

Mugrabi v Empire Chesapeake Holdings, LLC

2025 NY Slip Op 32992(U)

August 8, 2025

Supreme Court, New York County

Docket Number: Index No. 650794/2025

Judge: Lyle E. Frank

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

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

LIBBIE MUGRABI, MOO MOO ENTERPRISES, LLC,
Plaintiff,

- v -

EMPIRE CHESAPEAKE HOLDINGS, LLC, IAN PECK, ART
CAPITAL GROU, LLC, TERRENCE DORAN
Defendant.

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INDEX NO. 650794/2025
MOTION DATE 04/16/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18
were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is granted.

Background

This underlying proceeding is one of several that have arisen out of Libbie Mugarbi’s (collectively with her company Moo Moo Enterprises, LLC the “Plaintiffs”) attempt to obtain a loan from Art Capital Group, LLC (“ACG”). The loan was arranged by Empire Chesapeake Holdings LLC (“Empire”) and secured by a Basquiat painting. Defendants Terence Doran and Ian Peck are officers for Empire and ACG (the four collectively, “Defendants”). There was a supplemental security agreement that pledged a Warhol painting as security entered into shortly after the secured term loan sheet. There is a dispute over whether this supplemental agreement added the Warhol to the Basquiat as collateral, or if it replaced the Basquiat as collateral.

Defendants then took possession of the Warhol in a manner that Plaintiff alleges violated the New York UCC requirements for the disposition of collateral. Ultimately, Empire and ACG declined to fund the loan that was contemplated by the secured term loan sheet, citing concerns

about Ms. Mugrabi's credit worthiness. In June of 2024, the Warhol painting was sold. Several actions have resulted out of these and other interactions between the parties, including a proceeding filed with the Supreme Court on November 5, 2024 (the "November Proceeding"). In the November Proceeding, a sworn affirmation was provided by Mr. Peck where he stated that while conducting due diligence on the proposed loan, the Defendants "became aware of allegations that Mugrabi was a drug addict who wasted her fortune obtained in her divorce with her ex-husband on drugs and other ill-advised expenses" and that as a result they did not approve her for the loan. This statement (the "Peck Statement") was repeated in an affirmation filed with the First Department on an appeal in the November Proceeding. This present proceeding was filed by Plaintiff in February of 2025. She has three causes of action, two related to the UCC requirements for collateral and the Warhol sale, and one for defamation related to the Peck Statement.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is

whether 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.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

CPLR § 3211(g)(1) states that when, in a motion to dismiss, the moving party has demonstrated that the claim subject to the motion is an “action involving public petition and participation” as defined in the Anti-SLAPP Law, the motion is to be granted “unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law.” Unlike other CPLR § 3211 motions, once a showing is made that an action is a SLAPP suit, “the burden shifts to the plaintiff to demonstrate that the claim has a ‘substantial basis in law.’” *Reeves v. Associated Newspapers, Ltd.*, 228 A.D.3d 75, 77 [1st Dept. 2024].

Discussion

Defendants have moved to dismiss the third cause of action for failure to state a cause of action and pursuant to New York’s Anti-SLAPP law. They argue that the defamation cause of action falls well within the Anti-SLAPP law and that the Peck Statement is privileged. They also argue that the complaint fails to plausibly allege a defamation claim. Plaintiffs oppose the motion and argue that the Peck Statement is false and was made solely to defame Ms. Mugrabi in public. For the reasons that follow, the motion is granted.

The Anti-SLAPP Standard and Burden-Shifting Framework

Defendants move to dismiss the third cause of action based on CPLR § 3211(g). This provision states that when a claim involves a matter of public petition and participation as defined by the civil rights law, a motion to dismiss said claim is to be granted unless the responding party can demonstrate a “substantial basis in law.” The First Department has held that this standard imposes a higher burden than the CPLR § 3211(a)(7) analysis and is defined as

“such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.” *Reeves v. Associated Newspapers, Ltd.*, 232 A.D.3d 10, 12 [1st Dept. 2024].

Under the Anti-SLAPP law as amended in 2020, the moving party bears the initial burden of establishing that action or claim is a SLAPP suit under Civil Rights Law § 76-a(1). Once this has been established, the burden then shifts to the non-movant to demonstrate a substantial basis under the heightened standard. If this is not met, then the claim is dismissed, and an award of attorneys’ fees is mandatory. *Id.*, at 18 – 19.

Defendants Have Shown That the Third Cause of Action is a SLAPP Claim

NY Civil Rights Law defines an action involving public petition and participation as claim based upon either “any communication in a place open to the public or a public forum in connection with an issue of public interest” or “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.” NY CLS Civ. R. § 76-a(1)(a)(1) and (2). For an Anti-SLAPP motion to dismiss, the first step of the analysis is determining whether the claim at issue involved a communication on an issue of public interest or in furtherance of the right of petition. In *Sharp*, the First Department held that claims that had targeted allegations made in the commencement of a lawsuit fell under the definition of a SLAPP suit because it “involve[d] judicial proceedings and matters of political, social, or other concern to the community.” *Sharp v. Bar Fluid LLC*, 237 A.D.3d 628, 629 [1st Dept. 2025]; *see also Sweetpea Ventures Inc. v. Belmamoun*, 231 A.D.3d 460, 461 [1st Dept. 2024] (holding that both the right to petition and the matters of public interest referred to in the relevant Civil Rights Law provision encompass litigation and judicial proceedings). Because the Peck Statement was made

in the furtherance of a judicial proceeding and as part of a litigation matter, the Defendants have met their burden of showing that the third cause of action falls under the Anti-SLAPP law.

Plaintiffs Have Failed to Demonstrate Substantial Basis

The burden now shifts to Plaintiffs to demonstrate a substantial basis in fact or law for their defamation claim. Plaintiffs argue that any privilege that may have attached to the Peck Statement was lost because the statement in question was not pertinent to the litigation. They also argue that because Defendants' counsel also represents a Mr. Joon Ho Chun who claimed in another related action to have observed Ms. Mugarabi "using illegal drugs", that Mr. Chun must have been the source of the allegations that the Peck Statement references. Plaintiffs argue that because the statement by Mr. Chun was filed in that proceeding after the Peck Statement was made, this is an indication that the Peck Statement was fabricated. But this fails to meet the Anti-SLAPP substantial basis standard.

To begin with, the Peck Statement did not accuse Ms. Mugarabi of being a drug addict, but instead offered a needed explanation for why Defendants decided not to fund the proposed loan, stating that they had become "aware of allegations" regarding drug use. Plaintiffs have not made a showing of relevant proof adequate to support a reasonable conclusion that Mr. Peck made the statement in question aware of its falsity (that is, aware that their decision not to fund the loan was not in fact motivated in part by allegations of illicit drug use) and that he was motivated by malice.

As the Court of Appeals noted in their analysis of the balance between personal and public interests involved in such cases, "[i]t may be unfortunate that the plaintiff must suffer an attack [...] without any means of judicial redress. But the possible harm to him as an individual is far outweighed by the need [...] to encourage parties to litigation [...] to speak freely in the

course of judicial proceedings.” *Martirano v. Frost*, 25 N.Y.2d 505, 508 [1969]. The Court is not blind to the impact an individual must feel when statements are made in court that refer to potential illicit drug use. But the Defendants’ motivation for declining to fund the loan was at issue in that proceeding, and there has not been a showing made that Defendants did not in fact become aware of the allegations referenced at the time of the decision not to fund the loan. Because Plaintiffs have not met their burden of showing a substantial basis for their defamation claim, the third cause of action must be dismissed and attorneys’ fees awarded under the Anti-SLAPP law. Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that the third cause of action for defamation in the complaint be dismissed; and it is further

ORDERED that an inquest on attorneys’ fees be held at the time of trial or other such resolution of this matter.

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8/8/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE