SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN PART 60
Justice

QUEEN MOTHER DR. DELOIS BLAKELY,

Plaintiff,

-against-

THE WALT DISNEY COMPANY et al.,

Defendants.

INDEX NO. 103662/2012

MOTION DATE

Motion Seq. No. 001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to dismiss the complaint.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the accompanying decision/order.

Dated: 2-8-13

J.S.C. MARCY S. FRIEDMAN, J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

☐ DO NOT POST [ ] REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK – PART 60

PRESENT: HON. MARCY S. FRIEDMAN, J.S.C.

QUEEN MOTHER DR. DELOIS BLAKELY,

Plaintiff,

- against -

THE WALT DISNEY COMPANY, et al.,

Defendants.

Index No.: 103662/2012

Motion Seq.: 001

DECISION/ORDER

In this action for "[u]nauthorized depiction, production, portrayal, presentation in cinematic form and commercial exploitation," plaintiff alleges that defendants used "elements of her actual life experiences" without her consent for the movie "Sister Act," its sequel, and the Broadway production by the same name. (Compl. at 2.) Plaintiff, pro se, seeks $1 billion in damages. (Id. at 4.) Defendants move to dismiss the complaint on the grounds that it fails to state a claim and is barred by the statute of limitations and by laches.

It is well settled that on a motion to dismiss addressed to the face of the pleading, "the pleading is to be afforded a liberal construction (see, CPLR 3026). [The court] accept[s] the facts as alleged in the complaint as true, accord[s] plaintiffs the benefit of every possible favorable inference, and determine[s] only whether the facts as alleged fit within any cognizable legal theory." (Leon v Martinez, 84 NY2d 83, 87-88 [1994]. See also 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144 [2002].) "The motion must be denied, if from the pleadings' four corners, factual allegations are discerned which taken together manifest any cause

of action cognizable at law." (Richbell Information Services, Inc. v Jupiter Partners, L.P., 309 AD2d 288, 289 [1st Dept 2003] [internal quotation omitted].) However, "the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts." (Robinson v Robinson, 303 AD2d 234, 235 [1st Dept 2003]. See also Water St. Leasehold LLC v Deloitte & Touche LLP, 19 AD3d 183 [1st Dept 2005], lv denied 6 NY3d 706 [2006].)

Plaintiff cites Sections 50 and 51 of the New York Civil Rights Law as the basis for her claim. Section 51 provides that "[a]ny person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained ... may ... sue and recover damages for any injuries sustained by reason of such use...." Section 50 provides that a person who uses "the name, portrait or picture of any living person without having first obtained the written consent of such person" for advertising or trade is guilty of a misdemeanor.

Section 50 of the Civil Rights Law is inapplicable as it does not provide a private right of action, but rather authorizes criminal prosecution for unauthorized use by the appropriate authorities.

Section 51 claims must be brought within one year of accrual. (CPLR 215[3]; Costanza v Seinfeld, 279 AD2d 255, 255-56 [1st Dept 2001].) A claim accrues when the alleged unauthorized use is first published. The single publication rule applies to claims arising under § 51, regardless of when an allegedly injured party learned of the publication. (Nussenzweig v diCorcia, 9 NY3d 184, 188 [2007]; Bostwick v Christian Oth, Inc., 91 AD3d 463 [1st Dept 2012].) Thus, plaintiff's claims accrued when the motion pictures were released or, at the latest,

when the Broadway play opened. Plaintiff does not dispute defendants' contention that the "Sister Act" movies were released in 1992 and 1993, respectively, and that the Broadway play opened on April 10, 2011. (Defendants Memo in Support at 2.) As more than one year has elapsed since the most recent of these events, plaintiff's claims are clearly time-barred.

Even if this action were not time barred, the complaint does not state a cause of action under § 51. Plaintiff alleges not that defendants used her "name, portrait, picture or voice," but rather that the "Sister Act" movies and Broadway production are "a veritable similitude of plaintiff's actual life experiences as a Nun." (Compl. First Cause of Action, ¶ 4.) It is well settled that § 51 "was not intended to give a living person a cause of action for damages based on the mere portrayal of acts and events concerning a person designated fictitiously in a novel or play merely because the actual experiences of the living person had been similar to the acts and events so narrated." (Toscani v Hersey, 271 AD 445, 448 [1st Dept 1946]. See also Wojtowicz v Delacorte Press, 43 NY2d 858 [1978], affg 58 AD2d 45, 47 [1st Dept 1977].)

Plaintiff has cited no authority to the contrary. The cases relied on by plaintiff all involve the use of an actual picture, whether moving or still, of the allegedly aggrieved party. Candelaria v Spurlock, 2008 WL 2640471 [ED NY 2008] [use of plaintiff's image in a documentary]; D'Andrea v Rafla-Demetrious, 972 F Supp 154 (ED NY 1997) [use of plaintiff's picture in an advertising brochure]; Gallon v Hustler Magazine, Inc., 732 F Supp 322 [ND NY 1990] [use of plaintiff's picture in a magazine].) Plaintiff alleges no such use of her picture.

To the extent that plaintiff premises her complaint on common law rights, the complaint also does not state a cause of action. New York does not recognize a common law right of privacy. (Messenger v Gruner + Jahr Print. & Publ., 94 NY2d 436, 441 [2000]; Thomas v

Northeast Theatre Corp., 51 AD3d 588, 589 [1st Dept 2008].)

For the purposes of this motion, this court has assumed the truth of plaintiff's allegations that the various "Sister Act" productions are based on her life experiences. However, the New York statutes and common law do not support plaintiff's claim.

It is accordingly hereby ORDERED that defendants' motion to dismiss the complaint is granted with prejudice.

This constitutes the decision and order of the court.

Dated: New York, New York
February 6, 2013

MARCY S. FRIEDMAN, J.S.C.