309 10th Owner LLC v Trautmann
2025 NY Slip Op 32947(U)
July 31, 2025
Supreme Court, Kings County
Docket Number: Index No. 525341/2024
Judge: Carolyn E. Wade

At an IAS Term, Part 84, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located Civic Center, Brooklyn, New York, on the 31st day of July, 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: HON. CAROLYN E. WADE, J.S.C.

---

309 10TH OWNER LLC,

Plaintiff,

-against-

PETER TRAUTMANN, AMANDA TRAUTMANN, and KAIROS HAUS, LLC,

Defendants.

Index No. 525341/2024

DECISION AND ORDER

Mot. Seq. #2

The following papers were read on this motion: NYSCEF Doc. Nos. 17-34 and 36-47.

Upon reviewing the foregoing cited papers, and after oral argument, the Defendants Amanda Trautmann ("Amanda"), Peter Trautmann ("Peter") and Kairos Haus LLC's ("Kairos") (hereinafter referred to collectively as "Defendants") move for dismissal of the Plaintiff 309 10th Owner LLC's Complaint under CPLR §3211(g), and under New York's statute governing strategic lawsuits against public participation, Civil Rights Law §§70-a and 76-a ("anti-SLAPP statute"), for mandatory attorneys' fees and costs, and for punitive damages (the "Motion"). The Defendants' Motion is decided as follows:

I. Facts and Procedural History

Plaintiff, a real estate developer, asserts causes of action for tortious interference and commercial disparagement against Defendants in connection with Defendants' opposition to Plaintiff's residential construction project in Park Slope (the "Project") (NYSCEF Doc. No. 1). Specifically, the Complaint alleges that Defendants "[1] by testifying falsely in a public hearing ("City Council Testimony") and [2] sending a false and commercially disparaging letter to their neighbors concerning

Plaintiff and the Project ("Letter"), have caused significant damage to Plaintiff, the Project, and the community at large." (*Id.* ¶9). Plaintiff alleges that the City Council Testimony and the Letter convinced Defendants' neighbors not to sign proposed access agreements required to commence the Project, resulting in delays. Plaintiff seeks $6.85 million dollars in damages.

II. The Anti-SLAPP Statute Applies

Under Civil Rights Law §76-a(1)(a), a strategic action against public participation is a claim based on: (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. The 2020 amendments to the anti-SLAPP statute "substantially expanded the definition of an action involving public petition and participation." (*Gottwald v. Sebert*, 40 NY3d 240, 256 [2023]). The definition of "public interest" "shall be construed broadly" and "mean[s] any subject other than a purely private matter." (Civil Rights Law §76-a[1][d]).

Here, Amanda's City Council Testimony is petitioning activity within the protection of the anti-SLAPP statute, as it is based on her statement "at [a] public meeting against [Plaintiff's] proposed [land] development." (*600 W. 115th St. Corp. v. Von Gutfeld*, 80 NY2d 130, 138 [1992]). Similarly, the Letter is petitioning activity, as it was "a communication that was 'materially related' to the [D]efendants' efforts to report on, comment on, or oppose the [Plaintiff's Project]." (*See Southampton Day Camp Realty, LLC v. Gormon*, 118 AD3d 976, 977 [2d Dept 2014]). The Letter is also in furtherance of the Defendants' right to free speech in connection with a matter of public interest. While statements falling "into the realm of mere gossip and prurient interest" are unprotected, this definition covers any "matter of political, social, or other concern to the community, even if it does not affect the general population." (*Coleman v. Grand*, 523 F.Supp.3d 244, 259 [E.D.N.Y., Vitaliano, J.]).

As such, the Court finds that the anti-SLAPP statute applies to this action.

III. Plaintiff's Claims Lack a Substantial Basis in Law

After a defendant shows an action is a SLAPP, the burden shifts to the plaintiff to show that its "cause[s] of action ha[ve] a substantial basis in law[.]" (CPLR §3211[g]). "A court reviewing the sufficiency of a pleading under CPLR 3211(g) must look beyond the face of the pleadings to determine whether the claim alleged is supported by substantial evidence." (*Reeves v. Assoc. Newspapers, Ltd.*, 232 AD3d 10, 24 [1st Dept 2024]).

"Statements made by parties, attorneys, and witnesses in the course of a judicial or quasi-judicial proceeding are absolutely privileged, notwithstanding the motive with which they are made[.]" (*Gaeta v. Inc. Vil. of Garden City*, 72 AD3d 683, 684 [2d Dept 2010]).

"[P]ursuant to the *Noerr–Pennington* doctrine, [parties] cannot be penalized for, or prevented from, exercising their right to petition the government." (*Alfred Weissman Real Estate v. Big V Supermarkets*, 268 AD2d 101, 106 [2d Dept 2000]). "[T]he courts have expanded it to protect First Amendment petitioning of the government from claims brought under Federal and State law, including claims asserted pursuant [...] common-law tortious interference with contractual relations." (*Id.* at 107).

Here, neither of Plaintiff's causes of action have merit to the extent that they are based on statements made by Amanda during her City Council Testimony, because these statements are (1) absolutely privileged quasi-judicial testimony, and (2) protected under the *Noerr-Pennington* doctrine. Furthermore, Plaintiff failed to submit evidence to establish that that Defendants "acted with the sole purpose of harming the plaintiff" (*N. State Autobahn v. Progressive Ins. Group*, 102 AD3d 5, 21 [2d Dept 2012]) in Plaintiff's tortious interference claim.

Lastly, Plaintiff fails to show, by clear and convincing evidence, that Defendants made any false statement with actual malice (*i.e.*, that the statements were knowingly false) to support its commercial disparagement claim. (Civil Rights Law §76-a[2]). Defendants' statement that Plaintiff wanted to build in their backyard is substantially true — or, at least, not knowingly false. Despite

Plaintiff's claim of ownership to Defendants' backyard, Defendants' adverse possession lawsuit claiming the disputed strip of property against Plaintiff has already survived a motion to dismiss. (NYSCEF Doc. No. 46). At a minimum then, this was not a knowingly false statement.

As such, Plaintiff's claims lack a substantial basis in law.

IV. Defendant is Entitled to Their Attorneys' Fees and Cost

Attorney's fees and costs to a prevailing defendant are mandatory under Civil Rights Law §70-a(1)(a). (*Gottwald v. Sebert*, 40 NY3d 240, 257 [2023]). Accordingly, Defendants are entitled to a separate hearing to determine Defendants' costs and attorneys' fees.

V. Hearing is Required to Determine Punitive Damages

Punitive damages may be recovered upon a "demonstration that the action involving public petition and participation was commenced or continued for the sole purpose of harassing, intimidating, punishing, or otherwise maliciously inhibiting the free exercise of speech, petition or association rights." (Civil Rights Law §70-a[1][c]). Because evidence of Plaintiff's motivation (*i.e.* internal communications) and financial means lies in Plaintiff's possession, the Court orders that additional information is required to assess the appropriateness and the amount of punitive damages, if any.

ACCORDINGLY, it is hereby:

ORDERED that the Defendants' motion to dismiss is **GRANTED TO THE EXTENT** that the Plaintiff's Complaint is dismissed without prejudice; and it is further,

ORDERED that Defendants are entitled to a hearing on "costs and attorney's fees" under Civil Rights Law §70-a(1)(a) and punitive damages.

This constitutes the Decision and Order of the Court

ENTER:

Hon. Carolyn E. Wade, J.S.C.

Hon. Carolyn E. Wade
Supreme Court Justice

KINGS COUNTY CLERK
FILED
2025 AUG -6 A 9:55