

<b>Avenue Capital Group, LLC v Strum</b>
2026 NY Slip Op 30485(U)
February 9, 2026
Supreme Court, New York County
Docket Number: Index No. 159753/2024
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

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AVENUE CAPITAL GROUP, LLC, AVENUE CAPITAL MANAGEMENT II, L.P., MARC LASRY, SONIA GARDNER

Plaintiffs,

- v -

GINA STRUM,

Defendant.

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INDEX NO. 159753/2024

MOTION DATE 05/06/2025

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85, 153 were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

ORDERED that the part of defendant's motion to dismiss pursuant to CPLR § 3211(a)(7) for failure to state a claim for defamation is denied while defendant argues that the complaint fails to include: 1) the specific words used, 2) the identity of the individual(s) to whom the defamatory comments were made, 3) an allegation of actual malice, 4) an allegation of fault or special harm, 5) specific facts as opposed to non-actionable opinions, 6) untruths as opposed to substantially true statements, and 7) defamatory statements since having cancer is does not constitute libel per se; the complaint together with the affirmations (NYSCEF Doc Nos 65, 66, 68 & 73; Thomas v Thomas, 70 AD3d 588, 592-592 [1st Dept 2010] [noting that a plaintiff may submit affidavits in opposition to a motion to dismiss]): 1) states the particular words (CPLR § 3016[a]) allegedly used by defendant that plaintiff Avenue Capital Group, LLC (Avenue) was lying to investors and consultants by not disclosing plaintiff Sonia Gardner's health issues and that as a result of Gardner's health issues she was unable to perform her duties at Avenue since

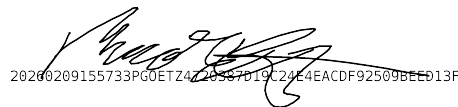
May 2022, 2) identifies David Jeffery at StepStone Group and Mercer as to whom the comments were made (Lasry affm ¶ 47, NYSCEF Doc No 68), 3) do not need to plead actual malice because Gardner is not a general-purpose public figure (*Gottwal v Sebert*, 193 AD3d 573, 576 [1<sup>st</sup> Dept 2021] [defining general-purpose public figure as someone who is a celebrity or household name]) nor is she a limited-purpose public figure (*id.*, defining a limited-purpose public figure as someone who has voluntarily injected themselves or is drawn into a public controversy to have influence on it) 4) does not need to allege special harm because defendant's alleged statements constitute defamation *per se* since defendant's alleged statements tend to injure plaintiffs' business (*Keeling v Salvo*, 188 AD3d 463, 464 [1<sup>st</sup> Dept 2020] [holding defamation *per se* allegations in the complaint sufficient since the alleged statements tended to injure plaintiff in her profession or trade]), 6) include defendant's alleged statements and they are not non-actionable opinion but rather specific facts that can be proven false (*Davis v Boenheim*, 24 NY3d 262, 268 [2014] [observing only statements alleging facts can be the subject of a defamation claim]), and can be demonstrated to be false especially in light of the affirmation from Gardner's treating physician, Dr. Raja M. Flores (NYSCEF Doc No 65), and 7) include an allegation that defendant revealed Gardner's cancer diagnosis and while standing alone does not constitute libel *per se* (*Sam v Enquirer/Star Group*, 223 AD2d 360 [1<sup>st</sup> Dept 1996]) according to the complaint and supporting affidavits Gardner's cancer diagnosis is merely the basis upon which defendant grounded her allegation that Gardner, the President, Managing Partner, and Co-founder of Avenue, was unable to perform her duties since May 2022; and it is further

ORDERED that the part of defendant's motion to dismiss pursuant to CPLR § 3211(g) because New York's anti-SLAPP (strategic lawsuits against public participation) law (Civil Rights Law § 76-a) applies is denied since Strum's alleged statements were made to a limited

private audience, investors and consultants StepStone Group and Mercer (Lasry affm ¶¶ 46-47, NYSCEF Doc No 68), and not made in a forum open to the public and consequently concerning matters of a purely private not public nature (*cf Aristocrat Plastic Surgery, P.C. v Silva*, 206 AD3d 26 [1<sup>st</sup> Dept 2022] [holding public posts of defendant’s plastic surgery experience with plaintiff on two internet platforms constitute a public forum and concern]; *Nelson v Ardrey*, 231 AD3d 179, 183 [2<sup>nd</sup> Dept 2024] [holding allegations of plaintiff’s alleged criminal activity made on plaintiff’s limited personal Facebook profile were of a private not public nature and were not made in a public forum]; *Miller v Appadurai*, 2022 NY Misc LEXIS 7864 [SC NY Co 2022] [holding letter addressed to Dean and Provost not made in public forum and not of a public concern]); and it is further

ORDERED that defendant’s motion to dismiss is granted solely to the extent that it seeks to dismiss plaintiff’s third cause of action for “cease and desist” because cease and desist is a form of relief and not an independent cause of action capable of forming the basis of a claim (*accord Revitalizing Auto Cmtys. Env’tl. Response Trust v Nat’l Grid USA*, 10 F 4th 87, 106 [2<sup>nd</sup> Cir 2021] [observing “a claim for declaratory relief is not an independent cause of action” but rather “a remedy for [] other claims”]; *Men Women N.Y. Model Management, Inc. v Elite Model Management-New York LLC*, 183 AD3d 501, 502 [1<sup>st</sup> Dept 2022] [observing “[t]here is no independent cause of action for injunctive relief”]; *Talking Capital LLC v Omanoff*, 169 AD3d 423, 424 [1<sup>st</sup> Dept 2019] [observing injunctive relief “is a remedy for an underlying wrong, not a cause of action”]); and it is further

ORDERED that defendant’s counsel is directed to show cause on February 19, 2026 at 2:15 p.m. why he should not be sanctioned for including two non-existent cases, *Kennedy v Kennedy*, 192 AD3d 111 (1<sup>st</sup> Dept 2020) and *Risucci v Homayoon*, 122 AD3d 700 (2<sup>nd</sup> Dept 2014)<sup>1</sup> in his memorandum of law (NYSCEF Doc No 102 pg 9,) in support of defendant’s motion (MS #8) for leave to supplement defendant’s papers on the instant motion.

  
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<u>2/9/2026</u> DATE			<u>PAUL A. GOETZ, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

<sup>1</sup> Plaintiffs note that although they were able to find *Risucci v Homayoon*, 122 AD2d 260 (2d Dept 1986), it does not have the language quoted in defendant’s brief in support of MS #8.