

MLO v "Younglawyer"
2015 NY Slip Op 30498(U)
March 9, 2015
Sup Ct, Kings County
Docket Number: 506175/2014
Judge: Bernard J. Graham
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: Part 36

Index No. : 506175/2014

Motion Calendar No.

Motion Sequence No.,

MLO,

Plaintiff(s),

-against-

DECISION / ORDER

Present:

Hon. Judge Bernard J. Graham

Supreme Court Justice

“YOUNGLAWYER”, “ANONYMOUS[1]”, “CLINTON”,
“NYCATTORNEY”, “DEEDEE”, “GRACE W.”,
“ANONYMOUS[2]”, “J. AHMEDI”, “STEVE B”,
“MARY1007”, and John Does 1-9, names fictitious
representing the anonymous posters of defamatory content
described herein

Defendant(s).

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion :
Plaintiff's Ex-Parte Motion to allow alternate service of process:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____
Order to Show cause and Affidavits Annexed.....	1-2
Answering Affidavits.....	_____
Replying Affidavits.....	_____
Exhibits.....	_____
Other: <u>Memorandum of Law</u>	3

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

Decision:

Plaintiff, MLO, has submitted an ex-parte motion to this Court for an order granting its application for leave of the Court to authorize alternate service upon certain defendants named above. For the reasons set forth below, the ex-parte motion is denied.

The plaintiff in this proposed action is a law firm, Manchanda Law Offices PLLC (“MLO”). The application for alternative service is made by the plaintiff due to the fact that the defendants, are unknown persons who have made allegedly disparaging and defamatory statements against the plaintiff on certain websites which exist for the purpose of posting anonymous comments. The web-sites are known as “Ripoff Report”, “Liars and CheatersRUs” and “Complaints Board”. According to plaintiff’s counsel, the alleged tortfeasors are able to conceal their identity by using a fictitious name and a non-traceable Internet Protocol (IP) address.

In light of the inability to identify the persons who are posting the allegedly defamatory comments, the plaintiff proposes that it be permitted to serve the defendants by posting the summons and complaints on the applicable websites as “rebuttals” to defendants’ posts.

It is expected by the plaintiff that notice will be given to the defendants because plaintiff believes that the website “will provide notification of the submission of a rebuttal to the author of the original report”. (See Affidavit of Marcus A. Nussbaum, par. 11, in Support of Plaintiff’s Ex-Parte Motion).

Discussion

The Civil Practice Law and Rules (“CPLR”), section 308 (5) allows for service to be made “in such manner as the court, upon motion without notice, directs if service is impracticable under paragraphs one, two and four of this section” (CPLR sec. 308(5)). The plaintiff’s counsel appears to satisfy the portion of CPLR which requires that the traditional forms of service are impracticable. The plaintiff has submitted the affidavit of plaintiff’s counsel which details the efforts taken to identify the names and personal information of the defendants through the use of information subpoenas served on the relevant websites. In response to the third party subpoena served upon the website “www.RipoffReport.com”, the plaintiff was given information that the comments were submitted to the website “using fictitious names and non-traceable internet protocol addresses”. (See Nussbaum Affidavit, par. 10, in support of the Ex-Parte Motion). Plaintiff also details efforts to subpoena websites “www.liarsandcheatersRUs.com” and

“www.complaintsboard.com” but received no responses and learned that the owners of those websites are not located in the United States.

The plaintiff’s request to post the pleadings as a rebuttal on an anonymous website is a substantially different method of service from those cases cited by the plaintiff which have authorized internet service as an acceptable form of alternative service. In cases in which courts have concluded that emailing a copy of the pleadings is allowable, the relationship between the parties has been that there had been prior email communication between the parties and that the name and address (or last known address) of the defendant was known and verifiable (see Rio Props Inc. v. Rio Int’l Interlink, 284 F3d 1007 (9th Cir. 2002); Snyder v. Alternate Energy Inc., et al., 19 Misc. 3d 954 (Civ. Ct. NYCo. 2008).

In a case relied upon by the plaintiff, the court allowed service of process in the form of email to the proposed defendant but it was shown that the defendant is the husband of the plaintiff and he had communicated by email with the plaintiff. The defendant was residing in Saudi Arabia and service by traditional methods was found to be impossible. (Hollow v. Hollow, 193 Misc. 2d 691 (Sup.Ct. Oswego Co. 2002). The Hollow case is clearly distinguishable as the parties were known to each other and they had a history of email communication which is clearly not the case in the instant matter.

If the parties do not have a history of communication with each other by email a court has rejected service by use of the internet (see Ehrenfeld v. Khalid Salim A Bin Mahfouz, 2005 U.S. Dist. Lexis 4741 [SD 2005]); or if an email address which was provided in the past is not shown to be valid currently, then the application for email service was denied (In Re Application of Citigroup Global Markets, Inc. v. Stavros Ocar CID, et al., 2013 NY Slip Op 31546 (U) [Sup. Ct. NY Co. 2013]).

It is undeniable that the relationship between MLO and the named defendants does not involve direct email communication to identifiable email addresses. Furthermore, the identity of the defendants is unknown and the messages are posted under anonymous names. There is very little assurance that the pleadings posted on these anonymous websites would be service on the defendants “reasonably calculated to give them notice of the action” (see Dobkin v. Chapman, 21 NY2d 490 [1968]). It is also apparent to this Court that there would never be a valid remedy available to the plaintiff from the proposed lawsuit (as it stands currently) simply because the

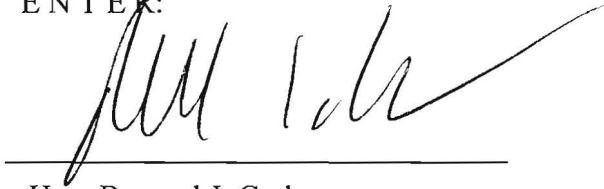
identity of the defendants is not known. In this instance, the obtaining of monetary relief is virtually impossible and the possibility of injunctive relief is meaningless if the messages can easily be posted using any fictitious name.

The Court is sympathetic to the lack of viable methods to challenge the alleged defamation in this instance but, due to the specific nature of the websites at issue here, simply posting pleadings as a rebuttal does not conform to New York law.

This shall constitute the decision and order of this Court.

Dated: March 9, 2015

ENTER:



Hon. Bernard J. Graham



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