SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C. PART 8

MARY E. DAVIS

INDEX NO. 151757/2021

MOT. DATE

- v -

JOYCE F. BROWN et al.

MOT. SEQ. NO. 001

The following papers were read on this motion to/for _____

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits NYSCEF DOC No(s). _____
Notice of Cross-Motion/Answering Affidavits — Exhibits NYSCEF DOC No(s). _____
Replying Affidavits NYSCEF DOC No(s). _____

Plaintiff is the former Dean of defendant Fashion Institute of Technology's ("FIT") School of Graduate Studies. Plaintiff is suing FIT and its president, defendant Joyce Brown, for defamation. The defamation is allegedly contained in a February 21, 2020 Letter to the Community (the "letter") posted by Brown on FIT's website. The letter was issued in response to criticism of the Graduate School's February 7, 2020 Fashion Show specifically with respect to the racial insensitivity of accessories used by one of the designers. Eight days after the show, the New York Post reported that a Black model refused to wear certain accessories she believed to be racist. According to plaintiff, "[t]his cricitism amplified the long simmering complaints of systemic racism at FIT under Dr. Brown's leadership". She claims that the letter was Brown's attempt to defect criticism of her own leadership failures at FIT. Ultimately, on November 10, 2020, FIT fired plaintiff.

Defendants now move to dismiss plaintiff's complaint containing causes of action for defamation *per se* and defamation by implication (CPLR § 3211[a][1] and [7]). They argue that the letter is constitutionally protected speech and that plaintiff has otherwise failed to allege a *prima facie* cause of action. Plaintiff opposes the motion. She contends that she has stated claims for defamation *per se* and by implication, that the letter as a whole could not be perceived by an average reader as mere expression of opinion, and at a minimum, the letter is mixed opinion.

On a motion to dismiss pursuant to CPLR § 3211, the pleading is to be afforded a liberal construction (*Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]). The court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*id.* citing *Morone v. Morone*, 50 NY2d 481 [1980]; *Rovello v. Orofino Realty Co.*, 40 NY2d 633 [1976]).

Under CPLR § 3211(a)(1), "dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Leon v. Martinez, supra* at 88).

Dated: January 6, 2022

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☒ **CASE DISPOSED** ☐ **NON-FINAL DISPOSITION**

2. Check as appropriate: Motion is ☒ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**

3. Check if appropriate: ☐ **SETTLE ORDER** ☐ **SUBMIT ORDER** ☐ **DO NOT POST**

☐ **FIDUCIARY APPOINTMENT** ☐ **REFERENCE**

The portion of the letter which plaintiff alleges is defamatory is as follows:

> To the FIT Community,
>
> Today I am writing to update you on the preliminary steps we have taken and are continuing to take in response to the fallout of the MFA Fashion show on February 7. This moment, in our minds, is not about closing a chapter and letting wounds heal. It is the beginning of accountability. And we cannot expect our community to trust us without a full examination of how this came about.
>
> …
>
> It also appears—based upon information available—that the styling and accessorizing used in the show were provided to [Huang] rather than chosen at his discretion. To us, this indicates that those in charge of and responsible for overseeing the show failed to recognize or anticipate the racist references and cultural insensitivities that were obvious to almost everybody else. That's inexcusable and irresponsible—but also why we are commissioning an independent investigation. …
>
> As a result, we are announcing today that the Dean of the School of Graduate Studies and the Chair of the MFA Fashion Design Department have been placed on administrative leave, pending the conclusion and outcome of the investigation.
>
> Sincerely,
>
> Dr. Joyce F. Brown
> President
> Fashion Institute of Technology

Discussion

Defamation is "the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of her in the minds of right-thinking persons, and to deprive her of their friendly intercourse in society" (*Stepanov v. Dow Jones & Co., Inc.*, 120 AD3d 28 [1st Dept 2014] citing *Foster v. Churchill*, 87 NY2d 744, [1996]). Whether the statements constitute fact or opinion is a question of law for the court to decide (*Silsdorf v. Levine*, 59 NY2d 8 [1983] *cert denied* 464 US 831).

The elements of a defamation claim are: [1] a false statement; [2] publication of the statement without privilege or authorization to a third party; [3] constituting fault as judged by, at a minimum, a negligence standard; and [4] the statement must either cause special harm or constitute defamation *per se* (*Dillon v. City of New York*, 261 AD2d 34 [1st Dept 1999] citing Restatement of Torts, Second § 558). A defamation claim must be pled with particularity, so that a plaintiff must allege the particular words complained of as well as the time, place and manner of the statement and to whom the statement was made (CPLR 3016[a]; *Dillon*, *supra* at 38).

In evaluating the viability of a defamation claim, the words must be construed in the context of the entire statement before an ordinary audience, and if the statement is not reasonably susceptible to a defamatory meaning, the claim is not actionable (*Silsdorf v. Levine*, 59 NY2d 8 [1983] *cert denied* 464 US 831). "Courts will not strain to find defamation where none exists" (*Dillon, supra* at 38 [internal quotation omitted]).

Defendants' motion to dismiss is granted, as the court finds that the allegedly defamatory letter is not actionable. The context of the letter was to acknowledge criticisms of the fashion show and inform the school community of the actions taken in response to those criticisms. The letter was very carefully

worded, using phrases such as "[i]t also appears—based upon information available" and "[t]o us". An average reader would clearly understand that the letter constituted the opinion of Brown, writing in her capacity as president of FIT, that the use of questionable accessories constituted a failure by "those in charge of and responsible for overseeing the show". It was further Brown/FIT's opinion that this failure was "inexcusable and irresponsible". Plaintiff is free to dispute these opinions in the marketplace of ideas, but not by suing Brown or FIT because of the letter.

In opposition to the motion, plaintiff's counsel argues that the letter "falsely stat[ed] she had failed to apprehend the racist nature of the presentation, characterize[ed] her as inexcusably irresponsible (and thus, by implication, professionally incompetent), and laying at her feet the blame for events in which she played no role and over which she had no control." For the reasons already stated, these are all protected opinions. By way of example, if Brown had said plaintiff was professionally incompetent because she handed the designer the questionable accessories, that could give rise to a defamation claim if false. However, the letter makes no such claim, and an average reader could only understand that those in charge failed to properly oversee the show.

Otherwise, as defense counsel correctly points out, there are only two actual statements of fact contained in the letter: [1] that FIT commissioned an independent investigation; and [2] that the Dean of the School of Graduate Studies and the Chair of the MFA Fashion Design Department had been placed on administrative leave, pending the outcome of the investigation. Neither fact is false and therefore neither can constitute defamation.

CONCLUSION

Accordingly, it is hereby

ORDERED that defendants' motion to dismiss is granted, the complaint is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision and Order and Judgment of the court.

Dated: January 6, 2022
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.