SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

======================================X

LAUREN KLAYNBERG aka LAUREN PEPIN,

Index No. 154252/2017

Plaintiff,

-against- AFFIRMATION IN SUPPORT OF MOTION TO DISMISS

STEPHEN DIBRIENZA, ESQ.

Defendant.

======================================X

Joseph N. DiGrazia, ESQ., an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following under the penalty of perjury:

1. I am attorney of record for the defendant, and as such am fully familiar with all the proceedings heretofore had herein. I submit this affirmation in support of the motion to dismiss the complaint filed by the plaintiff, Lauren Klaynberg.

2. The thrust of the plaintiff’s claim in this complaint is that the sign that the defendant placed in his office window stating he had to move because of his landlord’s greed and this statement defamed the plaintiff. No where in this sign did the defendant identify who his landlord was. This sign is located in the office in Brooklyn. The plaintiff lives in Manhattan. How anyone would make the connection between the plaintiff and the sign is not obvious. In fact, the plaintiff does not even allege this in the complaint. Without any one making the connection, how can she be defamed?

3. A critical element of defamation is that there has been harm to the person’s reputation. France v. St. Clare’s Hospital and Health Center, 82 A.D. 1, 7 Media L. Rep 2242 (1st Dept. 1981). The plaintiff has not alleged this. Who saw this communication and then thought less of her in either a professional or personal manner? From reading the complaint, no one. There is no claim in the complaint that potential renters stated because of the sign, they will not rent; or, because of the sign, someone thinks less of her. It is just idle speculation that this sign caused harm to her reputation. And therein lies the first problem with this complaint. Her reputation has not been harmed and even if the statement is false, there is no claim against the defendant.

4. More importantly, this statement made by Mr. Dibrienza, is non-factual. It is just his opinion; and statements of opinion are not actionable under our defamation laws as they are entitled to full protection under the New York State constitution. Gross v. New York Times Co., 180 A.D. 2d 308, 587 N.Y.S. 2d 293 (1st Dept. 1993).

5. As noted by the plaintiff in her complaint, Mr. DiBrienza referred to his being forced to move because of the “greed of the new landlord.” Correct or not, this is his opinion. In essence, “rhetorical hyperbole.” Segall v. Sanders, 2015 NY Slip Op. 4836, 11 N.Y.S. 3d 235, 129 A.D. 3d 819 (2nd Dept. 2015). And rhetorical hyperbole is not actionable under libel laws as it is a person’s mere opinion. Id. Also, the determination of whether this term is hyperbole (opinion) or not is a question of law for the judge to make. Id at 820. A fair reading of the sign leads to only one conclusion – it’s Mr. DiBrienza’s rhetorical opinion and thus non-actionable under our libel laws; and the cause of action should be dismissed.

6. As to the plaintiff’s intentional infliction of emotional distress claim, it is essentially a rehashing of the defamation claim. Id at 821. And as in Segall, the statement is not so extreme, outrageous to go beyond all bounds of decency. Id. So, likewise, the claim for intentional infliction for emotional distress should also be dismissed by this Court.

7. If the Court does not dismiss the entire complaint outright, it is requested that the plaintiff’s request for a jury trial be denied. In the lease agreement between the two parties, there is a provision that waives the right for both parties to a jury trial for any matter *whatsoever* (emphasis added) arising out of or connected to the tenancy/contract, a copy of the executed lease is attached as exhibit “A.” Pursuant to the parties own contractual agreement, the right to a jury trial has been waived and it should not be granted to the plaintiff in this matter.

8. Finally, the defendant asks this Court to sanction the plaintiff for the conduct in filing this complaint. It is not based on the law, which makes it frivolous. Also, it was apparently filed to harass the defendant on his way out the door as the lease is about to expire and Mr. DiBrienza is moving to a new location to run his practice. See 22 NYCRR §130-1*. See also*, Chupack v. Gomez, 2017 NY Slip Op. 30956(U) (NY, Supreme, 2017).

9. The plaintiff had adequate time to research the applicable law prior to filing this complaint. There were no time constraints involved here, except that the defendant was leaving the rented premises shortly. Besides that, if the plaintiff and her counsel had taken the time to adequately research the law on the state of defamation claims, they would have surely realized that their claim was meritless whether couched in terms of defamation or as intentional infliction of emotional distress. Furthermore, the timing of this lawsuit is suspect. It appears as if the plaintiff wanted to get one more jab at Mr. DiBrienza before he was gone and beyond her reach. This lawsuit can be categorized as a simple attempt to harass Mr. DiBrienza for any and all perceived slights. As the complaint is frivolous and filed for the purpose of harassing Mr. DiBrienza, it is requested that the Court affix sanctions in an appropriate amount as determined by the Court.

10. The complaint filed by the plaintiff should be dismissed in its entirety as it fails to state a claim upon which relief can be granted. It fails in the basic principle of a defamation claim in that it does not allege who holds her reputation in a lower regard now because of this written statement or if she lost any business due to this sign. It fails to say how anyone would know she was the anonymous landlord that Mr. DiBrienza complained about, since she lives in Manhattan and the sign was placed in Brooklyn. It fails to state if this is a libel or a slander claim; and if the rules are the same or different for these types of claims. The plaintiff asks for a jury trial when she is well aware that this right has been waived via the contract between the two parties.

11. In an effort to amplify her grievances and further harass Mr. DiBrienza, she adds a claim of intentional infliction of emotional distress. This claim is just a rehashing of the defamation claim. It adds nothing to the allegations except to embaress and humiliate Mr. DiBrienza. As a practing attorney such a claim would hurt his potential business. That must be why “esq.” was added to the caption by his name, to make sure nobody would miss the fact he is a lawyer and to hurt him one last time before he moved out. Who would want to use a lawyer who does such awful things as to cause a pregnant woman such stress. Remmeber, he is not being sued in his capacity as a lawyer, so why the reference? This is why sanctions are appropriate in this case. The claims are frivolous and a minimal amount of research would have shown this. Also, it was a way for the plaintiff to strike out one last time at Mr. DiBrienza before his lease expired, hurt him and hurt him good. The plaintiff’s conduct and that of her attorney should be sanctioned by this Court.

WHEREFORE, it is respectfully requested that the defendant’s motion to dismiss the complaint be granted, that the defendant be awarded sanctions by this Court and to award the defendant any other relief that this Court finds just, proper and equitable.

Dated: May 26, 2017

Brooklyn, NY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Joseph N. DiGrazia