

Frey v Cummings-Ramone

2025 NY Slip Op 34474(U)

November 20, 2025

Supreme Court, New York County

Docket Number: Index No. 150816/2025

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04

Justice

-----X

DAVID FREY,

Plaintiff,

- v -

LINDA CUMMINGS-RAMONE,

Defendant.

-----X

INDEX NO. 150816/2025

MOTION DATE 03/03/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13 were read on this motion to DISMISS.

Upon the foregoing documents, defendant’s motion to dismiss the complaint is granted.

In this action, plaintiff David Frey asserts claims for defamation arising from an allegation in the complaint filed by defendant Linda Cummings-Ramone (“Ramone”) in the action *Linda Ramone, individually, as a Trustee of the Linda Cummings-Ramone Living Trust and Survivor Trust, and derivatively on behalf of Ramones Productions, Inc. v. David Frey et al*, in New York State Supreme Court, New York County, under Index No. 650309/2024 (the “RPI Action”). In that action, Ramone sought to, inter alia, remove Frey from his position as one of the two directors of Ramones Productions, Inc. (“RPI”) and appoint a temporary receiver for RPI. As pertinent here, Cumming alleged that Frey and his co-defendant,

have effectively shut down the entire company. Contrary to RPI’s interests and commercial goals, Defendants refuse to engage with the Ramones’ record label, its social media creative agency, its merchandising partners, or its long-term business managers. At the same time, Defendants regularly create internecine disputes and unnecessary work that drains the company of funds, as exemplified by Mr. Frey’s litany of personal attacks and unresponsiveness toward RPI’s key commercial partners and vendors, prompting the resignation of RPI’s long-time business manager.

Defendants have prevented the company from conducting basic operational tasks, including, without limitation: (i) shopping for deals with merchandising partners, (ii) developing new product, box sets, and re-releases, (iii) establishing social media accounts, and (iv) launching an online webstore.

...

Given the makeup of the company and the Shareholders' divergent interests and motivations, so long as Mr. Hyman's appointed Director Mr. Frey remains serving as Director, the problems holding the company back will persist.

...

Mr. Frey's continued involvement and obfuscation remains a significant hurdle toward resolving even the most straightforward of operational issues within RPI, posing a substantial threat to RPI and its future

(NYSCEF Doc No. 2, complaint at ¶¶4, 5, 10, 36, in *Ramone v Frey et al*, Sup Ct, NY County, index No. 650309/2024). In this action, plaintiff takes issue with the allegation in Cumming's complaint that:

Ms. Ramone objects to Defendants' attempt to create a Ramones film without her involvement—not to be obstinate, but rather based on Defendants' disregard for RPI assets and their conduct and treatment of Ms. Ramone and her late husband, Johnny Ramone. Over the years, Defendants have lobbed insulting, misogynistic attacks on Ms. Ramone both privately and publicly, and have even gone so far as to threaten to leak compromising private footage of Ms. Ramone that Joey had in his possession, in furtherance of Defendants' self-dealing

(*id.* at 46 [emphasis added]). Frey asserts that this allegation was defamatory and that defendant knew at the time the complaint was filed that it was untrue.

Defendant now moves to dismiss the complaint on the principal ground that this statement is protected by the absolute litigation privilege.¹ In opposition, plaintiff argues, as pertinent here, that the litigation privilege does not apply because this statement was not material or pertinent to the claims asserted in the RPI Action. In support of his argument, plaintiff references a 2023

¹ While defendant also asserts alternative grounds for dismissal, which plaintiff disputes, the Court declines to reach these arguments in light of its conclusion that the absolute litigation privilege clearly precludes this action.

Arbitration between the parties—the purpose of which was to determine “whether Mr. Frey should be removed as a director of RPI pursuant to BCL §706, and, if so ... for what period of time, if any, he should be barred from re-election as a director” (NYSCEF Doc No. 273, Arbitration Award at ¶160 in *Ramone v Frey et al*, Sup Ct, NY County, index No. 650309/2024)—in which the Arbitrator, the Honorable Shira Scheindlin (ret.), concluded that cross-examination of Frey about Ramone’s “sex tape” was irrelevant (NYSCEF Doc No. 306, Arbitration tr. at 110-116 in *Ramone v Frey et al*, Sup Ct, NY County, index No. 650309/2024). In reply, defendant takes issue with plaintiff’s characterization of the determination made by Arbitrator Scheindlin.

DISCUSSION

“[A] statement made in the course of legal proceedings is absolutely privileged if it is at all pertinent to the litigation” (*Pomerance v McTiernan*, 51 AD3d 526, 528 [1st Dept 2008] [internal citations and quotations omitted]). “[T]he test to determine whether a statement is pertinent to litigation is ‘extremely liberal’ such that the offending statement, to be actionable, must have been ‘outrageously out of context’” (*Flomenhaft v Finkelstein*, 127 AD3d 634, 637 [1st Dept 2015] [internal citations omitted], *abrogated in part by Gottwald v Sebert*, 40 NY3d 240 [2023]). A statement is pertinent if it “may possibly bear on the issues in litigation now or at some future time ... the barest rationality, divorced from any palpable or pragmatic degree of probability, suffices” (*Seltzer v Fields*, 20 AD2d 60, 62 [1st Dept 1963], *affd*, 14 NY2d 624 [1964]). “Pertinency is a question of law for the court to decide” and “[a]ny doubt is to be resolved in favor of relevancy and pertinency” (*Mosesson v Jacob D. Fuchsberg Law Firm*, 257 AD2d 381, 382 [1st Dept 1999] [internal citations omitted]). The RPI Action complaint’s allegation that Frey threatened to leak compromising private footage of Ramone easily satisfies this standard, as it is clearly pertinent to the breakdown of relationship between the RPI shareholders and directors that formed the basis

for Ramone's efforts to remove Frey as an RPI director. Accordingly, the absolute litigation privilege applies, and no defamation claim lies.

Even assuming, as plaintiff contends, that Arbitrator Scheindlin ruled that inquiry into Frey's alleged threats concerning Ramone's "sex tape" was not relevant to the Arbitration, this evidentiary determination has no bearing on the analysis here (*see Seltzer v Fields*, 20 AD2d 60, 62 [1st Dept 1963] ["whatever may be the logic or the rule elsewhere, the possibly pertinent need be neither relevant nor material to the threshold degree required in other areas of the law"] *affd*, 14 NY2d 624 [1964]; *see also Martirano v Frost*, 25 NY2d 505, 508 [1969] ["In considering whether a particular statement is 'pertinent' and, by that token, privileged, we are not limited ... to the narrow and technical rules normally applied to determine the admissibility of evidence"]).

Accordingly, it is

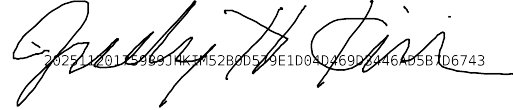
ORDERED that defendant's motion to dismiss this action is granted and it is hereby dismissed; and it is further

ORDERED that defendant shall, within ten days of the date of this decision and order, serve a copy of same with notice of entry on plaintiff and the Clerk of the Court; and it is further

ORDERED that service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.



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11/20/2025

DATE

HON. JUDY H. KIM, 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