

Carey v Mancuso

2025 NY Slip Op 35338(U)

February 24, 2025

Supreme Court, Rensselaer County

Docket Number: Index No. EF2022-272091

Judge: Adam W. Silverman

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At a Term of the Supreme Court, held in and for the County of Rensselaer, in the City of Troy, New York, on the 24th day of February, 2025.

PRESENT: HON. ADAM W. SILVERMAN
Acting Justice of the Supreme Court

SUPREME COURT
COUNTY OF RENSSELAER STATE OF NEW YORK

BARBARA CAREY and EDWARD CAREY,

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Plaintiffs,

-against-

JOSEPH MANCUSO,

Defendant.

APPEARANCES: HACKER MURPHY, LLP
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The following e-filed documents, listed by NYSCEF document numbers 3, 5, 8, 33-49, 52-72 were read on Plaintiffs' Motion for Summary Judgment Defendant's Cross Motion for Summary Judgment dismissing the Complaint (Motion # 1 & 2).

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ADAM W. SILVERMAN, A.J.S.C.

This case represents the continuation of an out-of-control dispute between next-door neighbors that has already involved both civil and criminal cases. Unable, or unwilling, to live peacefully next to one another, the parties seem to believe fanning the flames of their mutual disgust through a second civil lawsuit will be beneficial. While certainly the proper venue to peacefully resolve disputes, not all conflicts are properly a matter for the courts to resolve.

Because the relatively modern tort of intentional infliction of emotional distress, unlike other intentional torts, does not prohibit specific conduct but instead imposes liability based on after-the-fact judgments, courts rigorously enforce its standard of outrageous conduct. In the context of disputes between neighbors, the courts have been hesitant to intervene beyond the traditional torts of trespass and nuisance. While there is no desire that the parties escalate their already alleged uncivil behavior further, to be actionable, the alleged conduct must be beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Here, the parties have engaged in multiple court proceedings against each other and displayed significant incivility. While undeniably a shame, it does not rise to the rigorous standard of intentional infliction of emotional distress. Worse, some of these claims merely parrot claims that were already dismissed in a prior proceeding or are meritless as a matter of law. Even some noxious, deplorable, and reprehensible conduct that civil society rightly condemns does not create a remedy at law because courts have held it to be neither practical nor desirable for the law to provide a remedy against all activity that an individual might find annoying no matter how upsetting.

Summary judgment must be granted and the case dismissed in its entirety because both parties failed to meet the relevant standards.

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This case was commenced by the filing of a summons with notice on August 3, 2022. On August 23, 2022, plaintiffs filed a complaint alleging that defendant, over the course of the prior year, had “engaged in a course of intentional, extreme and outrageous conduct including verbal threats and harassing actions towards the plaintiffs causing them severe emotional distress and mental anguish which requires ongoing medical treatment.” Plaintiffs alleged that defendant was arrested in April of 2022 for harassing and threatening them and they were granted an Order of Protection as a result. Plaintiffs further allege that defendant violated the Order of Protection and was thereafter arrested again on or about August 1, 2022. On September 29, 2022, defendant joined issue and asserted six counterclaims. In sum and substance, defendant alleges that plaintiffs have committed abuse of process, intentionally inflicted emotional distress, and defamed him by filing multiple lawsuits and criminal complaints against him to intimidate, scare, threaten, and force him to sell his home. On August 22, 2024, plaintiffs filed a Note of Issue certifying that all discovery was complete. On October 24, 2024, plaintiffs filed a motion for summary judgment seeking dismissal of all counterclaims. On November 25, 2024, defendant cross-moved for summary judgment seeking dismissal of the complaint.

The parties are neighboring property owners who were previously involved in litigation. On February 25, 2019, plaintiffs commenced a previous action against defendant and his husband for timber trespass pursuant to RPAPL 861, trespass, conversion, negligence, and to determine the ownership and true boundary line regarding their shared property line. Defendant and his husband joined issue and asserted counterclaims for intentional infliction of emotional distress and violations of the Civil Rights Law. On June 30, 2021, the parties participated in arbitration on the border dispute

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that resulted in a finding that the disputed boundary line was better represented by defendant and his husband's expert's survey. On September 22, 2021, Supreme Court (Ceresia, J.) confirmed the arbitration award. On March 30, 2022, immediately prior to defendant's arrest, Supreme Court (Jordan, J.) granted summary judgment dismissing defendant and his husband's counterclaims. On September 22, 2022, the parties entered a stipulation of discontinuance relating to the remaining claims.

II. Standard for Issuance of Summary Judgment

Summary judgment is a drastic remedy which will be granted only when the party seeking summary judgment has established *prima facie* entitlement to judgment as a matter of law by presenting competent evidence that there is no doubt as to the absence of a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *McDay v State of New York*, 138 AD3d 1359, 1359 [3d Dept 2016]). "The court's function on a motion for summary judgment is issue finding not issue determination" (*Gadani v Dormitory Auth. of State of N.Y.*, 43 AD3d 1218, 1219 [3d 2007]; *see Lacasse v Sorbello*, 121 AD3d 1241, 1242 [3d Dept 2014]), and this Court "must view the evidence in the light most favorable to the nonmoving party and accord such party the benefit of every reasonable inference that can be drawn therefrom" (*Aretakis v Cole's Collision*, 165 AD3d 1458, 1459 [3d Dept 2018]; *accord Reed v New York State Elec. & Gas Corp.*, 183 AD3d 1207, 1210 [3d Dept 2020]).

The burden then shifts to the nonmoving party to establish, by admissible proof, the existence of genuine issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Davis v EAB-TAB Enters.*, 166 AD3d 1449, 1450 [3d Dept 2018]). However, in opposing a motion for summary judgment, the nonmoving party "must produce evidentiary proof in admissible form . . . or must

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demonstrate acceptable excuse for his [or her] failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman v City of New York*, 49 NY2d at 562; accord *Miller v Lu-Whitney*, 61 AD3d 1043, 1047 [3d Dept 2009]; see *Banco Popular N. Am. v Victory Taxi Mgt.*, 1 NY3d 381, 383 [2004] [“[A]verments merely stating conclusions, of fact or of law, are insufficient” to “defeat summary judgment”). It is incumbent upon the non-moving party to “lay bare” his or her proof in order to defeat summary judgment (*O’Hara v Tonner*, 288 AD2d 513, 513 [3d Dept 2001]).

III. Intentional Infliction of Emotional Distress

“The tort of [intentional infliction of emotional distress] is a relatively recent development in New York” (*Brown v Riverside Church in City of New York*, 231 AD3d 104, 109 [1st Dept 2024] [internal quotation marks and citation omitted]). It consists of four elements: “(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress” (*Howell v New York Post Co.*, 81 NY2d 115, 121 [1993]). “Intentional infliction of emotional distress, unlike other intentional torts, does not proscribe specific conduct but imposes liability based on after-the-fact judgments about the actor’s behavior” (*Stram v Farrell*, 223 AD2d 260, 264-65 [3d Dept 1996] [internal quotation marks and citation omitted]). Therefore, “[t]he standard of outrageous conduct is strict, rigorous and difficult to satisfy” (*Scollar v City of New York*, 160 AD3d 140, 146 [1st Dept 2018] [internal quotation marks and citation omitted]; see *Cunningham v Sec. Mut. Ins. Co.*, 260 AD2d 983, 985 [3d Dept 1999], *appeal dismissed* 94 NY2d 796 [1999]). Further, even where the alleged conduct is “deplorable and reprehensible,” this “does not necessarily lead to the conclusion that it arose to such a level that the law must provide a remedy. It is manifestly

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neither practical nor desirable for the law to provide a remedy against any and all activity which an individual might find annoying” (*Leibowitz v Bank Leumi Tr. Co. of New York*, 152 AD2d 169, 182 [2d Dept 1989] [internal quotation marks and citations omitted]).

Generally, courts focus on the outrageousness element because it is “most susceptible to determination as a matter of law” (*Roach v Stern*, 252 AD2d 488, 493 [2d Dept 1998] [internal quotation marks and citation omitted]; accord *Lea v McNulty*, 227 AD3d 971, 974 [2d Dept 2024]). “The conduct must consist of more than mere insults, indignities and annoyances” (*164 Mulberry St. Corp. v Columbia Univ.*, 4 AD3d 49, 56 [1st Dept 2004], *lv dismissed* 2 NY3d 793 [2004]). Such “conduct must transcend the bounds of decency and be regarded as atrocious and utterly intolerable in a civilized community” (*Klinge v Ithaca Coll.*, 235 AD2d 724, 724 [3d Dept 1997]; accord *Graham v Guilderland Cent. School Dist.*, 256 AD2d 863, 864 [3d Dept 1998] [Holding use of racial slurs to denigrate a person is not sufficiently egregious conduct to sustain a claim of this type]; see *Ruggiero v Contemporary Shells, Inc.*, 160 AD2d 986, 987 [2d Dept 1990] [Holding the “law does not compensate one for threats, annoyances or petty oppressions or other trivial incidents which must necessarily be expected and are incidental to modern life no matter how upsetting”]; *Leibowitz v Bank Leumi Tr. Co. of New York*, 152 AD2d at 182 [Holding use of ethnic and religious slurs to denigrate a person is not sufficiently egregious conduct to sustain a claim of this type]).

Many intentional infliction of emotional distress claims that have been upheld have required allegations detailing “a longstanding campaign of deliberate, systematic and malicious harassment” (*Estreicher v Oner*, 148 AD3d 867, 868 [2d Dept 2017] [“continuing and concerted campaign of harassment and intimidation (over thirteen years) of the defendant that progressed from, among other things, calling the defendant, his family, and guests ethnic and racial epithets and throwing items onto

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his property to eventually making threats of violence, making false criminal accusations, committing assault and battery against the defendant, and continuing to engage in threatening and intimidating conduct nearly two months after the physical confrontation that is the subject of the plaintiff's complaint"]; *Shannon v MTA Metro-North R. R.*, 269 AD2d 218, 219 [1st Dept 2000] ["a pattern of harassment, intimidation, humiliation and abuse, causing him unjustified demotions, suspensions, lost pay and psychological and emotional harm over a period of years"]; *Warner v Druckier*, 266 AD2d 2, 3 [1st Dept 1999][“through various specified acts, deliberately, systematically and maliciously harassed him over a period of years so as to injure him in his capacity as a tenant”]).

IV. Discussion

Plaintiffs base their claim of intentional infliction of emotional distress on four incidents. First, they assert that, on March 9, 2022, defendant screamed at plaintiff Barbara Carey and called her names. Plaintiff Barabara Carey testified that she feared for her life and plaintiff Ed Carey testified that it appeared that defendant was getting ready to enter their yard. Then, ten days later, plaintiffs allege defendant, using vulgar language, screamed to all the neighbors to come out and see that plaintiff Barbara Carey was a horrible person. Defendant also allegedly said, “I’m going to get you; you’re going to be sorry.” Over a month later, on April 23, 2022, plaintiffs assert that defendant called plaintiff Barbara Carey more vulgar words and made threatening statements. Plaintiff Barbara Carey testified that defendant was yelling from his deck, “a hundred fifty, 200 feet” away and so she began recording him. She testified that she was scared for her life and called the police 20 minutes later. When asked why she waited to call, she stated, “Because I was filming, I was the using the phone.” She further testified that she continued to record instead of calling the police or going inside and locking the doors. Plaintiff Barbara Carey is heard laughing on the recording. It is undisputed that

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defendant was charged with criminal Harassment in the Second Degree after this incident. It is also undisputed that the Brunswick Town Court issued an Order of Protection prohibiting defendant from communicating with, assaulting, harassing, or otherwise interfering with the plaintiffs. Over three months later, on August 1, 2022, plaintiffs allege defendant recorded them on his cell phone and a further confrontation ensued. It is undisputed that the police arrested defendant for a second time on August 2, 2022 based on the incident the day prior. Three months later, defendant pled guilty to criminal harassment in violation of Penal Code § 240.26.

Defendant bases his cross claim for intentional infliction of emotion distress on his belief that plaintiffs have hatred towards him and his husband based on their sexuality. He asserts that a relative of plaintiffs yelled a homophobic slur, plaintiffs pushed brush to the property lines, called defendant a “crybaby,” brought frivolous lawsuits, periodically recorded him, and yelled at him from their property.

The case law regarding neighbor disputes has generally found that even ongoing clashes involving discourtesy, threats, and even trespass do not constitute sufficiently outrageous behavior to maintain a claim for intentional infliction of emotional distress. As was already cited in the prior proceeding, the Appellate Division, First Department found that dumping a pile of cement on the sidewalk in front of a plaintiff’s house, tossing lighted cigarettes into his backyard, throwing eggs on his front steps, and threatening to paint a swastika on his house along with numerous additional acts of vandalism and various additional threats was insufficient (*see Seltzer v Bayer*, 272 AD2d 263, 264-65 [1st Dept 2000]). Similarly, the Appellate Division, Second Department found allegations insufficient where prolonged noise required police intervention, garbage (including dog waste, soiled diapers, and rotting food) was accumulated along the property, and defendants allegedly flooded and

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even trespassed to damage and remove items (*see Zimmerman v Carmack*, 292 AD2d 601, 601-602 [2d Dept 2002]). Similarly, another neighbor dispute was deemed insufficient where the plaintiff's allegations were that the defendants repeatedly "entered upon and caused unspecified damage to her property, complained to her employees about their work on her property, and made feigned complaints to various authorities about her activities on the property" (*Benjamin v Assad*, 186 AD3d 549, 550 [2d Dept 2020]).

In this neighbor dispute, both parties' allegations demonstrate the significant animosity felt between them - something not uncommon among parties (and particularly neighbors) engaged in ongoing litigation. They do not however raise a question of fact regarding intentional infliction of emotion distress. Simply, "although most people would likely consider the alleged conduct deplorable, the [parties'] conduct was not so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Seymour v Hovnanian*, 211 AD3d 549, 557 [1st Dept 2022] [affirming dismissal of a cause of action for intentional infliction of emotional distress regarding a dispute between neighbors]).

Defendant's remaining claims are also without merit as a matter of law. Defendant "concede[s] that statements made to the police by a private citizen do not impose liability in an action for defamation" (NYSCEF Doc No. 60 at 13) but asserts that his "defamation claims arise from the false, misleading, and untrue statements made in the current Complaint, which is a public record available to the public" (NYSCEF Doc No. 60 at 13). This claim is meritless as the statements made in a complaint "are absolutely privileged inasmuch as they were made in the course of a judicial proceeding and pertinent to that litigation" (*Adamski v Romano-Schulman*, 56 AD3d 1078, 1079 [3d

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Dept 2008]; *see generally* 2 Law of Defamation § 8:9 [2d ed.]). Next, defendant asserts that “[r]egarding the claim of abuse of process, [plaintiffs] have now, for the second time, misused the court system—specifically, the Rensselaer Supreme Court—to cause harm, embarrassment, discomfort, and grief, all for illegitimate purposes” (NYSCEF Doc No. 60 at 13). This assertion fails as “[t]he mere commencement of an action, even with malicious intent, does not give rise to a cause of action for abuse of process” (*Dixon v City of Rochester*, ___ AD3d ___, 2025 NY Slip Op 00553 [4th Dept 2025]; *see Pinkesz Mut. Holdings, LLC v Pinkesz*, 198 AD3d 693, 696-97 [2d Dept 2021]). Finally, defendant does not even contest the dismissal of his Civil Rights Law §52-A claim. Further, that claim was already addressed and dismissed in the previous action.

V. Conclusion

While summary judgment remains a drastic remedy, here, the allegations of both parties, even in the light most favorable to the nonmoving party, fail to state either the kind of utterly extreme single event or a longstanding campaign of deliberate, systematic, and malicious harassment that would support a claim for intentional infliction of emotion distress. Defendant’s remaining claims are even more without merit as a matter of law. Litigants, and society at large, have a moral obligation to behave civilly with each other. The court’s determination should not leave the parties with the impression that the alleged conduct is somehow appropriate or, even worse, should be condoned. That is far from the truth. None of the alleged conduct should continue, but our courts would be overwhelmed with every petty dispute if each indignity and discourtesy was enough to allow a judicial remedy.

Accordingly, it is

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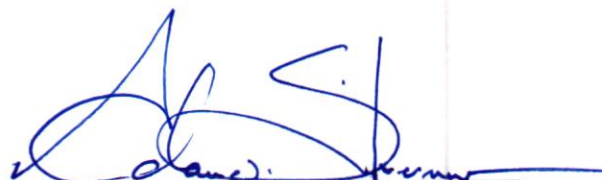
ORDERED, plaintiffs' motion for summary judgment dismissing defendant's counter claims is hereby **granted**; and it is further

ORDERED, defendant's cross motion for summary judgment dismissing the complaint is hereby **granted**.

The court has uploaded the original Decision/Order to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the County Clerk. Counsel are not relieved from the applicable provisions of CPLR 2220 and 202.5b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

SO ORDERED AND ADJUDGED**ENTER.**

Dated: February 24, 2025
Troy, New York



HON. ADAM W. SILVERMAN
Acting Justice of the Supreme Court