

Phipps v Kuonen

2026 NY Slip Op 30291(U)

January 23, 2026

Supreme Court, Kings County

Docket Number: Index No. 513984/2021

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 95 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 23rd day of January 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

-----X

SHANNON PHIPPS,

Plaintiffs,

Index No. 513984/2021

-against-

Cal. No. 7-8 MS 4-5

RYAN KUONEN, KEVIN LaCHERRA, and ERICK
WALDEN,

Decision and Order

Defendants.

-----X

The following e-filed papers read herein:

MS 4

NYSCEF Doc. Nos.

58-64

MS 5

67-71

Motion sequences four and five are decided as follows:

In sum and substance, both motions, which were filed by defendants, seek costs and attorneys' fees pursuant to Civil Rights Law § 70-a. Much of plaintiff's opposition stems from her position that (1) defendants' entitlement to such attorneys' fees has never been adjudicated and are thus precluded at this juncture; and (2) defendants cannot seek reargument or renewal of their previous motion to dismiss, which sought such fees but was never explicitly addressed in the 2021 decision granting their motion, because they cannot meet the standard for either reargument or renewal.

Although plaintiff is correct that defendants' entitlement to such costs and fees was never expressly adjudicated by the court, plaintiff fails to demonstrate why defendants' entitlement to such fees cannot be adjudicated now by way of the instant motions, especially one seeking reargument (*see Ruggiero v Long Island Railroad*, 161 AD2d 622, 622-623 [2d Dept 1990]).

Under Civil Rights Law § 70-a (1) (a), “[a] defendant in an action involving public petition and participation...may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney’s fees, from any person who commenced or continued such action; provided that: (a) costs and attorney’s fees shall be recovered upon a demonstration, including an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or...that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law....” In short, “[t]o recover attorneys’ fees, a defendant in an action involving public petition and participation must demonstrate, inter alia, that the action was ‘commenced or continued without a substantial basis in fact and law’” (*Biagini Realty v Brightman*, 2025 NY App Div LEXIS 7449, *6 [2d Dept 2025] [citation omitted]).

Here, citing to *Reeves v Associated Newspapers, Ltd.*, 232 AD3d 10 [1st Dept 2024], the Appellate Division Second Department, in affirming the lower court’s decision granting defendants’ dismissal motion, found that “plaintiff’s failure to meet the CPLR 3211[a][7] standard necessarily establishes her failure to meet the higher CPLR 3211[g] standard, required by the anti-SLAPP law because she failed to demonstrate that the causes of action to recover damages for defamation and private nuisance had a ‘substantial basis in law.’” Under *Reeves*, where a defamation suit concerning public communications on any nonprivate matter fails to survive ordinary CPLR 3211[a][7] analysis, defendants are entitled to mandatory costs and attorneys’ fees

pursuant to Civil Rights Law § 70-a (*see Reeves v Associated Newspapers, Ltd.*, 232 AD3d at 24-25).

Although plaintiff contends that there has been no adjudication that this action involves public petition or participation, implicit in the appellate court's analysis and citation of cases is that the claims herein involve public participation. Even if that were not the case, a reading of plaintiff's complaint and defendants' motion papers amply demonstrate that this action qualifies. An "action involving public petition and participation" includes claims based upon "any communication in a place open to the public or a public forum in connection with an issue of public interest" (*Aristocrat Plastic Surgery, P.C. v Silva*, 206 AD3d 26, 29 [1st Dept 2022]). "The amended law further provides that "[p]ublic interest" "shall be construed broadly, and shall mean any subject other than a purely private matter"" (*id.* citing Civil Rights Law § 76-a [1] [d]).

Here, plaintiff alleges, among other things, that "Defendants Kuonen and LaCherra intentionally and maliciously made and permitted false public statements to be made about the Plaintiff in order to discredit her and her political views..." (Complaint, ¶ 2). Plaintiff further alleges that "Kuonen, a City officer and political figure, was appointed a member of Brooklyn Community Board 1...—by Stephen Levin, abused her position as a City officer taking to Instagram to accuse Plaintiff of hate crimes and filing false police reports with a racial motive" (*id.* at ¶ 5). Further, that "LaCherra... is not a known member of the Community Board or other City agency but is heavily involved in the politics within the community and repeated and further exacerbated the claims during a recorded Community Board meeting where LaCherra appeared to act as a moderator of the meeting, even requesting that certain individuals be muted during the meeting" (*id.* at ¶ 6). The foregoing sufficiently establishes that plaintiff's claims against defendants involve a matter of "public interest" as set forth in Civil Rights Law § 76-a (1) (d).

Based on the foregoing and the appellate court's decision in this matter, defendants' motions seeking costs and attorneys' fees under Civil Rights Law § 70-a are granted. In order for the court to determine reasonable attorneys' fees and costs, defendants shall submit their brief and corroborating invoices by February 20, 2026. Plaintiff shall submit opposition, if any, by March 20th. Reply, if any, shall be submitted by April 3rd.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.