

MANCUSI v. NEW YORK POST

New York Supreme Court
Queens County

MANCUSI v. NEW YORK POST, INC.,
July 25, 1980

REGULATION OF MEDIA CONTENT

**Defamation — Damages — Pecuniary
(\$11,601)**

Tavern proprietor's failure to plead special damages warrants dismissal of his libel action against newspaper for article that described tavern as meeting place for "mobsters," but that did not refer directly to plaintiff by name or charge him personally with any misconduct or wrongdoing.

Libel action against newspaper. On defendants' motion to dismiss.

Motion to dismiss granted, with leave to plaintiff to replead.

Bernard Joseph Ferguson, Woodside, N.Y., for plaintiff.

Slade R. Metcalf, of Squadron, Ellenoff, Plesent & Lehrer, New York, N.Y., for defendants.

Full Text of Opinion

Kassoff, J.:

In this libel action defendants move by separate notice of motion to dismiss the complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

It is alleged in the complaint that plaintiff is the sole proprietor of The Owl Tavern located at Springfield Gardens in Queens County. On March 15, 1979 de-

fendant New York Post published an article written by defendant Doug Feiden concerning the six million dollar Lufthansa robbery at John F. Kennedy Airport. This article and one subsequently published in the June 4, 1979 issue of defendant New York Magazine, which was also written by Doug Feiden, are the basis for this libel action.

These articles describe one James ("Jimmy the Gent") Burke, a prime suspect in the robbery, with respect to his activities at The Owl Tavern and other Queens bars. The following passages are cited as libelous by plaintiff:

"Burke had a hot tip the other day on a speed horse in the seventh race at Aqueduct.

The horse won; as Burke's tips often do, and a little while later he was in an old hangout, the Owl Tavern in Springfield Gardens, where cargo workers from the airport and mobsters from the neighborhood meet to drink, discuss cargo hauls, and make plans. For three months now, the refrain has been the same, each time Burke walks into the darkened aerie of the Owl:

'Let's have a drink on Lufthansa,' someone shouted."

* * *

"And there, [Owl Tavern] under pictures of Ruffian and Foolish Pleasure and the other great horses he did what he has always done — he talked loud and he laughed loud and he drank whisky and took bets on the ponies.

'Let's have a drink on Lufthansa,' is the line you hear these days at the Owl, 145-88 New York Blvd., and in another gang joint, Robert's Lounge, at 214-45 Lefferts Blvd., in Ozone Park."

In the June 4, 1979 issue of New York magazine, Feiden theorizes as to the planning of the Lufthansa robbery:

"In all, there were some fifteen planning sessions in the bars and mob joints of Ozone Park, Springfield Gardens, Howard Beach, Canarsie, Flatlands, Mill Basin, and the Rockaways."

* * *

"Some of the planning took place in the darkened aerie of the Owl, on New York Boulevard, another joint where mobsters and cargo workers fraternize. It was here, after the robbery, that Burke would book

ten-and twenty-dollar bets on basketball games, even though the FBI believed he was still sitting on millions of dollars."

Although a corporation or business can be defamed by false statements concerning its credit or property, it has no character which can be affected by a libel (*El Meson Espanol v. NYM Corp.*, 521 F2d 737; *Reporters' Assn. of America v. Sun Printing & Pub. Assn.*, 186 NY 437). An action in libel will, therefore, not lie for defamatory matter asserted against the reputation of a place unless the owner alleged a pecuniary loss as a natural consequence of the publication (*Kennedy v. Press Pub. Co.*, 41 Hun 422; *Richman v. New York Herald Tribune, Inc.*, 7 Misc 2d 563).

It is clear that the passages quoted above do not directly refer to plaintiff by name or as proprietor of The Owl Tavern or charge him personally with any misconduct or knowledge of wrongdoing. Any interpretation of the language as defamatory to plaintiff as the owner of a "gang joint" requires an explanation and thus a pleading of special damages (*El Meson Espanol v. NYM Corp.*, supra; *Dauer & Fittipaldi, Inc. v. Twenty First Century Communications, Inc.*, 43 AD2d 178; *Stillman v. Paramount Pictures Corp.*, 2 AD2d 18, affd 5 NY2d 994).

While a fair reading of the language used in the articles may arguably be understood to be libelous to plaintiff (see *Tracy v. Newsday, Inc.*, 5 NY2d 134), the pleading of special damages here is insufficient. The use of round figures without itemization of losses with respect to the particular businesses or customers must be viewed as general damages and inadequate to satisfy pleading requirements (*Drug Research Corp. v. Curtis Pub. Co.*, 7 NY2d 435; *O'Connell v. Press Pub. Co.*, 214 NY 352; *Reporters' Assn. of America v. Sun Printing and Pub. Assn.*, supra).

Accordingly, defendants' motion for dismissal is granted to the extent that the complaint is dismissed against all moving defendants with leave to plaintiff to replead the special damages aspect of the action within 30 days after service of a copy of the order to be entered hereon.

Settle order.