

PUTNAM COUNTY
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To commence the 30 day 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, upon all parties

**SUPREME COURT OF THE STATE of NEW YORK
COUNTY OF PUTNAM**

-----X
ANTHONY L. MEOLA, Individually, BETH R. MEOLA, Individually, ANTHONY MEOLA and BETH MEOLA, As Legal Guardians for OLIVIA M. MEOLA, An Infant, and ANTHONY MEOLA, as Legal Guardians for ALEXANDRIA D. MEOLA, an infant, and ANTHONY MEOLA and BETH MEOLA, As Legal Guardians for ESTELLA G. MEOLA, An Infant,

DECISION & ORDER

Plaintiffs,

Index No. 1442/13

-against -

Sequence No. 1
Motion Date: 3/17/14

NATIONAL ENQUIRER and NEWS 12 WESTCHESTER OF DELAWARE LLC,

Defendants.

-----X
LUBELL, J.

The following papers were considered in connection with this motion by defendants for an Order pursuant to CPLR 3211(a)(7) dismissing plaintiffs' complaint which, upon notice to the parties, was converted to a motion for summary judgment (CPLR 3212):

PAPERS	NUMBERED
NOTICE OF MOTION/AFFIRMATION/EXHIBIT A	1
MEMORANDUM OF LAW	2
MEMORANDUM OF LAW	3
REPLY MEMORANDUM OF LAW	4
SUMMONS/VERIFIED COMPLAINT	5
AFFIRMATION OF DINA SFORZA/EXHIBIT A	6
REPLY AFFIRMATION	7
REPLY AFFIRMATION OF DAVID A. SCHULZ	8

Plaintiffs, husband and wife and their children, bring this action sounding in defamation, negligent publication and false light invasion of privacy, in connection with an article published in the National Enquirer on April 15, 2013, and with respect to

received
6-9-14

nine News 12 cable television broadcasts concerning the controversy surrounding the arrest of a rape suspect, Alexandru Hossu, who, at the time of his arrest, was allegedly the live-in personal trainer of Putnam County District Attorney Adam Levy ("DA Levy").

In short, plaintiffs seek \$4.5 million in compensatory damages plus unspecified punitive damages upon their claim that the news reports imply that they were harboring a criminal based upon the fact that a photo of their house situated at 66 Indian Wells Road, Brewster, New York, was incorrectly identified in both the print article and on the television broadcasts as the home of DA Levy, their immediate neighbor residing at 70 Indian Wells Road. Plaintiffs are not named or pictured anywhere in print or in the broadcasts, both of which unambiguously and repeatedly report that DA Levy had a rape suspect living in his home. Indeed, there is no dispute that the targeted assertions at DA Levy are exactly what made the reports so "newsworthy".

By Decision & Order of November 13, 2013, the Court denied defendants' motion to dismiss on procedural grounds for want of a copy of the very complaint sought to be dismissed (see Alizio v. Perpignano, 225 AD2d 723, 724 [2d Dept 1996][denial of motion to dismiss for want of copy of complaint warranted]). Denial, however, was without prejudice to the submission of a copy of the complaint by December 2, 2013, the date to which the motion was adjourned for that purpose.

In the Court's ensuing Decision & Order of January 27, 2014, the Court noted that there are two publications underlying this action, the first of which was provided and the second of which was not. The latter, an asserted March 21, 2013, News 12 Westchester LLC broadcast, was said to be found at http address "http://westchester.news12.com/news/putnam-county-da-s-personal-trainer-charged-with-raping-12-year-old-girl-1.4863505". It was not, although there was a brief article about the underlying incident.

Notwithstanding that, the Court elected to treat the CPLR 3211(a)(7) motion as one for summary judgment (CPLR 3211[c]). Correspondingly, the Court provided the parties with an opportunity to make an appropriate record (see Rovello v. Orofino Realty Co., Inc., 40 NY2d 633, 635 [1976]), including the submission of a proper and authenticated copy of the News 12 Westchester, March 21, 2013, newscast.

Upon review and receipt of the papers submitted thereafter, the Court is now in receipt of nine News 12 Westchester broadcasts which took place on March 21, 22, 23, 24, 25, 26, and 29, 2013, as well as on June 19 and July 2, 2013.

Now, upon review and consideration of all papers submitted in support and in opposition to defendants' motion for summary

judgment, as converted by the Court, the Court grants summary judgment in favor of defendants and against plaintiffs on all causes of action contained in the complaint.

Upon a fair reading and viewing of the alleged defamatory publications, and upon considering them as a whole and their effect upon the average reader and viewers, the Court finds, as a matter of law, that the allegedly defamatory statements are not "of and concerning the plaintiff[s]" (Brady v. Onaway Newspapers, Inc., 84 A.D.2d 226, 228 [2d Dep't 1981]; see Kirch v. Liberty Media Corp., 449 F.3d 388, 398 [2d Cir. 2006]; Church of Scientology Intl v. Behar, 238 F.3d 168, 173 [2d Cir. 2001][whether a challenged statement can be reasonably understood as being of and concerning a plaintiff is a question of law for the Court]; see Carlucci v. Poughkeepsie Newspapers, Inc., 57 N.Y.2d 883, 885 [1982][proper dismissal of complaint where article, not naming plaintiff, was not "of and concerning" plaintiff]).

Among other things, plaintiffs are not named in any of the publications and the publications are unmistakably about a suspect rapist allegedly living in the home of DA Levy, although admittedly, plaintiffs' home was mistakenly photographed and broadcast as the home of DA Levy. A reasonable reader or viewer could not misunderstand that the publications concerned plaintiffs, instead of the controversial relationship of an elected District Attorney with an accused rapist.

The Court further finds that, upon construing the publications as a whole and tested against the understanding of the average reader and viewer (Dillon v. City of New York, 261 A.D.2d 34, 38 [1st Dep't 1999]), the publications fail to imply or accuse plaintiffs of any activity that damages their reputation, nor do they "tend[] to expose [them] to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of [them] in the minds of right-thinking persons, and to deprive [them] of friendly intercourse in society" (Sydney v MacFadden Newspaper Pub. Corp., 242 NY 208, 211-12 [1926] citing Bennet v. Commercial Advertiser Assn., 230 N. Y. 125; Triggs v. Sun Printing & Pub. Assn., 179 N. Y. 144).

Additionally, plaintiffs have failed to come forward with a proper showing, let alone with adequate allegations, that defendants acted in a grossly irresponsible manner with respect to this matter of public concern (see Pollnow v Poughkeepsie Newspapers, Inc., 107 A.D.2d 10, 14 [2d Dep't 1985] aff'd, 67 N.Y.2d 778); Brown v. Johnson Newspapers Corp., 84 A.D.2d 636, 637 [3d Dep't 1981]). Correspondingly, their negligence claim fails as a matter of law (Weiner v. Doubleday & Co., Inc., 74 NY2d 586, 595 [1989] ["Gross irresponsibility" standard requires more than "simple negligence"]).

Finally, since New York does not recognize the common law tort

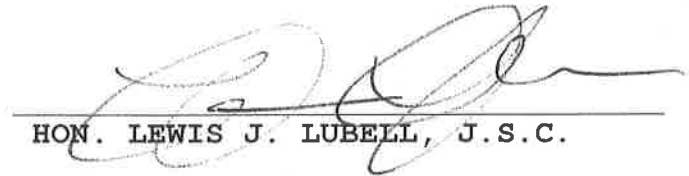
of invasion of privacy (Messenger v. Gruner + Jahr Printing & Publishing, 94 N.Y.2d 436, 441 [2000]; Howell v New York Post Co., Inc., 81 NY2d 115, 123 [1993][no false light tort exists in New York, either as a matter of common law or by statute]), the one remaining cause of action is hereby dismissed.

Based upon the foregoing and there being no merit to any other argument made in response to this motion for summary judgment, as converted by the Court, it is hereby

ORDERED, that the action be and is hereby dismissed in all respects.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: Carmel, New York
June 5, 2014



HON. LEWIS J. LUBELL, J.S.C.

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