs have failed to set forth a claim for punitive damages and defendants motion to dismiss this damages claim is granted.

Plaintiff has cross-moved for an order disqualifying defendant Brittney C. Russell, Esq. from representing Joseph Bynum, Audrey Lewis and Friendship Baptist Church of Roslyn, Inc. claiming that she is a named party and a necessary witness central to plaintiffs' claims (Motion Seq. 002). Plaintiffs raise the concern that this Court or a jury may be determining the comparative fault of the defendants including Russell which raises a conflict between her and her co-defendants. Based on the pleading before this Court it is clear that Ms. Russell is a central necessary witness and alleged participant in many of the activities underlying plaintiffs' claims. While Ms. Russell states in her papers that she was not plaintiff Stewart's attorney, plaintiffs claim she was and this presents one example of her being a necessary witness.

The New York State Rules of Professional Conduct at Rule 3.7 provides:

Lawyer as witness.

(a) A lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact unless:

- (1) the testimony relates solely to an uncontested issue;
- (2) the testimony relates solely to the nature and value of legal services rendered in the matter;
- (3) disqualification of the lawyer would work substantial hardship on the client;
- (4) the testimony will relate solely to a matter of formality, and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; or
- (5) the testimony is authorized by the tribunal.

(b) A lawyer may not act as advocate before a tribunal in a matter if:

- (1) another lawyer in the lawyer's firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or
- (2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.

(see 22 NYCRR 1200.0 [Lexis Advance through April 28, 2023]). It has been held that the risks that Rule 3-7 is designed to alleviate are as follows: "(1) the lawyer might appear to vouch for his own credibility; (2) the lawyer's testimony might place opposing counsel in a difficult position when she has to cross-examine her lawyer-adversary and attempt to impeach his credibility; (3) some may fear that the testifying attorney is distorting the truth as a result of bias in favor of his client; and (4) when an individual assumes the role of advocate and witness both, the line between argument and evidence may be blurred, and the jury confused (*Murray v Metro. Life Ins. Co.*, 583 F.3d 173, 178 [2d Cir. 2009], citing *Ramey v. Dist. 141, Int'l Ass'n of Machinists & Aerospace Workers*, 378 F.3d 269, 282-83 [2d Cir. 2004]).

“The disqualification of an attorney is a matter that rests within the sound discretion of the Supreme Court” (*Lauder v Goldhamer*, 122 AD3d 908, 998 NYS2d 79 [2d Dept 2014]; see *Levy v 42 Dune Rd., LLC*, 162 AD3d 651, 77 NYS3d 498 [2d Dept 2018]). “The advocate-witness rules contained in Rules of Professional Conduct (22 NYCRR 1200.0) Rule 3.7 provide guidance, but not binding authority, for courts in determining whether to disqualify an attorney” (*Spielberg v Twin Oaks Constr. Co., LLC*, 134 AD3d 1015, 20 NYS3d 911 [2015], quoting *Gould v Decolorator*, 131 AD3d 448, 15 NYS3d 145 [2d Dept 2015]; see also *Matter of Norton v Town of Islip*, 167 AD3d 622, 86 NYS3d 912 [2d Dept 2018]). The party seeking to disqualify a law firm or an attorney bears the burden to show sufficient proof to warrant such a determination (*Aryeh v Aryeh*, 14 AD3d 634, 788 NYS2d 622 [2d Dept 2005]). To disqualify an attorney under N.Y. R. Prof. Conduct 3.7(a) (22 NYCRR 1200.0), a moving party must demonstrate that the testimony of the opposing party’s counsel is necessary to the moving party’s case, and that such testimony would be prejudicial to the opposing party (*Cathedral Ct. Assoc., L.P. v Cathedral Props. Corp.*, 116 AD3d 649, 983 NYS2d 277 [2d Dept 2014]).

To state in a different manner, “[A] trial lawyer who functions also as a trial witness is thought to be more easily impeachable for interest, and thus a less effective witness for the client (Code of Professional Responsibility EC 5-9). By the same token, the interest of the adversary in a fair trial is said to be threatened in that opposing counsel may be handicapped in challenging the credibility of a lawyer-witness who also appears as an advocate in the case. Recognizing that the roles of an advocate and of a witness are inconsistent, and that it is from a public image point of view ‘unseemly’ for a lawyer in a trial also to argue his own credibility as a witness, the Code of Professional Responsibility directs that a lawyer who ought to be called as a witness on behalf of his client shall withdraw from the conduct of the trial and his firm shall not continue representation in the trial (*S & S Hotel Ventures LP v 777 S. H. Corp.*, 69 NY2d 437, 515 NYS2d 735 [1987]).

In sum, a party’s entitlement to be represented in ongoing litigation by counsel of his or her own choosing is a valued right which should not be abridged absent a clear showing that disqualification is warranted (*Gulino v Gulino*, 35 AD3d 812, 826 NYS2d 903 [2d Dept 2006]). At this early stage of the litigation the Court should not determine this issue. The Court will deny plaintiffs motion with the express right to re-notice same on the same papers after the first two (2) named defendants are deposed or their depositions are waived. A copy of this Order shall be attached to such notice of motion.

The defendants’ motion to strike plaintiffs’ reply to their cross-motion to disqualify defendants attorney (Mot Seq. No.3) and plaintiffs’ cross-motion to redact certain records (Mot. Seq. No. 4) is resolved as follows. The defendants motion to strike the reply is denied. The plaintiffs’ cross-motion for redaction is granted, defendants taking no position on this matter. Plaintiffs are directed to submit a short, concise Order directing the Clerk of the Court to make the redactions in a manner easily understandable by the Court and the Clerk of the Court.

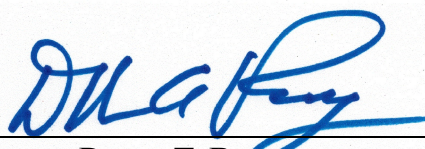
The start of this case casts doubt on the ability of the parties or their attorneys to work in a

respectful and professional manner. The Court refers to the record on NYSCEF and the tone and manner of exchanges between the attorneys. As an arbiter of law, this Court will not point to any individual upon which its dissatisfaction rests. However, it will now require that before either party makes a motion they must seek permission of this Court and that, if granted, the Court will set the motion/briefing schedule. Nothing in this Order shall preclude the parties from appealing this or any decision of this Court or to make a motion before an appellate court without permission of this Court..

Any relief not specifically provided for herein is denied. This constitutes the decision and Order of this Court.

Dated: November 25, 2024
Riverhead, New York





DAVID T. REILLY
JUSTICE OF THE SUPREME COURT

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION