

Shapiro v Kushnick-Carr
2025 NY Slip Op 35446(U)
January 17, 2025
Supreme Court, Nassau County
Docket Number: Index.No. 614920/2022
Judge: Felice J. Muraca
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T:

HON. FELICE J. MURACA, A.J.S.C.

IAS/TRIAL PART 41

AKIVA SHAPIRO,

Plaintiff,

-against-

SHERYL KUSHNICK-CARR,

Defendant.

DECISION & ORDER

Index No. 614920/2022

Mot. Seq. # 001

E-filed documents 5-31 were reviewed in preparation of this Decision and Order.

Defendant moves, pre-answer, for an Order (1) pursuant to CPLR 3211[a][1],[7], and [G] dismissing the complaint based on the Strategic Litigation Against Public Participation Act; (2) an award of costs and fees under NYS Civil Rights Law § 70-a and 76-a; or, in the alternative, an Order (3) dismissing the Complaint pursuant to CPLR 3211[a][1] and [7]; and (4) awarding Defendant costs and fees pursuant to CPLR 8303-a. Plaintiff opposes.

Plaintiff is an attorney representing non-party MaryAnn Russo as the plaintiff in an action Russo commenced against Defendant's husband, non-party Alexander Carr (*Maryann Russo v Alexander Carr*, Nassau County Index No. 611769/2022) (the "Russo Action.") Russo is Carr's mother. In the Russo action, the allegations against Carr are, in sum and substance, that he effectively evicted Russo from her longtime home after it had been deeded to him.

During the pendency of the Russo Action, which is still an active matter, Defendant posted a purported "review" of Plaintiff's legal services on Plaintiff's public Google profile page. The review stated: "Don's [sic] Not Use Him!! He is what gives [sic] bad names [sic] to attorneys...A Tinker of many types of law...A MASTER OF NONE!"

Plaintiff then commenced the instant action suing Defendant for defamation per se. Plaintiff avers that Defendant (1) has never been a client of Plaintiff or his law firm; (2) has never had any communication with Plaintiff or his law firm; and that (3) Defendant has only seen Plaintiff once, or at most twice, from a distance, when she accompanied Carr to court appearances on the Russo Action.

In support of her motion, Defendant argues that the action should be dismissed because it constitutes a "Strategic Lawsuit Against Public Participation," i.e., a lawsuit designed to quell

and quash Defendant's participation in public affairs or matters of public interest. Defendant asserts that the instant action violates New York State's "Anti-Slapp," laws, which are designed to protect her from litigation that intends to silence her exercise of free speech about matters of public interest.

Defendant argues that Google reviews are a public forum and that her comments about Plaintiff's legal services are a matter of public concern. Defendant argues that the public policy of this State permits *any* person to formally complain about an attorney's professional or personal conduct, not just clients. Defendant argues that the statement cannot be defamatory because it is substantially true; and further, that malice cannot be proven, and that statements concerning an attorney are a matter of public interest and a constitutional right.

In opposition, Plaintiff argues that Defendant's remarks do not represent a public matter, but rather a private concern, i.e., the allegations in the Russo Action. Plaintiff avers that there has never been an attorney-client relationship between him and Defendant. Moreover, Plaintiff argues that Defendant was not involved in the Russo Action and that her statement was in retaliation to the allegations contained in the pleadings in the Russo action. Plaintiff contends that since Defendant never retained him to provide legal services. Further, that she has no actual knowledge concerning the quality of the legal services he provides. In addition, the statement was not a legitimate review and therefore, is not protected by the Anti-SLAPP laws.

Plaintiff further argues that the statement cannot simultaneously be "subjectively true," as argued by Defendant, *and* an expression of protected opinion. Plaintiff argues that the statement is merely an *ad hominem* attack on his integrity, honesty, trustworthiness, and ethics. Plaintiff asserts that there is no other reasonable explanation for Defendant's post other than the actual malice Defendant feels toward Plaintiff for his representation of Defendant's mother-in-law.

A "SLAPP" lawsuit, or a "strategic lawsuit against public participation" is a litigation filed against an individual, usually sounding in defamation or slander, against an individual who has made a public statement about an area that can be characterized as being of a public interest or concern. These lawsuits are generally characterized as "having little legal merit but are filed nonetheless to burden opponents," the individual who has made the public statement, "with legal defense costs and the threat of liability and to discourage others who may wish to speak out in the future" (*Aristocrat Plastic Surgery P.C. v Silva*, 206 AD3d 26, 28 [2d Dept 2022])[internal quotations omitted]). New York State first enacted "Anti-SLAPP" litigation in 1992 in response to "rising concern about the use of civil litigation, primary defamation suits, to intimidate or

silence those who spoke out at public meetings against proposed land use development and other activities requiring approval of public boards.” [*Id.*][internal quotations omitted]).

In 2020, with the rise of the internet age and its corresponding opportunities for increased speech of all kinds, the Legislature amended New York’s Anti-SLAPP statute in an effort to “broaden the scope of the law and afford greater protections to citizens” beyond suits arising from applications to the government.” (*Id.*, [internal quotations omitted]). The law, Civil Rights Law §76-a, was amended to expand the definition of an action involving petition and participation to include “claims based upon any communication in a place open to the public or a public forum in connection with an issue of public interest.” (Civil Rights Law § 76-a[1][a][1]). Moreover, the definition of “public interest,” was amended to be “construed broadly, and shall mean any subject other than a purely private matter.” (Civil Rights Law § 76-a[1][d]).

There is no question that social media comments, online comments, and review of businesses are public communications for Anti-SLAPP act purposes (*Great Wall Med., P.C. v Levine*, 74 Misc. Ed 1224[A], 3 [Supreme Court, New York County, 2022]). And indeed, as other Courts have noted, a negative review of a law firm posted on a website warning others to stay away from a firm constitutes protected activity (*see, e.g., Abir Cohen Treyzon Solo, LLP v Lahiji*, 40 Cal App 5th 882, 887-888 [2010]) as well as reviews of doctors, dentists, and other professional services providers (*Aristocrat Plastic Surgery, P.C.*, 203 AD3d at 30-31 [collecting cases]).

Here, the Court cannot conclude that Defendant’s statement in her Google review constituted protected speech. Rather, the Court views Defendant’s statement as a wife retaliating against an attorney who represented her mother-in-law in a suit against her husband. Central to this determination is the fact that at no time prior to the posting had Defendant ever been a client of Plaintiff. Had Plaintiff represented Defendant at any point in time, the Court would likely conclude that the comment was protected, but that is not the case here.

Moreover, even though Defendant’s statement appears to have been her personal opinion and in reaction to the Russo Action, she is not entitled to any privilege arising from that action. To be sure, one of the oldest, most established principles in defamation law, first articulated in the eighteenth century, is that “[n]either party, witness, counsel, jury or judge can be put to answer, civilly or criminally, for words spoken in office” (*Andrews v Gardiner*, 224 NY 440 [1918], quoting Lord MANSFIELD in *R. v Skinner*, Lofft, 55 [1772]). Accordingly, the statements made by Plaintiff, as an attorney, in the complaint filed in the Russo Action are

entitled to the absolute privilege accorded to statements made in a litigation (*see, e.g., Park Knoll Assoc. v Smith*, 59 NY2d 205 [1983], citing *Youmans v Smith*, 153 NY 214 [1897]).

It cannot be said that Defendant is entitled to the same protections because she is not a party to that action. Moreover, there is no basis for this Court to conclude that Defendant's public statement calling into question Plaintiff's legal ability, acumen, and integrity, is somehow even possibly pertinent to the Russo Action (*see, e.g., Martirano v Frost*, 25 NY2d 505 [1969]).

Finally, to the extent that Defendant argues that she has a right to criticize Plaintiff because the "public policy of this State allows any person to formally complain about an attorney's professional or personal conduct," the Court finds this unavailing. Defendant's public criticism of Plaintiff is not based on personal knowledge of Plaintiff's conduct, but rather on the privileged statements he made in connection with the Russo Action.

Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss the complaint is **DENIED**; and it is further

ORDERED that Defendant is directed to answer the complaint with 20 days of the filing of this Order.

Any relief not specifically addressed herein is denied.

This constitutes the Decision and Order of this Court.

Dated: January 17, 2025

Mineola, NY

ENTER:


HON. FELICE J. MURACA, A. J. S. C.

ENTERED

Jan 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE