

SUPREME COURT-STATE OF NEW YORK  
IAS PART-ORANGE COUNTY

Present: HON. CATHERINE M. BARTLETT, A.J.S.C.

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ORANGE

-----x  
THOMAS WESBECHER

Plaintiff,

-against-

CABLEVISION SYSTEMS CORPORATION and  
CSC HOLDINGS, LLC,

Defendants.

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,

Index No. 5918/2011  
Motion Date: November 14, 2011  
(Adjourned to January 18, 2012)  
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The following papers numbered 1 to 7 were read on this motion by defendant to dismiss  
plaintiff's complaint pursuant to CPLR §§ 3211 (a)(7):

Notice of Motion to Dismiss Complaint-Affidavit-Exhibits-Memo of Law .....	1-5
Affirmation in Opposition-Exhibit .....	5-6
Reply Memorandum of Law .....	7

Upon the foregoing papers, it is ORDERED that the motion is disposed of as follows:

This is an action based in libel in which plaintiff alleges that a news report which  
portrayed him in an unfavorable light falsely created the impression that he was a dangerous  
individual.

Specifically, plaintiff was arrested by police after accidentally shooting himself at home  
when the police discovered a weapons cache of unregistered firearms in the house. Defendants

broadcast a news report of the arrest which included statements and opinions made by the police and neighborhood reactions to the weapons cache.

Defendants essentially assert that plaintiff's claims are fatally defective due to an absolute privilege under New York law, that broadcasts of statements of opinions by neighbors and police are nonactionable, and any alleged implied defamatory statements are defectively pled as a matter of law. Plaintiff opposes the motion.

On a defendant's CPLR 3211 motion to dismiss, the Court's task is

to determine whether plaintiffs' pleadings state a cause of action. 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" [cit.om.]. In furtherance of this task, we liberally construe the complaint [cit.om.], and accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion [cit.om.]. We also accord plaintiffs the benefit of every possible favorable inference [cit.om.].

*511 West 232<sup>nd</sup> Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 (2002). *See also*, *Polonetsky v Better Homes Depot, Inc.*, 97 NY2d 46, 554 (2001); *Leon v Martinez*, 84 NY2d 83, 87-88 (1994); *Collins v Telcoa International Corp.*, 283 AD2d 128, 131 (2d Dept. 2001); *Sheila C. v Povich*, 11 AD3d 120, 122 (1<sup>st</sup> Dept. 2004).

As expressed by Professor David Siegel:

When the motion omits affidavits and other proof and does limit itself to the facial allegations of the pleading, the movant must be aware of the great liberalization that pleadings have undergone under the CPLR. Technicality has been largely removed. If from the four corners of the pleading, regardless of its form and draftsmanship, factual allegations can be discerned which, taken together, manifest any claim cognizable under the law, the pleading does state a cause of action and the motion will fail. These conclusions derive from a study of the Advisory Committee's intentions, which were fully implemented by the courts. *See Foley v. D'Agostino*, 21 A.D.2d 60, 248 N.Y.S.2d 121 (1st Dep't 1964). The

practitioner would do well to note this--a review of the Practice Commentaries on CPLR 3013 will help--before attempting to defeat a cause of action under paragraph 7 on the ostensible basis that it is deficient on its face. Even if the theory it purports to be based on is wrong, the existence of any other theory that would qualify the allegations as a "cause of action" will suffice to defeat the motion.

Siegel, Practice Commentaries, (7B McKinney's Cons Laws of NY, CPLR C3211:24 ((2004))

Upon motion to dismiss complaint, plaintiff must be given benefit of every possible favorable inference, and complaint should not be dismissed if, upon examination of four corners of pleading, factual allegations contained therein indicate existence of cause of action. *Fleming v Allstate Ins. Co.*, 106 AD2d 426 (2<sup>nd</sup> Dept. 1984), affirmed 66 NY2d 838, certiorari denied 106 S.Ct. 1493, 475 U.S. 1096, 89 L.Ed.2d 894. *See, also, Burlew v American Mut. Ins. Co.*, 99 AD2d 11 (1984), affirmed 63 NY2d 412; *Reifenstein v Allstate Ins. Co.*, 92 AD2d 715 (1983); *Mihalko v Blood*, 86 AD2d 723 (1982); *Wayne S. v. Nassau County, Dept. of Social Services*, 83 AD2d 628 (1981); *Etterle v Excelsior Ins. Co. of New York*, 74 AD2d 436 (1980); *Edison v Viva Intern., Ltd.*, 70 AD2d 379 (1979); *Ayala v Jamaica Sav. Bank*, 121 Misc2d 564 (1983), affirmed 109 AD2d 723, appeal denied 66 NY2d 601.

The standard by which courts must judge the face of the pleadings and provide the plaintiff every consideration thereof. However, courts note that libel actions which have no basis should be disposed of early or else a chilling effect on free speech may ensue. Specifically, the Court of Appeals stated "we must not be reluctant to apply the ordinary rules governing summary judgment in libel cases such as this, since '(t)he threat of being put to the defense of a lawsuit \* \* \* may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself' (*Washington Post Co. v. Keogh* (D.C.), 365 F.2d 965, 968, cert. den. 385 U.S.

1011, 87 S.Ct. 708, 17 L.Ed.2d 548; see Ingber, *Defamation: A Conflict Between Reason and Decency*, 65 Va.L.Rev. 785, 833-834.” *Karaduman v Newsday, Inc.*, 51 NY2d 531, 545 (1980). “Whether particular words are defamatory presents a legal question to be resolved by the court in the first instance \* \* \* The words must be construed in the context of the entire statement or publication as a whole, tested against the understanding of the average reader, and if not reasonably susceptible of a defamatory meaning, they are not actionable and cannot be made so by a strained or artificial construction” *Aronson v Wiersma*, 65 NY2d 592, 593-594 (1985).

Civil Rights Law § 74 states in pertinent part that “[a] civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding or other official proceeding, or for any heading of the report which is a fair and true headnote of the statement published.” When determining whether article constitutes “fair and true” report within meaning of this section establishing privilege from civil actions for “fair and true” report of judicial proceedings, legislative proceedings or other official proceedings, the language used therein should not be dissected and analyzed with lexicographer’s precision, nor should a fair report which is not misleading, composed and phrased in good faith under exigencies of publication deadline, be thereafter parsed and dissected on basis of precise denotative meanings which may literally, although not contextually, be ascribed to words used; for report to be characterized as “fair and true” within meaning of this section, thus immunizing its publisher from civil suit sounding in libel, it is enough that the substance of the article be substantially accurate. *See, Holy Spirit Ass’n for Unification of World Christianity v New York Times Co.*, 49 NY2d 63 (1979).

Defendants demonstrated a prima facie case for dismissal of the action. Plaintiff was

arrested for the possession of a sizeable weapons cache after responding to a call involving an accidentally self-inflicted gunshot wound. Defendants reported on police statements and those of neighbors. This Court's review of the statements involved is convincing that the statements challenged were not reasonably susceptible of a defamatory meaning, but rather constituted pure opinion and thus were constitutionally protected (*see generally, Steinhilber v Alphonse*, 68 NY2d 283, 290 (1986); *Immuno AG. v. Moor-Jankowski*, 77 NY2d 235, 243 (1991), *cert. denied* 500 U.S. 954, 111 S.Ct. 2261, 114 L.Ed.2d 713), or were otherwise substantially accurate. Under the New York State Constitution, expressions of pure opinion are afforded greater protection than under the Federal Constitution. A pure opinion is a statement of opinion which is accompanied by a recitation of the facts upon which it is based or does not imply that it is based upon undisclosed facts (*see, Steinhilber*, 68 NY2d at 289). Here, contrary to the plaintiff's contention, the expressions of opinion in the news broadcasts were adequately supported by the statement of the underlying facts, and did not imply that they were based on undisclosed facts (*see, Steinhilber supra*, at 289).

Plaintiff has not come forth with any sufficient facts to warrant denial of defendants' motion. Therefore, defendants' motion to dismiss is granted in all respects

The foregoing constitutes the decision and order of the court.

Dated: January 18, 2012  
Goshen, New York

ENTER



HON. CATHERINE M. BARTLETT,  
A.J.S.C.

**JUDGE NY STATE COURT OF CLAIMS  
ACTING SUPREME COURT JUSTICE**