

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1507

CA 09-01377

PRESENT: HURLBUTT, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ.

MASSA CONSTRUCTION, INC., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

GEORGE M. BUNK, P.E., P.C., AND GEORGE M. BUNK,
INDIVIDUALLY, DEFENDANTS-RESPONDENTS.

LINDENFELD LAW FIRM, P.C., CAZENOVIA (HARRIS LINDENFELD OF COUNSEL),
FOR PLAINTIFF-APPELLANT.

THOMAS P. HUGHES, NEW HARTFORD, FOR DEFENDANTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Ontario County (William F. Kocher, A.J.), entered December 23, 2008. The judgment granted the motion of defendants for summary judgment and dismissed the amended complaint.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by denying the motion in part and reinstating the first cause of action and as modified the judgment is affirmed without costs.

Memorandum: Plaintiff commenced this action alleging that defendants tortiously interfered with its agreement with the New York State Thruway Authority and made defamatory statements concerning both plaintiff's competence to perform and actual performance of the agreement, thereby damaging plaintiff's reputation. We conclude that Supreme Court properly granted that part of defendants' motion for summary judgment dismissing the defamation cause of action in the amended complaint based on plaintiff's failure to comply with the pleading requirements set forth in CPLR 3016 (a), i.e., plaintiff's failure to set forth in the amended complaint the time, place and manner of the allegedly defamatory communications (see *Dillon v City of New York*, 261 AD2d 34, 40). "[M]erely paraphrasing [the allegedly defamatory] statements" and failing to include the entire statement or publication requires dismissal of that cause of action (*Scalise v Herkimer, Fulton, Hamilton & Otsego County BOCES*, 16 AD3d 1059, 1060; see *Keeler v Galaxy Communications, LP*, 39 AD3d 1202).

We agree with plaintiff, however, that the court erred in granting that part of defendants' motion for summary judgment dismissing the cause of action for tortious interference with contract. Although defendants met their initial burden, plaintiff raised triable issues of fact whether defendants acted in bad faith

and committed "independent torts or predatory acts directed at" plaintiff for their own pecuniary gain (*BIB Constr. Co. v City of Poughkeepsie*, 204 AD2d 947, 948; *cf. First Am. Commercial Bancorp, Inc. v Saatchi & Saatchi Rowland, Inc.*, 55 AD3d 1264, 1266-1267, lv denied in part and dismissed in part 12 NY3d 829). We therefore modify the judgment accordingly.

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court