

SUPREME COURT : STATE OF NEW YORK
 IAS PART WESTCHESTER COUNTY
 PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

-----X
 KEVIN KENNEDY,

Plaintiff,

-against-

MARSHA PELS AND JOHN AND JANE DOE "1"
 THROUGH "10",

Defendants.
 -----X

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

DECISION & ORDER

Index No: 67550/2016

Motion Return Date:
 April 21, 2017
 Motion Seq. #1

The following papers (e-filed documents 3-44) were read on the **E-filed** motion by defendant, Marsha Pels, for an order dismissing the complaint pursuant to CPLR 3211(a)(1), (3) and (7).

Notice of Motion, Affirmation, Affidavit (Exhibits A-I)
 Memorandum of Law
 Affirmation in Opposition (Exhibits 1-2)
 Memorandum of Law
 Reply Affirmation (Exhibits 1-17)
 Reply Memorandum of Law

Upon reading the foregoing papers it is

ORDERED the motion is granted, and the complaint as amended¹ is dismissed.

Plaintiff sues alleging the defendant, Pels, defamed him by distributing a flyer addressed to residents, workers and business owners in Greenpoint, Brooklyn, and asking them to contact elected officials and four individuals, including plaintiff, if they "have been inconvenienced over the past several days with regard to 'Ringside.' Or [sic] simply tired of the neighborhood being taken hostage and terrorized." Ringside referred to a "film shoot" being conducted in a building located at 99 Commercial Street in Brooklyn, New York, which is owned by 99 Commercial Street, Inc. The amended complaint alleges that plaintiff is employed as the building's manager. The amended complaint asserts three causes of action - defamation, tortious interference with contract and injunction.

¹ Before submitting opposition to the motion plaintiff served an amended complaint. Defendant elected to proceed with the motion as a motion to dismiss the complaint as amended.

Prior to serving an answer the defendant, Pels, moves for an order dismissing the complaint.

“Affording the complaint a liberal construction, accepting all facts as alleged in the complaint as true, and according the plaintiff the benefit of every possible favorable inference” (*Lissauer v Guideone Specialty Mut. Ins.*, 109 Ad3d 878, 878 [2d Dept 2013]) the complaint fails to state a cause of action against the defendant, Pels.

Defamation

“To assert a viable defamation claim, the allegedly defamatory statement must be susceptible to a reasonable interpretation by those acquainted with the parties and the subject as being of and concerning the plaintiff” (*Three Amigos SJL Rest., Inc. v. CBS News Inc.*, 28 N.Y.3d 82, 88, (2016)). Here, the flyer complained of does not state anyone other than Ringside has interfered with the neighborhood. It makes no reference to plaintiff other than providing his phone number to those who wish to complain about the alleged neighborhood disruption. Since the statements in the flyer do not refer to plaintiff the amended complaint fails to state a cause of action for defamation (*Three Amigos SJL Rest. Inc., supra*). Moreover, a reasonable reader of the flyer would conclude that the statements in the flyer are expressions of opinion, which are not actionable, rather that statements of fact (*Sciadone v Derosa*, 148 AD3d 741 [2d Dept 2017]).

Tortious Interference With Contract

“To prevail on a claim for tortious interference with business relations in New York, a party must prove 1) that it had a business relationship with a third party; 2) that the defendant knew of that relationship and intentionally interfered with it; 3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and 4) that the defendant's interference caused injury to the relationship with the third party” (*Amaranth LLC v. J.P. Morgan Chase & Co.*, 71 A.D.3d 40, 47 [2d Dept 2009]).

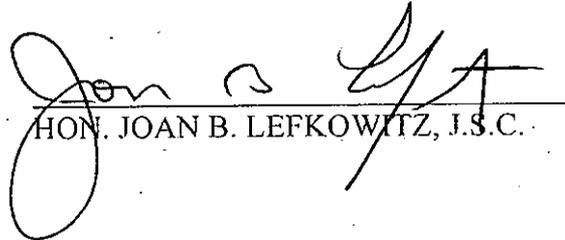
Here, the amended complaint states that plaintiff is the building manager of a residential and commercial building in Greenpoint, Brooklyn, which is owned by 99 Commercial Street, Inc. The amended complaint does not state that plaintiff has any association with 99 Commercial Street, Inc., other than being employed as the building's manager. The amended complaint alleges the “Ringside film shoot” was being conducted within 99 Commercial Street, which is owned by the corporation, not by plaintiff. Moreover, the amended complaint does not set forth the terms of the purported contract or business relationship between plaintiff, as an individual, and “Ringside film shoot.” Finally, the amended complaint does not describes the legal status of what it identifies as “Ringside film shoot,” which it alleges to be the other party to the contract. Thus, the amended complaint fails to allege facts to support its conclusory allegations that plaintiff and “Ringside film shoot” were parties to a contract or business relationship. Accordingly, the second cause of action fails to state a cause of action for tortious interference with contract or business relations.

Injunction

Since the first and second causes of action are dismissed there is no basis upon which to grant plaintiff the requested injunctive relief.

ENTER,

Dated: White Plains, New York
June 30, 2017



HON. JOAN B. LEFKOWITZ, J.S.C.