

Troia v LoanStreet, Inc.

2025 NY Slip Op 31845(U)

May 22, 2025

Supreme Court, New York County

Docket Number: Index No. 150354/2024

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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WYATT TROIA,

Plaintiff,

- v -

LOANSTREET, INC., IAN LAMPL

Defendant.

INDEX NO. 150354/2024

MOTION DATE 03/18/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after a final submission date of March 4, 2025, Defendants Loan Street, Inc. (“LoanStreet”) and Ian Lampl’s (“Lampl”) (collectively “Defendants”) motion to dismiss Plaintiff Wyatt Troia’s (“Plaintiff) Complaint pursuant to CPLR 3211(a)(7) is granted.

I. Background

Plaintiff was formerly employed by LoanStreet as an engineer but was terminated on June 12, 2020. On the date of his termination, Plaintiff allegedly sent a company wide e-mail airing grievances about LoanStreet and complaining that he was terminated shortly before his stock options would vest. Plaintiff had previously signed a non-disparagement clause with LoanStreet, and once it expired on June 13, 2021, Plaintiff began posting about his employment with LoanStreet on a variety of internet forums. LoanStreet worked with the various internet platforms to take down those posts, and Plaintiff in turn worked to have the posts restored. On June 24, 2021, LoanStreet sent Plaintiff a cease-and-desist letter claiming Plaintiff was defaming Defendants.

On July 21, 2021, Defendants sued Plaintiff in the Southern District of New York alleging defamation, amongst other causes of action. Plaintiff moved to dismiss, which was largely denied. Only the injurious falsehood claim was dismissed with prejudice, and some of the allegations of defamation arising from statements regarding hiring and firing practices and stock vesting periods were dismissed without prejudice, with leave to replead (*see LoanStreet, Inc. v Troia*, 2022 WL 3544170 [SDNY 2022]). After his motion to dismiss was denied, Plaintiff asserted a counterclaim alleging a violation of New York's anti-SLAPP law. On September 8, 2023, United States District Judge Buchwald dismissed Plaintiff's anti-SLAPP counterclaim and found the "complaint is, quite clearly, not a SLAPP" and had a "substantial basis in fact and law." (*see* NYSCEF Doc. 12). Plaintiff then commenced this action on January 12, 2024, again seeking to recover under New York Civil Rights Law § 70-a (NYSCEF Doc. 1). Defendants move to dismiss Plaintiff's Complaint, and Plaintiff opposes.

II. Discussion

A. CPLR 3211(a)(7)

Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(7) is granted. When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences drawn from the pleadings and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). However, a motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

As held by the First Department and the Court of Appeals, a trial court may consider documentary evidence on a CPLR 3211(a)(7) to attack the sufficiency of a pleading if the evidence

conclusively establishes that Plaintiff has no cause of action (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128 [1st Dept 2014] citing *Rovello v Orofino Realty Co., Inc.*, 40 NY2d 633, 636 [1976]). When documentary evidence is submitted by a defendant on a CPLR 3211(a)(7) motion, “the standard morphs from whether the plaintiff has stated a cause of action to whether it has one” (*Basis Yield Alpha Fund (Master), supra*). As held by the Hon. Dianne T. Renwick, “the key should be whether the evidence adduced conclusively negates an element of the cause of action” (*Basis Yield Alpha Fund (Master), supra* at 134 n. 4).

Civil Rights Law § 70-a(1)(a) allows a party to an action involving public petition and participation to maintain an action, claim, cross claim, or counterclaim to recover damages from any person who commences or continues such action, but only if it was determined that the action was brought without a substantial basis in fact and law. Compensatory damages may be recovered under Civil Rights Law § 70-a(1)(b), but only upon an additional showing that the action was brought to harass, intimidate, punish, or maliciously inhibit the free exercise of speech.

Plaintiff’s Civil Rights Law § 70-a fails because Judge Buchwald explicitly wrote that Defendants’ lawsuit “stated a ‘substantial basis in fact and law.’” (*see* NYSCEF Doc. 12). Judge Buchwald dismissed the counterclaim premised on New York’s anti-SLAPP law, which Plaintiff’s attorneys wrote is the very same claim in this action (NYSCEF Doc. 22). After commencement of this action, Judge Buchwald wrote to the parties and clarified “any possible ambiguity” by stating she “ruled on the merits that Troia’s SLAPP claim failed as a matter of law given this Court’s prior rulings on the sufficiency of the complaint.” (NYSCEF Doc. 13). This Court finds no reason to depart from Judge Buchwald’s well-reasoned decision dismissing Plaintiff’s anti-SLAPP claim. Because Plaintiff’s anti-SLAPP claim was dismissed on the merits based on a finding that

Defendants' complaint had a substantial basis in fact and law, he cannot revive the very same claim in this Court (*Smartmatic USA Corp. v Fox Corporation*, 213 AD3d 512, 512 [1st Dept 2023]).

Simply: it is impossible for Plaintiff's claim to meet Civil Rights Law § 70-a's statutory criteria to obtain damages – a demonstration that an action that was filed without substantial basis in fact or law. Judge Buchwald found Plaintiff liable to Defendants for defamation with malice, and a trial on damages is pending, foreclosing any possibility for Plaintiff to sue Defendants for a violation of Civil Rights Law § 70-a. Because the Complaint is dismissed under CPLR 3211(a)(7), the branches of the motion under CPLR 3211(a)(4) and (a)(5) are academic.

B. CPLR 3211(g)

Defendants' CPLR 3211(g) motion is denied. Although the Complaint was dismissed pursuant to CPLR 3211(a)(7), Defendants' CPLR 3211(g) motion is not academic and must be addressed (*Reeves v Associated Newspapers, Ltd.*, 232 AD3d 10, 12 [1st Dept 2024]). As held by the First Department in *Reeves*, if a SLAPP lawsuit fails to survive an ordinary CPLR 3211(a)(7) analysis, then it also fails to meet the higher burden under CPLR 3211(g), and costs and attorneys' fees must be awarded pursuant to Civil Rights Law § 70-a. While Defendants have succeeded under CPLR 3211(a)(7), they are only entitled to attorneys' fees and costs under CPLR 3211(g) if this lawsuit may be considered a SLAPP lawsuit and whether New York's anti-SLAPP laws can be reasonably construed to impose liability on a plaintiff who fails to recover on a claim on Civil Rights Law § 70-a.

This Court concludes that the legislature did not intend for a plaintiff who fails to recover on a claim on a Civil Rights Law § 70-a claim to then become subjected to liability for costs and attorneys' fees under CPLR 3211(g). The purpose of New York's amended anti-SLAPP law is to protect those who are subjected to frivolous lawsuits aimed at punishing those who exercise their

right to speak freely on issues of public concern in a public forum (*see generally Aristocrat Plastic Surgery, P.C. v Silva*, 206 AD3d 26, 29 [1st Dept 2022]). Nowhere in the statutory history or case law is there even an inkling of a suggestion that a party who successfully overcomes an anti-SLAPP claim may then use the anti-SLAPP law to impose liability against the party who sought relief under the anti-SLAPP law. Imposing liability in the way requested by Defendants would discourage litigants from asserting anti-SLAPP claims for fear of subjecting themselves to liability should their claims fail – which would run contrary to the Legislature’s goal of expanding the application of anti-SLAPP protections. As stated by the First Department:

“[T]he 2020 amendments...were addressed to the ‘narrow[] interpret[ation] by the courts’ of the then-existing section 76-a, which had failed to accomplish the objection of the originally enacted anti-SLAPP law—that is, it had failed to provide ‘the utmost protection for the free exercise or speech, petition, and association rights, particularly where such rights are exercised in a public forum with respect to issues of public concern’ (*Aristocrat Plastic Surgery, supra* at 29 quoting Sponsor’s Mem, Bill jacket, L 2020, Ch 250).

Thus, based on the legislative history and prior interpretation and application of the anti-SLAPP law, the Court finds Defendants are not entitled to relief under CPLR 3211(g). Seeking relief under Civil Rights Law § 70-a does not constitute a SLAPP lawsuit, but usually constitutes an attempt to vindicate rights provided by the Legislature under the anti-SLAPP law. The Court also has concerns that imposing liability for attorneys’ fees and costs under CPLR 3211(g) against plaintiffs simply for bringing a failed Civil Rights Law § 70-a claim would violate the absolute litigation privilege, which immunizes from liability statements made during the pendency of litigation (*see, e.g. Gottwald v Sebert*, 40 NY3d 240, 253-54 [2023]). Thus, the branch of the motion under CPLR 3211(g) is denied.

Accordingly, it is hereby

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(7) is granted, and Plaintiff's Complaint is hereby dismissed; and it is further

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(g) is denied; and it is further

ORDERED that Defendants' motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(4) and (a)(5) are academic given dismissal under CPLR 3211(a)(7); and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>5/22/2025</u> DATE		<u>Mary V Rosado J.S.C.</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE