

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

PRESENT: MANUEL J. MENDEZ Justice

PART 13

CHRISTOPHER BRUMMER, Plaintiff, -against-

INDEX NO. 153583/2015 MOTION DATE 01-20-16 MOTION SEQ. NO. 015 MOTION CAL. NO.

BENJAMIN WEY, FNL MEDIA LLC, and NYG CAPITAL LLC d/b/a NEW YORK GLOBAL GROUP, Defendants.

The following papers, numbered 1 to 8 were read on this motion to/for TRO and Preliminary Injunction:

Table with 2 columns: Description of papers and PAPERS NUMBERED. Rows include Notice of Motion/ Order to Show Cause, Answering Affidavits, and Replying Affidavits.

Cross-Motion: Yes X No

Upon a reading of the foregoing cited papers, it is ordered that Plaintiff's motion for a preliminary injunction and temporary restraining order pursuant to CPLR §6301 is granted.

Plaintiff commenced this action on April 22, 2015 asserting three causes of action for defamation, defamation per se, and intentional infliction of emotional distress. Plaintiff is a professor of law at Georgetown University Law Center and the sole African-American on the National Adjudicatory Council (herein "NAC").

The Complaint alleges that almost a month after the NAC panel upheld the FINRA lifetime ban on non-parties William Scholander and Talman Harris, TheBlot, began publishing numerous articles defaming the Plaintiff. Defendant Wey has testified previously that he is TheBlot's publisher and that Defendant FNL owns TheBlot (Moving Papers Ex. 1).

Plaintiff now seeks an Order pursuant to CPLR §6301 for a temporary restraining order and preliminary injunction to remove and prevent articles about Plaintiff from appearing on TheBlot. The Defendants oppose this motion.

CPLR §6301 grants this court the power to issue an order directing the Defendants to perform an act for the benefit of Plaintiff, or to refrain from performing an act that would be injurious to the Plaintiff (CPLR § 6301). The issuance of a preliminary injunction is within the discretion of the trial court.

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

Arts Housing, Inc., 4 NY3d 839, 833 NE2d 191, 800 NYS2d 48 [2005]). An injunction maintains the status quo until a full hearing can be had on the merits. It should not be granted unless its necessity and justification is clear based on undisputed facts (*Residential Board of Managers of the Columbia Condominium v Alden*, 178 AD2d 121, 576 NYS2d 859 [1<sup>st</sup> Dept. 1991]).

A cause of action for defamation is stated when a Complaint contains allegations of: (i) a false and injurious statement of fact concerning the plaintiff, that exposes the plaintiff to hatred, contempt, aversion, or would cause an unsavory opinion of the plaintiff in the minds of a substantial number in the community; (ii) the statement has been published or spoken to a third party; and (iii) damages have been accrued (*Frechtman v Gutterman*, 115 AD3d 102, 979 NYS2d 58 [1<sup>st</sup> Dept. 2014]). The pleadings of damages is not necessary when the pleadings allege defamation per se (*Lieberman v Gelstein*, 80 NY2d 429, 590 NYS2d 857, 605 NE2d 344 [1992]). Defamation per se is alleged when the defamatory statement: (i) charged plaintiff with a serious crime; or (ii) tends to injure the plaintiff in his or her trade, business or profession (id).

Plaintiff demonstrates the likelihood of ultimate success on the merits for defamation and defamation per se regarding Defendants references to criminal affiliation and fraudulent activity by Plaintiff. The offending statements alleged in the Complaint and annexed in Plaintiff's exhibits tend to injure Plaintiff's reputation and good name, and otherwise "expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of [him] in the minds of right-thinking persons, and to deprive [him] of their friendly intercourse in society" (*Dillon v City of New York*, 261 AD2d 34, 704 NYS2d 1 [1<sup>st</sup> Dept 1999]). In the articles published by *TheBlot* Defendants continuously refer to Plaintiff as a "phony law firm dropout, imbecile, being caught up in fraud, an Uncle Tom," and asserts that Plaintiff had sexual affairs and engaged in lewd conduct including being a "suspect in a rape case" (*Moving Papers Ex. 14-24*).

When the Plaintiff seeks to enjoin a Defendant's expressions and speech, additional rules govern as they implicate a Defendant's First Amendment rights. The court's analysis begins with the "confrontation between the constitutional guarantee of freedom of speech and its restraint in the face of an offensive intrusion as part of coercive action upon a captive audience in a private dispute" (*Trojan Elec. & Mach. Co., Inc. v Heusinger*, 162 AD2d 859, 557 NYS2d 756 [3<sup>rd</sup> Dept 1990]). There is a distinction between protected speech "intended to encourage debate on public issues," and "defamatory speech [that does not advance such societal interests and, indeed, concerns a private individual]" (*Bingham v Struve*, 184 AD2d 85, 591 NYS2d 156 [1st Dept 1992]). Likewise, a court has upheld a preliminary injunction against a defendant arguing about his First Amendment rights by finding "the words and conduct of the defendant were obviously designed and put into effect for the purpose of intimidating the plaintiff and coercing settlement of a claim by adversely affecting [the plaintiff's] business venture" (*Trojan Elec. & Mach. Co. v Heusinger*, 162 AD2d 859, 557 NYS2d 756 [3<sup>rd</sup> Dept. 1990]). Thus, an injunction will lie to restrain libel when the publication is "part and parcel of a course of conduct deliberately carried on to further a fraudulent or unlawful purpose" (*Ansonia Assoc. Ltd. Partnership v Ansonia Tenants' Coalition*, 253 AD2d 706, 677 NYS2d 575 [1st Dept 1998]).

Plaintiff establishes that he will suffer irreparable harm if the Defendants are allowed to continue to post and maintain offensive articles on *TheBlot*. The harm caused by continuing offensive communication is irreparable when "it is capable of injuring [plaintiff's] standing and reputation in all aspects of [his] personal and professional life, and of inflicting serious psychological and emotional damage to [plaintiff]" (*Bingham, supra*).

The Plaintiff has annexed numerous articles as exhibits that are offensive in nature (*Moving Papers Ex. 14-24*). Defendant Wey continues to link offensive articles about the Plaintiff to Defendant Wey's personal twitter account, including as recent as the 26<sup>th</sup> of May, 2017 ([twitter.com/WeyBenjamin](https://twitter.com/WeyBenjamin)). These articles currently on *TheBlot* can be viewed directly by any of Defendant Wey's 84.9 thousand "followers" on Twitter along with *TheBlot's* normal consumers. It is clear that if these posts continue to be displayed, they are capable of injuring Plaintiff's standing and reputation in his professional life as a professor of law at Georgetown University, and a member of NAC.

