

# **Heredia v. Taylor, 300237/05**

## **Decided: March 6, 2009**

Judge Genine D. Edwards

KINGS COUNTY  
Civil Court

**Judge Edwards**

### **DECISION AND ORDER**

This matter involves two unrepresented litigants, who were formerly neighbors, in a small building located at 84 Prospect Place, in Brooklyn, New York. The plaintiff brings a cause of action based upon defamation against the defendant.

#### **The Testimony**

According to the plaintiff, in October 2002, the defendant told the police and a representative of the Administration of Child Services ("ACS") that the plaintiff was a whore and prostitute, abused her child, and used drugs. Therefore, ACS began an investigation into plaintiff's life. She was subject to unannounced home inspections, drug tests as well as disclosure of her personal information. ACS called plaintiff all hours of the night, causing plaintiff to lose sleep and become an emotional wreck. Her friends and family were interviewed. Defendant's ACS interview was the only negative interview. According to the plaintiff, ACS found all allegations to be untrue. Plaintiff testified that the defendant wanted plaintiff to lose custody of her son.

In 2003, the defendant threatened the plaintiff with a gun. Plaintiff called 911, the police responded and the defendant was arrested for gun possession. The following day, plaintiff saw defendant and the defendant began yelling at her. Plaintiff again called the precinct. The police responded and again arrested the defendant. Plaintiff testified at the defendant's criminal trial for harassment, gun possession and menacing. The defendant was convicted of menacing. Thereafter, the plaintiff received a one-year order of protection against the defendant.

As a result of this saga, the plaintiff suffers from depression, sleepless nights and low self-esteem. Pursuant to a prescription from her internist, Dr. Vencat, she took Welbrutrin from 2003-2008. It should be noted that the plaintiff failed to proffer any evidence to corroborate this testimony.

Plaintiff's only witness was her friend, Peter Ford. Mr. Ford testified that he has known the plaintiff since 1993. Plaintiff lived in the subject premises since 1995. He spent time with plaintiff's son and never noticed any abuse. Mr. Ford testified that the plaintiff is not a prostitute and does not have Middle Eastern men in her apartment. However, Mr. Ford had no knowledge of the defendant's reputation in the subject building.

In her defense, Ms. Taylor testified that in October 2002 she called the 78th precinct due to loud noise coming from the plaintiff's apartment. According to the defendant, when the police arrived the plaintiff was in a car with the engine running and her son was in the apartment on the fourth floor. Defendant testified that the plaintiff left her infant alone on a daily basis. Plaintiff would put on a CD to cover the child's crying. The defendant was not concerned about the plaintiff and her lifestyle, but about the child who was constantly left alone. The defendant indicated that she was not interviewed by ACS; she only called because the little boy was left alone in the apartment. Defendant admitted calling ACS twenty-two (22) times, but no one responded the night she called due to screams from the plaintiff's son. She called the Mayor's Office, the landlord, and even reported the information to the Attorney General's Office. The defendant testified that she was an employee of the New York City Police Department, and was previously a certified social worker with Social Services. In addition, her sister is a supervisor. Therefore, she could not allow the child to be left alone. She did not want to get into trouble for not reporting it.

The defendant testified that the police was called on many occasions due to the plaintiff's activities. She called the police because men would push into the building trying to get to the plaintiff. The defendant testified that everyone in the neighborhood knew about the plaintiff's lifestyle. She simply did not want to get into trouble for plaintiff's activities.

The defendant admitted she had a licensed nine millimeter firearm in her apartment. Defendant asserted that plaintiff framed her and she was arrested; the plaintiff hated her since she had a job. Specifically, when defendant was home alone the plaintiff would kick her apartment door. She testified that she never threatened the plaintiff with a gun, but she was arrested and later released. Thereafter, the plaintiff called the police again and the defendant was sent to Riker's Island jail, without bail. Thereafter, she had to live in a shelter until 2006 because she could not obtain an apartment.

## **The Law**

Slander is an oral statement about the plaintiff made to a third party, without authority, which adversely affects the plaintiff's reputation. [Beschel v. Countywide Home Loans, Inc., 21 Misc.3d 1136\(A\), 2008 N.Y. Slip Op. 52397\(U\) \(Sup. Ct. Nassau County 2008\)](#); [Veritas Capital Mgt. L.L.C. v. Campbell, 22 Misc.3d 1107\(A\), 2008 N.Y. Slip Op. 52608\(U\) \(Sup. Ct. New York County 2008\)](#). A cause of action based upon slander requires proof of special damages, that is loss of something having economic or pecuniary value such as a loss of a job, loss of a contract, loss of money. [Lieberman v. Gelstein, 80 N.Y.2d 429, 590 N.Y.S.2d 857 \(1992\)](#); [Rufeh v. Schwartz, 50 A.D.3d 1002, 858 N.Y.S.2d 194 \(2d Dept. 2008\)](#).

However, slander per se is restricted to four types of statements: (1) charging a person with a serious crime; (2) tending to injure a person's trade, business or profession; (3) that a person has a loathsome disease; or (4) any statement that imputes unchastity to a woman. [Lieberman, supra](#); [Rufeh, supra](#); [Frederick v. Fried, 10 A.D.3d 444, 780 N.Y.S.2d 908 \(2d Dept. 2004\)](#); [Matherson v. Marchello, 100 A.D.2d 233, 473 N.Y.S.2d 998 \(2d Dept. 1984\)](#). Such a statement presumes damages, thus, no proof of damages is necessary. [Lieberman, supra](#). But, the United States Supreme Court holds "that the States may not permit recovery of presumed or punitive damages,

at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth." [Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S. Ct. 2997 \(1974\)](#). Hence, New York insists that a compensable defamatory claim, such as slander, depends upon the actual existence of harm to plaintiff's reputation or the defamer's knowledge of its falsity or reckless disregard for the falsity of the statement. [France v. St. Clare's Hosp. & Health Center, 82 A.D.2d 1, 441 N.Y.S.2d 79 \(1st Dept. 1981\)](#); [Salomone v. MacMillan Publ. Co., 77 A.D.2d 501, 429 N.Y.S.2d 441 \(1st Dept. 1980\)](#).

### **The Findings**

Applying the foregoing principles to the evidence adduced at trial, including the fact that the defendant did not deny making the statements, but instead testified that the plaintiff's reputation was known throughout the neighborhood, this Court finds that the defendant is liable for slander per se as against the plaintiff. However, defendant's statements regarding drug use and child abuse only amount to slander. Nonetheless, plaintiff sorely failed to shoulder her burden of proving damages with regard to all of the statements. Indeed, plaintiff did not prove one scintilla of special damages nor that her reputation was damaged in any manner nor that the defendant knew that the statements were false or recklessly disregarded the falsity of the statements.

Accordingly, judgment is rendered in favor of the defendant and the complaint is dismissed.

This constitutes the decision and order of this Court.