

Goldberg v Naessig

2026 NY Slip Op 31881(U)

March 31, 2026

Supreme Court, New York County

Docket Number: Index No. 653186/2025

Judge: Gerald Lebovits

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

-----X

INDEX NO. 653186/2025

MARISSA GOLDBERG,

MOTION SEQ. NO. 002

Plaintiff,

- v -

DECISION + ORDER ON MOTION

ADAM C. NAESSIG,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to DISMISS

Sills Cummis & Gross P.C., New York, NY (Anna C. Singer of counsel), for plaintiff.
Lewis & Lin, LLC, Brooklyn, NY (David D. Lin of counsel), for defendant.

Gerald Lebovits, J.:

This action arises from a dispute about pet-sitting responsibilities and a subsequent online review of the pet-sitter. Plaintiff, Marisa Goldberg, is a former pet sitter and dog walker who provided services through the online platform Rover.com ("Rover"). (See NYSCEF No. 15 at ¶¶ 1-3). Defendant, Adam C. Naessig, together with his partner, hired plaintiff through Rover in January 2025 to care for their two dogs while defendant and his partner were out of town. (Id. at ¶¶ 4, 7). After returning from his trip, defendant posted a lengthy and negative review on plaintiff's public Rover profile, accusing her of severe neglect, deceit, and "borderline abuse" of his dogs.

The parties dispute the scope of the pet-sitting services plaintiff was hired to provide. Plaintiff maintains that the agreement required only two daily visits to feed and walk the dogs and did not include overnight stays. (See NYSCEF No. 40 at 2.) Defendant, by contrast, asserts that he booked through Rover an overnight house-sitting arrangement that required continuous care, including overnight stays and three daily walks. (See NYSCEF No. 38 at 12.) Upon returning home, defendant reviewed building key logs, surveillance footage, and veterinary records and concluded that plaintiff had not stayed overnight and had left the dogs unattended for extended periods. This prompted him to post a critical review on Rover reflecting his understanding of plaintiff's performance. (See NYSCEF No. 29 at ¶ 43.)

Plaintiff contends that the statements in defendant's review are false, harmed her livelihood, and caused her severe emotional distress. (See NYSCEF No. 15 at ¶¶ 23-62.) Plaintiff

seeks \$200,000 in damages for libel and intentional infliction of emotional distress (IIED). (*Id.*) The statements plaintiff identifies as defamatory in her amended complaint are as follows:

- “Defendant stated that Plaintiff ‘subjected [his] dogs to severe neglect and borderline abuse.’” (NYSCEF No. 15 at ¶ 26.)
- “[H]e stated that Plaintiff ‘blatantly LIED to us,’ regarding the time that she spent in Defendant’s apartment, based on his review of his building’s key log.” (*Id.* at ¶ 27.)
- “Defendant characterized Plaintiff’s behavior while dog-sitting for him as ‘showing a clear and repeated pattern of neglect, deceit, irresponsibility, and dare we say borderline abusive behavior.’” (*Id.* at ¶ 28.)
- “Defendant also stated that Plaintiff left his dogs alone for 22+ hours ‘every day’ during the relevant period.” (*Id.* at ¶ 29.)
- “Defendant also stated that Plaintiff ‘intentionally staged’ Defendant’s bed and pillows ‘to give us the impression she had stayed over.’” (*Id.* at ¶ 33.)
- “And in describing Plaintiff’s deactivation of her Rover account, Defendant wrote” ‘This dodgy tactic, to us, is an admission of guilt as [Plaintiff’s] profile was visible just moments prior to reaching out.’” (*Id.* at ¶ 35.)

On this motion, defendant seeks dismissal of the amended complaint, compensatory and punitive damages, and attorney fees under New York’s anti-SLAPP law. (*See* NYSCEF No. 28.) The motion is granted in part and denied in part.

DISCUSSION

I. Whether the Anti-SLAPP Statute Applies to Plaintiff’s Claims

The Anti-SLAPP statute is designed to stop lawsuits that are filed to intimidate, punish, or silence people for exercising free speech. (*See* Civil Rights Law § 76-a; CPLR 3211 [g]; *Reeves v Associated Newspapers, Ltd.*, 232 AD3d 10, 16-20 [1st Dep’t 2024].) It applies when the communication at issue is made in a public forum and is of public interest. (*Id.*) For claims in which New York’s anti-SLAPP statute applies, a plaintiff must demonstrate that the claims have a substantial basis in law and fact. (*Id.* at 12.) Furthermore, where the truth or falsity of the challenged statements is material, plaintiff must plead and ultimately prove actual malice, meaning knowledge of falsity or reckless disregard for the truth. (*Id.*)

Plaintiff’s claims arise from a communication in a public forum. Defendant’s review was posted on plaintiff’s public Rover profile, an online platform used to market pet-sitting services to prospective customers. (*See* NYSCEF No. 38 at 3-4; NYSCEF No. 40 at 6.) Plaintiff concedes that Rover is generally open to the public and that defendant’s review was publicly visible once she reactivated her profile. (NYSCEF No. 40 at 6.) Online consumer reviews posted on publicly accessible platforms constitute communications made in a public forum for purposes of the anti-SLAPP statute. (*See e.g. Aristocrat Plastic Surgery, P.C. v Silva*, 206 AD3d 26, 31-32 [1st Dept 2022] [reviews posted on “public internet forums” are subject to anti-SLAPP law].)

The review also concerns an issue of public interest. Plaintiff marketed her pet-sitting services to the public through Rover, and defendant's review addressed the quality of those services for the benefit of other potential consumers. (See NYSCEF No. 29 at ¶¶ 43-44.) Consumer reviews of services offered to the public are not purely private matters. They fall within the statute's broad definition of public interest. (See *Aristocrat*, 206 AD3d at 30 [holding that business reviews are matters of public interest]; *Twenty-Five E. 40th St. Rest. Corp. v Forbes, Inc.*, 37 AD2d 546, 546 [1st Dept 1971] ["The review of the restaurant was of interest to the public who might patronize it."].)

Accordingly, plaintiff's libel and intentional-infliction-of-emotional-distress claims are subject to the anti-SLAPP statute's heightened pleading and proof requirements.

II. Whether Plaintiff Has Shown Actual Malice

When there is "an action involving public petition and participation within the meaning of New York's anti-strategic lawsuits against public participation law," a motion to dismiss "shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law." (*Irizarry v Zelaya*, 244 AD3d 591, 591 [1st Dept 2025]). In turn, on a defamation claim, "plaintiff must establish by clear and convincing evidence that the relevant communication was made with knowledge of its falsity or with reckless disregard of whether it was false." (*InkMango, Inc. v Warren*, 243 AD3d 476, 476 [1st Dept 2025].)

Actual malice is a demanding standard. It requires a showing that defendant made the challenged statements with knowledge of their falsity or with reckless disregard for whether they were false. To make out this showing, plaintiff must establish that defendant "in fact entertained serious doubts as to the truth of the statements at the time of publication or that [they] actually had a high degree of awareness of its probable falsity." (*Sweeney v Prisoners' Legal Servs.*, 84 NY2d 786, 792-793 [1995] [internal quotations removed].)

Here, the record demonstrates that defendant undertook a careful, multi-step investigation before publishing his review. That investigation is incompatible with reckless disregard for the truth. (See NYSCEF No. 48 at 15.) After plaintiff's services ended and defendant returned home to discover his apartment in disarray and his dogs visibly distressed and underweight, defendant did not immediately accuse plaintiff of misconduct. (See *id.*; see also NYSCEF No. 29 at ¶¶ 10-21.) Instead, he reviewed contemporaneous and independent sources of information, including the building's electronic guest key logs, a sample of surveillance footage corroborating those logs, plaintiff's own contemporaneous messages and photographs, and the physical condition of the dogs as later confirmed by a veterinarian. (See NYSCEF No. 48 at 15; NYSCEF No. 29 at ¶¶ 21-39.) Defendant also compared plaintiff's representations, such as statements implying overnight stays and continuous daily care, with objective records showing prolonged absences, some exceeding 22 hours, and reconciled those discrepancies before reaching his conclusions. (See NYSCEF No. 48 at 11, 15; NYSCEF No. 49.) He also attempted to address his concerns privately by contacting plaintiff for clarification and a refund before posting any public criticism, but plaintiff had deactivated her Rover profile, foreclosing further dialogue. (See NYSCEF No. 29 at ¶¶ 40-44; NYSCEF No. 38 at 16.)

Defendant's reliance on multiple sources, corroboration across records, and efforts to resolve inconsistencies prior to publication negate any inference that defendant entertained serious doubts about the truth of his statements or acted with reckless disregard for their accuracy.

The only possible basis for plaintiff to suggest actual malice involves defendant's statements that plaintiff failed to comply with the overnight-stay and three-daily-walks requirements. Plaintiff claims that defendant knew this requirement had been orally modified and nevertheless stated in defendant's review that she breached it. (*See* NYSCEF No. 40 at 2; NYSCEF No. 41 at ¶¶ 9-11.) That claim, however, does not satisfy the actual-malice requirement. The claim rests solely on a representation in plaintiff's affidavit that defendant orally modified the original contract to say the dogs needed to be taken out twice per day and that plaintiff did not need to stay overnight. (*See* NYSCEF No. 41 at ¶¶ 9-11.) But plaintiff identifies no contemporaneous communications or other corroborating evidence for this representation. Her account is also contradicted by the written Rover bookings, receipts, platform descriptions, and contemporaneous messages reflecting overnight house-sitting obligations. (*See* NYSCEF No. 48 at 10-11.) Accordingly, she has not shown that her claim has a substantial basis in law. (*Reeves*, 232 AD3d at 24 ["[A] court reviewing the sufficiency of a pleading under CPLR 3211[g] must look beyond the face of the pleadings to determine whether the claim alleged is supported by substantial evidence."]) Thus, plaintiff has not established actual malice, as required under Civil Rights Law § 76-a (2).

III. Whether Plaintiff's IIED Claim States a Cause of Action

Under New York law, an IIED claim has four elements: (1) extreme and outrageous conduct; (2) intent to cause, or reckless disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection between the conduct and the injury; and (4) severe emotional distress. (*See Howell v New York Post Co.*, 81 NY2d 115, 122 [1993].) Plaintiff does not allege conduct that qualifies as "extreme and outrageous" in the IIED context. Posting even a harsh consumer review is not "beyond all bounds of decency" and "utterly intolerable in a civilized community"—at least absent the use of abusive rhetoric in the review that far exceeds what plaintiff has alleged here. (*Brown v Riverside Church in the City of New York*, 231 AD3d 104, 110 [1st Dept 2024] [describing "extreme and outrageous conduct" element of an IIED claim] [internal quotation marks omitted].) Defendant's motion to dismiss plaintiff's IIED claim is granted.

IV. Whether Defendant is Entitled to Attorney Fees and Damages

Under Civil Rights Law § 70-a [2] [a], a defendant is entitled to an award of costs and attorney fees when an action subject to the anti-SLAPP statute is dismissed as lacking a substantial basis in law or fact. (*See Aristocrat Plastic Surgery*, 206 AD3d at 29.)

That standard is met here. Plaintiff's claims arise from protected speech, and the claims fail to identify any actionable false statement or facts supporting actual malice. Plaintiff has therefore failed to demonstrate a substantial basis in law or fact for either her libel or IIED

claims, as required once the anti-SLAPP statute applies. (See NYSCEF No. 38 at 23-24; NYSCEF No. 48 at 16-17.)

Because plaintiff’s action is dismissed under the anti-SLAPP statute for lack of a substantial basis in law and fact, defendant is entitled to an award of reasonable attorney fees under Civil Rights Law § 70-a [1] (a).

The court is unpersuaded, however, that plaintiff brought this action solely to harass or with malicious intent. (See Civil Rights Law §70-a; 215 W. 84th St. Owner LLC v Bailey, 217 AD3d 488, 489 [1st Dept 2023] [holding that punitive damages were not warranted under the anti-SLAPP statute “because the record does not show that plaintiff commenced the action solely with malicious intent”].) Although plaintiff’s claims are dismissed under the anti-SLAPP statute, the record does not establish that this action was commenced for the sole purpose of inhibiting protected speech, nor is plaintiff’s theory of libel, accompanied by her affidavit, so baseless that it would serve as evidence of plaintiff’s malicious intent. Defendant’s request for an award of compensatory and punitive damages is denied.

Accordingly, it is

ORDERED that the branch of defendant’s motion seeking to dismiss plaintiff’s claims against him is granted, and the complaint is dismissed, with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the branch of defendant’s motion seeking an award of attorney fees is granted, and defendant may enter a supplemental judgment for his reasonable attorney fees incurred in this action, with the amount of those fees to be determined by a motion made on notice made within 30 days of entry of this order; and it is further

ORDERED that the branch of defendant’s motion seeking an award of compensatory and punitive damages is denied; and it is further

ORDERED that defendant shall serve a copy of this order with notice of its entry on plaintiff and on the office of the County Clerk (using the NYSCEF document type “Notice to the County Clerk - CPLR § 8019 (c)”), which shall enter judgment accordingly.

3/31/2026

DATE

HON. GERALD LEBOVITZ
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE