Evans v Punter
2025 NY Slip Op 31737(U)
May 13, 2025
Supreme Court, New York County
Docket Number: Index No. 154101/2020
Judge: David B. Cohen

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART** **58**

Justice

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PAUL EVANS,

Plaintiff,

- v -

MALCOLM A. PUNTER, AARIAN PUNTER, RUCKER PARK PREP FOUNDATION, HARLEM CONGREGATIONS FOR COMMUNITY IMPROVEMENT, INC.,

Defendants.

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INDEX NO. 154101/2020

MOTION DATE 09/20/2024, 10/07/2024

MOTION SEQ. NO. 012 013

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 012) 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 236, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 280, 281, 282, 283, 284, 285, 286, 287, 296, 298, 300, 301, 302, 303

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 288, 289, 290, 291, 292, 293, 294, 295, 297, 299, 304

were read on this motion to/for JUDGMENT - SUMMARY.

In this defamation action, defendants Malcolm Punter (M. Punter) and Harlem Congregations for Community Improvement, Inc. (Harlem Congregations) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint (seq. 012).

In motion sequence 013, defendants Aarian Punter (A. Punter) and Rucker Park Prep Foundation (Rucker Park) move, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

Plaintiff opposes both motions.

BACKGROUND

This action arises from an August 25, 2019 event held at Rucker Park, located at 8th Avenue and West 155th Street (the Park). At the time, plaintiff was employed as a "riding

manager," a senior member of the staff at the City of New York Department of Parks and Recreation (Parks Department). The riding manager "is the person selected by operations to visit the borough, visit the borough events and report any irregularities or hazardous conditions" (Lavoie aff, exhibit F [Plaintiff dep. Tr] at 35). As described in the complaint, "among [plaintiff's] tasks to be performed is to make sure that there are no permit violations or unsafe conditions at any scheduled events" (complaint, ¶ 19).

On August 25, 2019, plaintiff visited a basketball tournament in the Park that he believed was operating without the required permit (complaint, ¶ 20). Although he was an employee of the Parks Department, he was not wearing a uniform or a badge at that time (Lavoie aff, exhibit F at 155-156). According to plaintiff, Shena Kaufman (Kaufman), the District Manager, asked him to stop by the Park, "because there was allegedly a basketball celebrity in attendance, and [Kaufman] suspected permit problems (complaint, ¶ 21).

When plaintiff arrived at the Park, he discovered that the "group managing and organizing the event did not have the proper special event permit for the purposes present, and, instead, had used a sports tournament permit to host their event" (*id.*, ¶ 22). Plaintiff was able to secure a copy of the sports tournament permit, which does not allow for amplified sound or music, an elaborate tent set-up or "the festival that was going on" (Lavoie aff, exhibit F at 54). Plaintiff tried to speak with the event organizer but was "deliberately and intentionally delayed" by some attendees (complaint, ¶ 23).

Plaintiff eventually spoke to Adrienne Felton (Felton), who told him that she was one of the "partners for the event" (Lavoie aff, exhibit F at 52). Felton showed the permit to plaintiff, who believed it was not sufficient for that event. Plaintiff then asked to speak to Robert McCullough (McCullough), who was the permit holder.

Plaintiff testified that when he approached McCullough, plaintiff introduced himself and identified himself as a parks department administrator, as he had when he spoke to Felton. Plaintiff spoke to McCullough while standing in front of the table at which McCullough was seated, and he told McCullough about the permit violations. McCullough began "venting" to Plaintiff about the permitting process and "that the parks department was greedy. He said it was unfair. He complained about everybody in the process" (*id*. at 59).

Plaintiff testified that he tried to calm McCullough down, but that his conversation with McCullough was "not successful" (*id*. at 60). Plaintiff further characterized his conversation with McCullough as follows: "[his] allies who were not indicated in any permitting documents, had grown extremely hostile towards me, challenged me, and directly interfered with my conversation with [McCullough] whom I spoke to across a table. [McCullough's] allies closely surrounded me as I spoke to him. In exasperation, I stepped away from the group . . ." (Plaintiff aff, ¶ 12).

Plaintiff then contacted Kaufman, who suggested that he contact Manhattan Borough Commissioner William Castro (Castro), and when plaintiff spoke to Castro, Castro asked him several questions and then told him to end the event a half an hour earlier than planned. According to plaintiff' affirmation in opposition to defendants' motion, when he was later speaking to New York State Assembly Member Al Taylor (Taylor) while at the event, he was interrupted several times when he received calls from Castro (Plaintiff aff, ¶ 15).

After the event, according to plaintiff, "M. Punter and A. Punter, acting individually, and on behalf of Defendants Harlem Congregations and Rucker Park Prep sent written and electronic communications to the Borough Commissioner, William Castro, making false, slanderous and libelous statements regarding the behavior of [plaintiff] [on August 25, 2019]" (*id*., ¶

25). Plaintiff affirms that the emails were "highly critical" of him, "very negative and defamatory in nature in that [sic] completely mischaracterized my actions and behavior" (Plaintiff aff, ¶ 16). Plaintiff stated that the writers of the electronic communications also "attributed threatening statements and actions to [him] that I did not make" (*id.*), and that the communications were further published to multiple third parties.

M. Punter's letter, dated August 26, 2019 and addressed to Castro, written on behalf of Harlem Congregations, alleges that plaintiff acted as follows: "aggressively marched about flaying his hands in the center of the park"; "point[ed] in community volunteers[']faces"; took his actions "in the park in front of community residents, children, elders and elected officials"; gave "commands to unsuspecting participants in the tournament activities"; and "never identified himself" or "presented his Park Department identification to anyone in the park." M. Punter also contends that plaintiff "even attempted to interrogate youth volunteers in the park with questions about activities going on that day," and that his "behavior was disrespectful to [McCullough], an elder in the community . . ."

In the letter, M. Punter also asserts that he witnessed plaintiff "yell at other volunteers including [A. Punter] who was working closely with Mr. McCollough [sic], and "shout[] at Assemblyman [Alfred] Taylor," and that plaintiff's "behavior [was] outrageous," and he "displayed a total disregard for professional decorum in the administration of his official duties" (Lavoie aff, exhibit M).

A. Punter's email, dated August 26, 2019 and addressed to Castro, written on behalf of Rucker Park, contained the following pertinent statements concerning plaintiff:

> "I observed and experienced him spending well over an hour and a half relentlessly being offensive and contemptuous toward me, volunteers and other visitors in the park."
>
> "Without a clear cause, [plaintiff] immediately demanded that he be shown a permit."

> "He presented no credentials that would assure me he was an employee of your agency."
>
> "His behavior was extremely bad-mannered and contemptuous toward several people, including Parents, a member of the New York State Assembly, Mr. Al Taylor, a Member of the NAACP and Adrienne Felton the Community Liaison from the New York all of whom were present for this display of disrespect exhibited as representative of your agency."

A. Punter also claims that he witnessed several acts of unprofessional behavior displayed by plaintiff toward McCullough including pointing his finger, raising his voice, standing over McCullough, cutting McCullough off mid-sentence, and dismissing McCullough "in a reprimanding tone." Moreover, plaintiff "waved his hand and arms in the air and walked off without out as much as allowing [McCullough] to complete his thoughts and explanation around his requests and concerns."

A. Punter claims that he "too was treated harshly by [plaintiff]. He stated, 'I don't want to hear anything you have to say to me[.]'" When A. Punter attempted to speak to plaintiff, plaintiff "put his hand in my face and stated to me 'I told you to stay over there, and now you are over here . . . so you need to get out of my face'", which caused him to feel "demeaned by [plaintiff]." He felt that plaintiff's "tactics to bully me and attack [McCullough] was [sic] humiliating," and that plaintiff "was dishonorable and his behavior as a state and/or government employee was shocking; [plaintiff] began arguing and dismissing other people . . ., and his representation on Saturday was abusive to its [i.e., the park's] visitors" (Lavoie aff, exhibit N).

During his deposition, plaintiff testified that he did not point his finger, raise his voice, waive his arms and hands in the air, or walk off without permitting McCullough to complete his thoughts. Plaintiff further testified that he did not say to anyone "I don't want to hear anything you have to say to me" (Lavoie aff, exhibit F at 100), nor did he ever say "I told you to stay over there and now you are over here. So you need to get out of my face" (*id.*). Rather, plaintiff

testified that he "would never tell somebody to get out of my face" (*id.*), and denied that he put his hand in somebody's face (*id.*).

During her deposition, A. Punter testified that plaintiff appeared "very, very upset" and she "didn't like the way that he was talking. I mean he was very disrespectful" (Lavoie aff, exhibit G [A. Punter dep. Tr.] at 36-37). She further testified that she observed that "every time that Bob [McCullough] would try to speak to him, [plaintiff] would interject, interrupt in a manner that wasn't equal to Bob. And it was rude. In my profession, when you stand over someone, it is intimidating, it's bullying, and that's what I observed. I was quite taken back by his behavior" (*id*. at 33).

At his deposition, M. Punter testified that he was present at the Park as a representative of Harlem Congregations, and also holds an advisory position with Rucker Park. He described plaintiff's conduct in the Park as aggressive and testified that plaintiff was pacing back and forth speaking on his phone, approaching people without identifying himself, and asking if there was a permit for the event, and demanding that the event be "shut down in a raised voice, almost yelling" (Lavoie aff, exhibit H at 33).

On January 29, 2020, plaintiff was informed by the Parks Department that it had preferred charges against him and that an informal conference would be held. The charges included:

(1) Charge 1 – Conduct Prejudicial to Good Order and Discipline:

> Engaging in activity that interferes with any activity of the agency or those of its officers or employees in violation of the rule set forth in Chapter Three, Rule 111(6)(A) of the *Department of Parks and Recreation's (DPR) Standards of Conduct.*
>
> Threatening, intimidating or harassing a superior, fellow employee, other City employee, Peace/Police Officer or private citizen in violation of the rule set forth in Chapter Three, Rule 111(6)(B) of the *DPR's Standards of Conduct*.

> Specification 1 – On August 24, 2019, you conducted yourself in an aggressive manner when addressing DPR patrons about their activity at Holcombe Rucker Park. Specifically, your questioning of participants and youth volunteers about the status of their permit was described as an interrogation. Additionally, when addressing community volunteers, your elevated tone and hand gestures, were described by witnesses as intimidating and aggressive. Behavior consistent with the above description is unprofessional, discourteous, and unwelcome at DPR.

(2) Charge II – General Misconduct:

Disorderly or disruptive conduct in violation of Chapter Three, Rule I(6) in violation of DPR's Standards of Conduct.

> Specification 1 – Repeat and reiterate Charge I, specification 1.

(NYSCEF 231).

By letter dated February 25, 2020, plaintiff was informed that "after considering all of the evidence presented at the Informal Conference held on February 12, 2020," he had been found guilty of all charges against him. It was recommended that a penalty be imposed against him consisting of a written reprimand and Interpersonal Strategies Training at DCAS (NYSCEF 295).

After plaintiff appealed the determination, it was upheld on October 20, 2020, with the finding that plaintiff had violated the Department's Standard of Conduct, and the recommended penalty was to be immediately enforced (NYSCEF 232).

According to plaintiff, after the disciplinary proceeding against him, he applied for "multiple" positions within the Parks Department following the subject incident, and was denied all of them, "all due to the false statements of the Defendants" (Plaintiff aff, ¶ 25).

The complaint contains four causes of action: (1) defamation and libel per se as against M. Punter, (2) defamation and libel per se against A. Punter, (3) defamation and libel per se as against Harlem Congregations, and (4) defamation and libel per se against Rucker Park.

DISCUSSION

I. Defendants' motions for summary dismissal on the ground that the subject communications contain the truth and/or opinion

In order to establish a prima facie claim of defamation, a plaintiff must prove that (1) the making of a false statement, (2) its publication without privilege or authorization to a third party; (3) constituting fault as judged by, at a minimum, a negligence standard, and (4) causing special harm or constituting defamation per se (*Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999]).

Truth provides a complete defense to a claim of defamation (*Birkenfeld v UBS AG*, 172 AD3d 566, 566 [1st Dept 2019]). If an allegedly defamatory statement is true or substantially true, the defamation claim must be dismissed. A statement is substantially true if the statement would not have had a different effect on a person's mind than that the truth would have produced (*Franklin v Daily Holdings, Inc*., 135 AD3d 87 [1st Dept 2015]).

Moreover, it is for the court to determine in the first instance whether the challenged statements are susceptible of a defamatory meaning. "If the contested statements are reasonably susceptible of a defamatory connotation, then it becomes the jury's function to say whether that was the sense in which the words were likely to be understood by the ordinary and average [listener]'" (*James v Gannett Co*., 40 NY2d 415, 419 [1976]). In general, "(l)oose, figurative or hyperbolic statements, even if deprecating to the plaintiff, are not actionable" (*Dillon*, 261 AD2d at 38).

Challenged statements consisting of "pure" opinions are also insufficient to find defamation (*Davis v Boeheim*, 24 NY3d 262 [2014]). However, "words that sound like an opinion may be actionable where the statement 'implies that it is based upon facts which justify

the opinion but are unknown to those reading or hearing it'" (*Frechtman v Gutterman*, 115 AD3d 102, 105 [1st Dept 2014] [internal citation omitted]). "'The actionable element of a 'mixed opinion' is not the false opinion itself—it is the implication that the speaker knows certain facts, unknown to his audience, which support his opinion and are detrimental to the person about whom he is speaking'" (*id*. at 105-106 [internal citation omitted]).

A. M. Punter's letter

M. Punter made several statements about plaintiff's conduct in his letter to Castro, including that plaintiff "aggressively marched about [waving] his hands in the center of the park, point[ing] in community volunteers faces in front of community residents, children, elders and elected officials, [and] giving commands to unsuspecting participants in the tournament activities" (complaint, exhibit 1). He wrote that Plaintiff displayed a "total disregard for professional decorum in the administration of his official duties" (*id.*). M. Punter also stated that he saw Plaintiff act in a disrespectful manner toward McCullough and yell at Taylor.

Here, defendants establish that the statements are true or substantially true through sworn testimony of several witnesses who personally observed plaintiff's behavior, including the Punters and non-parties McCullough and Felton, and a non-party event attendee (*Reus v ETC Hous. Corp*., 203 AD3d 1281 [3d Dept 2022] [defendant established truth of article by submitting evidence, including affidavit from former tenant about conditions in building, photographs, and deposition testimony]; *Hope v Hadley-Luzerne Pub. Library*, 169 AD3 1276 [3d Dept 2019] [court correctly found that depiction of events set forth in allegedly defamatory letter was substantially true based on submitted affidavits and deposition testimony, and plaintiff's testimony did not set forth different account of essential facts]).

At the very least, the allegations set forth in the letter are substantially true, as it is undisputed that plaintiff was at the event, asked numerous people questions about the event and permit, stood over McCullough while talking to him, and contacted Castro and Taylor while he was also speaking to other people at the event. Plaintiff also admitted that he got exasperated during his communications at the event, and that emotions were raised. Thus, the description of the event by M. Punter in his letter is substantially true. Plaintiff's denial of engaging in unprofessional or rude conduct is both self-serving and unaccompanied by any witness statements or other evidence, and thus insufficient to raise a triable issue as to the falsity of the allegedly defamatory statements (*see Silverman v Clark*, 35 AD3d 1 [1st Dept 2006] [credibility of defendant's factual showing of truth does not become issue until plaintiff submits contradictory evidence]).

Moreover, the Parks Department found that plaintiff had engaged in unprofessional behavior that day, as set forth in its charges against plaintiff, after investigating the incident and holding an informal conference before it during which evidence was presented, further corroborating M. Punter's version of events. Also persuasive of the truth of the statements is that both Punters were apparently so upset by plaintiff's behavior that they complained about him to his supervisor, Castro, immediately after the incident and despite the fact that plaintiff was a stranger to them.

Even if not true, the statements made by M. Punter in which he characterizes plaintiff's behavior as, essentially, inappropriate, abusive or rude are vague and hyperbolic and expressions of opinion, and thus not defamatory (*see Rivas v Restaurant Assocs., Inc.*, 223 AD3d 634 [1st Dept 2024] [defendant's use of terms "pedophile" and "child molester" was hyperbolic and he was reacting in anger to plaintiff's improper conduct toward his daughters]; *Morrison v Poullet*,

227 AD2d 599 [2d Dept 1996] [statements that plaintiff was unprofessional, disrespectful, rude and "even accusatory" and became "verbally abusive" during interview were nonactionable opinion]).

Defendants thus establish that the statements in M. Punter's letter are not defamatory, and plaintiff fails to raise a triable issue in opposition.

B. A. Punter's email

For the same reasons discussed above, the statements made in A. Punter's email are either true or substantially true, or constitute non-actionable opinion or hyperbole.

The parties' remaining arguments have been considered and need not be addressed.

Accordingly, it is hereby

ORDERED that defendants Malcolm Punter and Harlem Congregations for Community Improvement, Inc.'s motion (seq. 012) for summary judgment dismissing the complaint is granted; and it is further

ORDERED that defendants Aarian Punter and Rucker Park Prep Foundation's motion (seq. 013) for summary judgment dismissing the complaint is granted; and it is further

ORDERED that the complaint is dismissed in its entirety and the clerk is directed to enter judgment accordingly.

5/13/2025
DATE

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DAVID B. COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE