

SUPREME COURT - STATE OF NEW YORK
~~TRIAL~~/SPECIAL TERM, PART I SUFFOLK COUNTY

Present:

Hon. JOSEPH JASPAN
Justice

MOTION DATE 8/11/82 19

MOTION NO. 14,802

GEORGE SASSOWER,
Plaintiff

PLTF'S/RESP. ATTY:
George Sassower, Esq.
283 Soundview Avenue
White Plains, New York 10606

^{-against-}
ERNEST L. SIGNORELLI, ANTHONY MASTROIANNI,
VINCENT G. BERGER, JR., ALAN CROCE, ANTHONY
GRYMALSKI, CHARLES BROWN, HARRY E. SEIDELL,
NEW YORK NEWS, INC., and VIRGINIA MATHIAS,
Defendants

DEFT'S/RESP. ATTY:
Patterson, Belknap, Webb and Tyle
For New York News, Inc.
30 Rockefeller Plaza
New York, New York 10112

Upon the following papers numbered 1 to _____ read on this motion _____

Notice of Motion/Order to Show Cause and supporting papers _____; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers _____; Replying Affidavits and supporting papers _____; Other _____; (and after hearing counsel in support of and opposed to the motion) it is,

~~ORDERED~~

Plaintiff seeks to recover damages for the publication of two newspaper articles which are alleged to be defamatory.

He now moves to strike the responsive pleading of the New York News, Inc. (News) for its alleged wilful failure to respond to eight of 23 items requested in what is referred to as the "Second List of Interrogatories" dated March 20, 1982 (Interrogatories 5, 6, 7, 14, 15, 16, 19 and 20).

The defendant News does not claim that the items sought by this method of discovery are not relevant (Allen v. Crowell-Collier Publishing Co., 21 N.Y. 2d 403) or even that they are not "material and necessary" in the prosecution of the action, regardless of burden of proof (C.P.L.R. 3101(a))

The News relies instead upon a claim of privilege granted by Section 79-h of the Civil Rights Law and asserted in the answers of that defendant dated June 25, 1982.

No motion was made for a protective order with respect to those challenged items as authorized by C.P.L.R. 3103. However, that section does not preclude consideration of defendant's claim at this time (subd. a).

Civil Rights Law Section 79-h(b) provides defendants with a

~~ORDERED~~

~~XXXX~~

privilege against disclosure of both news and news sources but it may be invoked only after there has been established an express or implied agreement of confidentiality (Hennigan v. Buffalo Courier Express Co., Inc., et al., ___ A.D. 2d ___, 446 N.Y.S. 2d 767). No such claim is made by the News in this case.

Further, the third partial affirmative defense in mitigation of damages alleges that the matter published was received by defendant from reliable sources and published without malice toward plaintiff. Since defendant News thereby puts in issue the very privilege upon which they rely they cannot use Section 79-h(b) as a shield (Greenberg v. C.B.S., Inc., 69 A.D. 2d 693).

In any event, the questions posed do not reach the area of confidential sources.

Items 5 and 6 merely inquire as to whether the articles were questioned or checked before publication for accuracy and fairness by the News and if so what were the results.

Item 16 asks whether any articles concerning the plaintiff were submitted for review by the legal department of the News and if so defendant is asked to set forth copies of same as submitted and as thereafter corrected or adjusted.

Items 14, 15, 19 and 20 relate to the custom and practice of the News in handling and verifying articles submitted by independent contractors.

Item 7 requests the following information:

"c) 'all articles by Art Penny which were received by defendant, New York News, Inc. prior to August 17, 1977, which were not published by New York News, Inc. and the reason, if any, for such non-publication' (Interrogatory 7) "

Although the defendant has not made this point, the information required does not appear to be relevant to the issues herein and defendant will not be required to respond to it (C.P.L.R. 3103(a)).

Plaintiff's motion to strike the answer of the defendant "News" is granted unless that defendant responds to interrogatories 5, 6, 14, 15, 16, 19 and 20 within twenty (20) days after service of a copy of this order with notice of entry.

This memorandum shall constitute the order of this court.

Dated: September 29, 1982


J.S.C.