

Newsweek Digital LLC v Olivet Univ.

2026 NY Slip Op 31343(U)

April 2, 2026

Supreme Court, New York County

Docket Number: Index No. 155276/2025

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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NEWSWEEK DIGITAL LLC

Plaintiff,

- v -

OLIVET UNIVERSITY,

Defendant.

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INDEX NO. 155276/2025

MOTION DATE 07/07/2025

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, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, Defendant's motion to dismiss pursuant to CPLR 3211(a)(7) is denied.

I. Background

Defendant previously sued Plaintiff in the United States District Court for the Southern District of New York (see Olivet Univ, v Newsweek Digital LLC, 2024 WL 1892563 at 76 [SDNY 2024]) (the "Underlying Action"). Defendant claimed it was defamed by two articles which Plaintiff published based on an incorrect statement that Olivet University pled guilty to money laundering when instead it pled guilty to falsification of business records in the first degree and conspiracy in the fifth degree. In a Decision and Order dated April 30, 2024, United States District Judge Naomi Reice Buchwald dismissed the Underlying Action, finding the allegedly defamatory statements were substantially true and therefore non-actionable. The Second Circuit affirmed and added the Complaint could also be dismissed based on New York Civil Rights Law § 74 (see Olivet Univ, v Newsweek Digital LLC, 2024 WL 5001841 [2d Cir. 2024]).

Plaintiff now sues for costs related to defending the Underlying Action pursuant to New York Civil Rights Law § 70-a. Defendant moves, pre-answer, to dismiss, arguing that the Underlying Action had a substantial basis and therefore the Civil Rights Law § 70-a claim is inapplicable. Plaintiff opposes.

II. Discussion

Defendant's motion is denied. On a pre-answer motion to dismiss, the Court is required to accept as true all of Plaintiff's factual allegations and draw all favorable inferences that may flow from them (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). Pursuant to Civil Rights Law § 70-a:

"1. A defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, 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 subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules, that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law;
- (b) other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights..."

A "substantial basis" in fact and law means requires "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*see Smartmatic USA Corp. v Fox Corp.*, 213 AD3d 512 [1st Dept 2023]).

Civil Rights Law § 76-a provides:

“1. For purposes of this section:

(a) An “action involving public petition and participation” is a claim based upon:

(1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or

(2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.

(b) “Claim” includes any lawsuit, cause of action, cross-claim, counterclaim, or other judicial pleading or filing requesting relief.

(c) “Communication” shall mean any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(d) “Public interest” shall be construed broadly, and shall mean any subject other than a purely private matter.”

Here, the Complaint adequately alleges that the Underlying Action was an “action involving public petition and participation.” Plaintiff was sued by Defendant for news reporting of an ongoing criminal proceeding. It is well established that matters of public interest include judicial proceedings (*see Sweetpea Ventures Inc. v Belmamoun*, 231 AD3d 460 [1st Dept 2024]). The circulated news articles constitute communications in a public forum. Therefore, the Underlying Action involved public petition and participation as defined in Civil Rights Law § 76-a.

Finally, considering Defendant’s defamation lawsuit against Plaintiff was dismissed at the pleading stage based on the determination that the allegedly defamatory statements were substantially true, a determination affirmed on appeal by the Second Circuit, Plaintiff has adequately alleged that the Underlying Action lacked a substantial basis in law or fact for purposes of bringing a claim pursuant to Civil Rights Law § 70-a. Defendant’s reference to determinations in another proceeding in Florida are irrelevant and non-dispositive at the motion to dismiss stage,

especially as this action is premised on the determination of the United States District Court of the Southern District of New York and the Second Circuit. Therefore, the motion to dismiss is denied. The Court has considered the remainder of Defendant’s contentions and finds them to be unavailing.

Accordingly, it is hereby,

ORDERED that Defendant’s motion to dismiss is denied; and it is further

ORDERED that within twenty days of entry, counsel for Defendant shall serve its Answer to Plaintiff’s Complaint; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed preliminary conference order be submitted any later than May 5, 2026. If the parties have a serious discovery dispute which requires Court intervention, they shall notify the Court of the nature of the dispute so that a conference may be scheduled; and it is further

ORDERED that if the parties seek to resolve this matter through the Court’s sponsored ADR program, they shall notify the Court accordingly so that the appropriate referral order may be entered; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the court.

4/2/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE