



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL LEIDIG and CENTRAL
EUROPEAN NEWS, LTD,

Plaintiffs,

- against -

BUZZFEED, INC.,

Defendant.

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VICTOR MARRERO, United States District Judge.

16 Civ. 0542 (VM)

DECISION AND ORDER

Plaintiffs Michael Leidig ("Leidig") and Central European News Ltd. ("CEN") (collectively, "Plaintiffs"), commenced this litigation against defendant BuzzFeed, Inc. ("BuzzFeed") alleging libel and seeking \$5,000,000 in damages in connection with an article published by BuzzFeed regarding Plaintiffs. (See "Complaint," Dkt. No. 1.)

Plaintiffs subsequently moved for Partial Summary Judgment pursuant to Federal Rule of Civil Procedure 56(a) ("Rule 56(a)"), seeking an order declaring "(1) that the article . . . was defamatory of plaintiffs as a matter of law; (2) that the defamatory assertions contained in the article were false, as a matter of law; and (3) that neither plaintiff is a 'public figure' as that term is used in the law of libel[.]" ("Motion," Dkt. No. 16, at 1.) For the reasons discussed below, the Court finds that there are

genuine issues of material fact such that summary judgment is not warranted. Plaintiffs' Motion is therefore DENIED.

I. BACKGROUND

On April 24, 2015, BuzzFeed, an internet media company that operates the popular eponymous website, published an article titled "The King of Bullsh*t News" (hereinafter, the "Article" or "Publication"), on its website. (See Dkt. No. 1-1.) The Article's primary subject is a selection of articles sold by CEN, a British news agency founded by Leidig which "provid[es] news from non-English-language countries" to third party media services in Britain and elsewhere. (See id.; Dkt. No. 1 ¶¶ 14-15, 22-23.) The Article focuses on stories disseminated and sold by CEN on topics such as teens in China walking cabbages on leashes due to loneliness; a Justin Bieber ringtone saving a Russian fisherman from a bear attack; and numerous stories involving male castration. (See id. at 3, 6, 13-17.) The Article's primary thesis is that, after purportedly investigating the facts contained in these and other CEN stories, "the evidence assembled by BuzzFeed News suggests that an alarming proportion of CEN's 'weird news' stories are based on exaggeration, embellishment, and outright fabrication[.]" (Id., at 4.)

On January 25, 2016, Plaintiffs commenced this litigation alleging that BuzzFeed's Article falsely suggests

that Plaintiffs are "in the business of publishing news articles presented as true that are false" - or so-called "fake news" - and "that plaintiffs are the largest purveyors of such articles in the world." (Complaint ¶ 3.) Plaintiffs further allege that BuzzFeed published the Article "with reckless disregard for whether [the statements were] true or false" (Complaint ¶ 6; see also id. ¶¶ 8-10, 35-37, 42-44, 56-59, 63-66.)

On January 13, 2017, Plaintiffs filed the instant Motion, seeking an Order finding the Article defamatory as a matter of law and false as a matter of law, as well as finding that neither CEN nor Leidig are public figures for the purposes of this litigation. Plaintiffs argue that the Article's statements are false because, among other reasons: "Leidig has never created or knowingly published a fake news story, nor added phony quotations to a story"; Leidig "has no knowledge of anyone else at CEN doing either of these things; Leidig has explained his sources for the CEN stories attacked by the Article, thereby "demonstrating the falsity of BuzzFeed's accusations of fraud"; and BuzzFeed has presented no evidence that its libelous assertions are true. (See "Memorandum," Dkt. No. 20, at 14; "Reply Memorandum," Dkt. No. 38, at 5-8.)

Plaintiffs further argue that the Article is defamatory as a matter of law, because "it charges [Leidig] with criminal conduct – preparing fake news stories and selling them as real, [or] defrauding his customers" and "was intended to, and did injure him in his profession," and that it is defamatory of CEN "because it was a direct attack on the company's integrity and competence." (Memorandum at 13.)

Finally, Plaintiffs argue that "Defendants [sic] cannot possibly ascribe [public figure] status to Mr. Leidig or his company" for all purposes, and that Plaintiffs are not limited purpose public figures because neither Plaintiff has "voluntarily inject[ed] himself . . . into a public controversy" related to the litigation, invited public attention to either's views, assumed a position of prominence with respect to the controversy, or maintained regular and continuing access to the media. (Id., at 16-17.)

On February 16, 2017, Defendant filed a memorandum of law in opposition to Plaintiffs' Motion arguing that any findings regarding whether the Article is false or defamatory as a matter of law before discovery has begun in earnest is premature. (See "Opposition," Dkt. No. 27, at 6-10.)¹ In

¹ Defendant filed its Opposition as an omnibus memorandum relating to both this Motion and as a separate Motion to Compel, which was referred to Magistrate Judge Gorenstein, along with all other pretrial and discovery disputes, on April 4, 2017. (Dkt. No. 40.) Accordingly, the Court does

support, Defendant cites to numerous outstanding discovery issues and requests and identifies numerous questions of fact bearing on the falsity or defamatory nature of the Article, as well as Plaintiffs' status as public or private figures. (See "Bolger Decl.," Dkt. No. 28, ¶ 20-21, 24-27, 29-30.)² Defendant argues that, at this stage, Plaintiffs have failed to establish that the Article is materially false and that the Court should grant summary judgment to BuzzFeed instead. (Id., at 7-9, 11-14.)

Defendant further argues that Plaintiffs cannot be granted private figure status at this stage; rather, "Plaintiffs must be considered a [sic] limited purpose public figures." (Opposition at 15-19.) Defendant cites to the Complaint in support: Leidig alleged that "he was a 'successful' journalist"; that he sells CEN stories "to some of the most well-known and successful media entities in the world"; and that Leidig "started the nonprofit 'Journalism without Borders,' serves as vice-Chair of the National Association of Press Agencies, authored six books, and won prestigious awards for his journalism." (Id., at 16 (quoting

not address those portions of the Opposition which relate to Defendant's Motion to Compel.

² The Declaration of Katherine M. Bolger, like the Opposition, was filed in support of both the instant Motion and Defendant's separate Motion to Compel. The Court addresses only those portions of the declaration which may bear on the Motion now before it.

Complaint ¶¶ 22-23 and "Leidig Decl.," Dkt. No. 18, at ¶¶ 4-7).) Defendants argue that, despite Plaintiffs' statements to the contrary, "Plaintiffs have invited comment about their role in th[is] controversy" and, in fact, "Plaintiffs['] plead[ings acknowledge] they wrote a book about BuzzFeed about this dispute." (Opposition at 17 (quoting Leidig Decl. ¶ 7).) Defendants argue that this Court must therefore find Plaintiffs to be public figures or, at a minimum, permit discovery "to determine whether plaintiffs are public figures." (Opposition at 18.)

II. DISCUSSION

A. LEGAL STANDARD

1. Rule 56(a)

Summary judgment is appropriate if the evidence shows that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The role of a court in ruling on such a motion "is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried[.]" Knight v. United States Fire Ins. Co., 804 F.2d 9, 11 (2d Cir. 1986).

The moving party bears the initial burden of demonstrating the absence of any genuine issues of material fact. See Celotex Corp., 477 U.S. at 323; Gallo v. Prudential

Residential Servs., L.P., 22 F.3d 1219, 1223 (2d Cir. 1994). If the moving party satisfies its burden, the nonmoving party must provide specific facts showing that there is a genuine issue for trial in order to survive the motion for summary judgment. See Shannon v. New York City Transit Auth., 332 F.3d 95, 98-99 (2d Cir. 2003).

In determining whether the moving party is entitled to judgment as a matter of law, the court must "resolve all ambiguities and draw all justifiable factual inferences in favor of the party against whom summary judgment is sought." Major League Baseball Properties, Inc. v. Salvino, Inc., 542 F.3d 290, 309 (2d Cir. 2008); see also Samuels v. Mockry, 77 F.3d 34, 35 (2d Cir. 1996) ("Summary judgment is proper if, viewing all facts of record in a light most favorable to the non-moving party, no genuine issue of material fact remains for adjudication.") (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-50 (1986)). Although the party opposing summary judgment may not "rely on mere conclusory allegations nor speculation," D'Amico v. City of New York, 132 F.3d 145, 149 (2d Cir. 1998), if there is any evidence in the record from which a reasonable inference could be drawn in favor of the opposing party, summary judgment is improper. See Gummo v. Village of Depew, N.Y., 75 F.3d 98, 107 (2d Cir. 1996).

2. Libel

To make a prima facie case of libel under New York law, a plaintiff must establish the following five elements:

- 1) a written defamatory statement of fact concerning the plaintiff;
- 2) publication to a third party;
- 3) fault (either negligence or actual malice depending on the status of the libeled party);
- 4) falsity of the defamatory statement; and
- 5) special damages or per se actionability (defamatory on its face).

Celle v. Filipino Reporter Enterprises Inc., 209 F.3d 163, 176 (2d Cir. 2000); see also Church of Scientology Int'l v. Eli Lilly & Co., 778 F.Supp. 661, 666 (S.D.N.Y. 1991).

A defamatory statement of fact is one "which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society." Balestriere PLLC v. CMA Trading, Inc., No. 11 CIV. 9459, 2014 WL 929813, at *16 (S.D.N.Y. Mar. 7, 2014) (internal quotations and citations omitted); see also Karedes v. Ackerley Group, Inc., 423 F.3d 107, 113 (2d Cir. 2005); Foster v. Churchill, 87 N.Y.2d 744, 751, 642 N.Y.S.2d 587 (1996). "[O]nly factual statements are actionable as defamation or libel[.]" because "New York law protects derogatory statements which may be categorized as 'opinion' as opposed to 'fact.'" Chau v. Lewis, 771 F.3d 118, 128 (2d Cir. 2014).

Upon reviewing the statement in question, a Court "must give the disputed language a fair reading in the context of the publication as a whole" and construe it as the intended readership would. Celle, 209 F.3d at 177 (emphasis in original) (quoting Armstrong v. Simon & Schuster, Inc., 649 N.E.2d 825, 829 (N.Y. 1995)).

"The standard for assessing falsity is informed by the 'common law of libel[,] . . . [which] overlooks minor inaccuracies and concentrates upon substantial truth.'" Blair v. Inside Ed. Prods., 7 F. Supp. 3d 348, 357 (S.D.N.Y. 2014) (quoting Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 516 (1991)). "[W]here the 'the substance, the gist, [or] the sting' of a statement is true, it cannot be libelous." Stern v. Cosby, 645 F. Supp. 2d 258, 276 (S.D.N.Y. 2009) (quoting Masson, 501 U.S. at 517 (1991)). Indeed, under New York law, it is well-established "that truth is an absolute, unqualified defense to a civil defamation action" and that "'substantial truth suffices to defeat a charge of libel.'" Stern, 645 F. Supp. 2d at 276 (quoting Weber v. Multimedia Entm't, Inc., No. 97 Civ. 0682, 2000 WL 526726, at *10 (S.D.N.Y. May 2, 2000)); see also Guccione v. Hustler Magazine, Inc., 800 F.2d 298, 301 (2d Cir. 1986), cert. denied, 479 U.S. 1091 (1987); Jewell v. NYP Holdings, Inc., 23 F. Supp. 2d 348, 366 (S.D.N.Y. 1998) ("[I]t is not necessary

to demonstrate complete accuracy to defeat a charge of libel.").

"[S]ummary judgment cannot be granted on [Plaintiff's] defamation claim" where the "plaintiff has not foreclosed the possibility that [the defendant's] statements were more or less truthful." Balestriere PLLC, 2014 WL 929813, at *18.

3. Fault: Public vs. Private Figures

Defamation law makes a distinction between public and private figures with respect to the element of fault. See, e.g., N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964) (establishing more stringent standard for public officials than for private figures for purposes of fault). The rationale underlying this distinction is "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," on the one hand, and a recognition that "private figures are more vulnerable to injury from defamation," on the other. Contemporary Mission, Inc. v. N.Y. Times Co., 842 F.2d 612, 619-20 (2d Cir. 1988).

Public figures for all purposes are those "who have voluntarily sought and attained influence or prominence in matters of social concern." Celle, 209 F.3d at 176. Defamation law recognizes "limited purpose public figures" as plaintiffs who "have voluntarily exposed themselves to increased risk of

injury" through participation in public affairs. Contemporary Mission, 842 F.2d at 619-20. Limited purpose public figures typically "have greater access to the media and thus are in a better position to contradict a lie or correct an error" than a private person. Id.

A public figure bringing a claim of libel is required to establish that the defendant made the disputed statements with "actual malice." See Curtis Pub. Co. v. Butts, 388 U.S. 130, 155 (1967) (establishing "actual malice" standard for public figures); N.Y. Times Co. v. Sullivan, 376 U.S. at 279-80 (establishing standard for first time for public officials). In other words, the plaintiff must show that the defendant published the statement "with knowledge that it was false or with reckless disregard of its truth or falsity." Celle, 209 F.3d at 174. If the plaintiff is a private figure, then they need only show that the defendant acted with negligence. Id. at 176.

B. APPLICATION

Upon reviewing the parties' briefs, and for the reasons discussed below, the Court finds that there remain numerous genuine issues of material fact such that filing a motion for summary judgment would be premature and granting it would be improper.

At the outset, Plaintiffs have not met their burden to show the absence of any genuine dispute as to material facts. See Celotex Corp., 477 U.S. at 323; Gallo v. Prudential Residential Servs., L.P., 22 F.3d 1219, 1223 (2d Cir. 1994). Indeed, Plaintiffs' Local Rule 56.1 Statement confirms that several facts central to this dispute remain contested by the parties. ("Rule 56.1 Statement," Dkt. No. 17 ¶¶ 4-26.) Although Plaintiffs state in their Rule 56.1 Statement that the "material facts [contained therein] are not disputable," the paragraphs that follow belie that claim. (See, e.g., id. ¶ 9 ("Plaintiffs allege that the words quoted in paragraph 7 were defamatory of them and false; Buzzfeed denies both these assertions."); id. ¶¶ 17, 20, 23, 26 (same, but making reference to different paragraphs and statements in the Article).) At this juncture, it appears that there are few material facts about which the parties agree.

Furthermore, and as Plaintiffs recognize, "discovery is still in its earliest states[.]" (Memorandum at 18.) As a result, there is little to no relevant evidence upon which Plaintiffs have relied in support of their Motion.³ With

³ Without an evidentiary record - such as deposition testimony, affidavits, or any factual findings regarding the falsity of the Article or truth of the underlying CEN Articles - the Court finds it difficult to assess the reliability or accuracy of the statements contained in the Motion and supporting papers. By way of example, Plaintiffs state that the x-ray images discussed in the Article were "in fact the images . . . of a man who contracted the disease [disseminated cysticercosis] from eating sashimi" because a neurosurgeon said so. (Leidig Decl. ¶ 17.) The

respect to falsity, the Motion and supporting papers consist mainly of Plaintiffs insisting upon a tautology that, to paraphrase Lucetta, conveys no other than Plaintiffs' reason: The Article is false because it is false.⁴ (See, e.g., Memorandum at 14; Leidig Decl. ¶ 16.) If the Court were to grant Plaintiffs' Motion at this stage, it would be doing so based on little more than the parties' "conclusory allegations [] or speculation." D'Amico, 132 F.3d at 149. Because "the evidence proffered by plaintiff on this issue could allow a reasonable fact-finder to resolve the issue in favor of either party, summary judgment is unwarranted." Balestriere PLLC, 2014 WL 929813, at *17.

Similarly, with respect to the defamatory nature of the Article, the Court cannot find the Article or the statements contained in it defamatory as a matter of law at this

statement raises a question as to why a neurosurgeon would be evaluating x-ray images for their accuracy, rather than a radiologist, a type of doctor whose specialty includes and therefore is more suited to the interpretation of radiological and medical images, such as x-ray images. See American College of Radiology, What is a Radiologist?, <https://www.acr.org/Quality-Safety/Radiology-Safety/Patient-Resources/About-Radiology> (last visited May 8, 2017.) Perhaps affidavits, deposition testimony, or other evidence would be illuminating on this and other points.

⁴ Then thus: of many good I think him best.

I have no other, but a woman's reason;
I think him so because I think him so.

William Shakespeare, *Two Gentlemen of Verona* 1.2:171-174.

junction. Although the question of whether a statement is defamatory is one of law, questions of law are informed by questions of fact. This is particularly true in libel cases where the line between truth and falsity or between protected speech and defamation is often a fine one. To the extent that material issues of fact remain and the question of the Article's defamatory meaning is inextricably linked with the question of the Article's falsity, the Court finds that it is premature to make a finding with respect to the defamatory nature of the Publication as well.

Finally, regarding whether Plaintiffs are public or private figures for the purposes of establishing fault, the Court finds the question to be far from settled, as Plaintiffs would have it. On the one hand, Plaintiffs argue that Leidig "is nowhere close to [being in the] league" of a public figure, and on the other, Plaintiffs cite to Leidig's numerous journalistic accomplishments and prizes and to CEN's far-reach. (Compare Memorandum at 16-17 and Reply Memorandum at 9, with Complaint ¶¶ 22-23 and Leidig Decl. ¶¶ 5, 7.) Here, as with falsity and defamation, many factual questions remain, including regarding Plaintiffs' influence and reach, Leidig's book "Buzz Bottom Feeders" potentially written about this controversy, and Plaintiffs' other potential responses

to this litigation. The Court finds that additional discovery on this point, too, is appropriate.

III. ORDER

Accordingly, it is hereby

ORDERED that Michael Leidig's and Central European News' motion for partial summary judgement (Dkt. No. 16) is **DENIED**.

SO ORDERED.

Dated: New York, New York
9 May 2017


VICTOR MARRERO
U.S.D.J.