

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

JOAN M. KENNEY
J.S.C.

PRESENT: _____
Justice

PART 8

Index Number : 151633/2014
GRAVANO, KAREN
vs.
TAKE-TWO INTERACTIVE
SEQUENCE NUMBER : 002
DISMISS

INDEX NO. _____
MOTION DATE 151633/14
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

In this action alleging a violation of plaintiff's right to privacy, defendants seeks a pre-answer order, pursuant to CPLR 3211(a)(1) and (7), dismissing the amended complaint.

The application to dismiss, pursuant to CPLR 3211(a)(1), is denied. The "documents" relied upon by movants, to assert that the images in question are not those of the plaintiff, is vehemently and factually contested by the plaintiff. These factual disputes require a determination by the trier of facts and said documents cannot, at this juncture, support an application to dismiss based on the self-serving statements that the images are not those of the plaintiff's.

The application seeking dismissal for failure to state a cause of action, pursuant to CPLR 3211(a)(7), is denied and granted, in part. When deciding whether or not a complaint should be dismissed pursuant to CPLR 3211(a)(7), the complaint must be construed in the light most favorable to the plaintiff, and all factual allegations must be accepted as true, limiting the inquiry to whether or not the complaint states, in some recognizable form, any cause of action known to our law (see, *World Wide Adjustment Bureau et al., v Edward S. Gordon Company, Inc., et al.*, 111 AD2d 98 [1st Dept, 1985]). In assessing the sufficiency of the complaint, this court must also consider the allegations made in both the complaint and the accompanying affidavit, submitted in opposition to the motion, as true and resolve all inferences which reasonably flow therefrom, in favor of the plaintiff (*Joel v. Weber*, 166 Ad2d 130, [1st Dept, 1991]). The sufficiency of a pleading to state a cause of action generally depends upon whether or not there is substantial compliance with CPLR 3013, which requires that statements in a pleading be sufficiently particular to give the court and parties notice of the transactions or occurrences intended to be proved and the material elements of each cause of action. Pleadings should not be dismissed or ordered amended unless the allegations therein are not sufficiently particular to apprise the court and parties of the subject matter of the controversy. Further, every pleading question should be approached in the light of CPLR 3026

Dated: March 11, 2016

JOAN M. KENNEY, J.S.C.
J.S.C. *[Signature]*

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

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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requiring that pleadings shall be liberally construed and that defects shall be ignored if a substantial right of a party is not prejudiced. Thus, the burden is placed upon one who attacks a pleading for deficiencies in its allegations to show that he is prejudiced. The test of prejudice is to be given primary emphasis. Thereby, the court disregards pleading irregularities, defects, or omissions that are not such as to reasonably mislead one as to the identity of the transactions or occurrences sought to be litigated or as to the nature and elements of the alleged cause or defense. In this case, plaintiff has alleged cause(s) of action alleging a violation of a right to privacy pursuant to New York Civil Rights Law section 50 and 51.

Plaintiff has, however, also set forth causes of actions that are not recognized in the State of New York, and must be dismissed, pursuant to CPLR 3211(a)(7). There is no basis in law, or in fact, as to why this Court would apply the laws governed in the State of New Jersey and the State of California. If plaintiff claims that she was injured in those states, then she may commence actions in those states against defendants, if applicable. It is further noted that plaintiff did not address defendants arguments against dismissal of claims wherein the laws of New Jersey and California may apply. As such, the 2nd, 3rd, 4th, and 5th causes of actions, are dismissed.

Accordingly, it is

ORDERED that the within pre-answer motion to dismiss, is denied and granted, in part ; and it is further

ORDERED that the 1st cause of action of the amended complaint, shall remain; and it is further

ORDERED that the Clerk of the Court shall enter judgment in favor of defendants and against plaintiff dismissing the 2nd, 3rd, 4th and 5th causes of action in the amended complaint; and it is further

ORDERED that the application for sanctions, is denied, within this Court's discretion; and it is further

ORDERED that the defendants shall answer the amended complaint within 30 days from the date of this order; and it is further

ORDERED that the parties appear for a compliance conference on June 9, 2016 at ~~10:00~~ a.m. in Room 304 located at 71 Thomas Street, NYC 10013.


JOAN M. KENNEY 3/11/16
J.S.C.

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