

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

PRESENT:	<u>HON. RICHARD G. LATIN</u>	PART	46M
	<i>Justice</i>		
-----X		INDEX NO.	<u>160562/2022</u>
SCOTT STRINGER,		MOTION DATE	<u>03/07/2023, 08/30/2024</u>
Plaintiff,		MOTION SEQ. NO.	<u>001 002</u>
- v -			
JEAN KIM,		DECISION + ORDER ON MOTION	
Defendant.			

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 57, 58, 59, 60, 61, 62 were read on this motion to/for DISMISSAL.

This is a defamation matter, involving sexual assault allegations made by, now, pro se defendant Jean Kim (“Defendant”) against plaintiff Scott Stringer (“Plaintiff”). By order dated April 25, 2024, the First Department reversed and remanded this Court’s decision on Defendant’s first motion to dismiss, for a determination of the branch of Defendant’s first motion seeking dismissal pursuant to CPLR 3211(g) (*see* NYSCEF Doc. No. 47). Defendant filed a second motion to dismiss pursuant to CPLR 3211(a)(5) and (g) on August 26, 2024 (*see* NYSCEF Doc. No. 57).

As an initial matter, Defendant’s second motion to dismiss is denied. To the extent that Defendant’s second motion appears to be a renewed motion to dismiss, pursuant to CPLR 2221, such motion is improper at this juncture as the CPLR 3211(g) branch of the first motion has not been decided. With respect to Defendant’s renewed CPLR 3211(a)(5) argument, Defendant has failed to provide a reasonable justification for not presenting such facts on the prior motion (*see* CPLR 2221[e][2]). As such, Defendant’s second motion to dismiss is denied.

The CPLR 3211(g) branch of Defendant's first motion is decided as follows:

CPLR 3211(g) applies to “strategic lawsuits against public participation”, or SLAPP suits. A motion to dismiss pursuant to CPLR 3211(g) shall be granted where the moving party demonstrates that the claim involves “public petition and participation”, as defined in Civil Rights Law § 76-a(1)(A), unless the responding party shows that the “cause of action has a substantial basis in law or is supported by a substantial argument of an extension, modification or reversal of existing law” (CPLR 3211[g][1]; *see also 161 Ludlow Food, LLC v L.E.S. Dwellers, Inc.*, 176 AD3d 434 [1st Dept 2019]). Here, neither party disputes that the matter involves public petition and participation and that CPLR 3211(g) is implicated (*see* NYCEF Doc. No. 17 at 15; NYCEF Doc. No. 24 at 8). Therefore, the burden shifts to the Plaintiff to show that their defamation claim has a substantial basis in law.

The “substantial basis” standard is met by “such relevant proof as a reasonable mind may accept to support a conclusion or ultimate fact” (*Smartmatic USA Corp. v Fox Corp.*, 213 AD3d 512, 512 [1st Dept 2023], quoting *Golby v N & P Engrs. & Land Surveyor, PLLC*, 185 AD3d 792, 793–794 [2nd Dept 2020]). “[A] court reviewing the sufficiency of a pleading under CPLR 3211(g) must look beyond the face of the pleadings to determine whether the claim alleged is supported by substantial evidence” (*Reeves v Associated Newspapers, Ltd.*, 2024 NY Slip Op 04286 [1st Dept Aug. 22, 2024], citing *Castle Vil. Owners Corp. v Greater N.Y. Mut. Ins. Co.*, 58 AD3d 178, 183 [1st Dept 2008]).

Defamation is the “[m]aking of a false statement that tends to expose a person to contempt, hatred, ridicule, aversion or disgrace” (*Thomas H. v Paul B.*, 18 NY3d 580, 584 [2012]). To state a claim for defamation, the plaintiff must allege (1) a false statement that is (2) published to a third party without privilege or authorization (3) constituting fault as judged by, at minimum, a


negligence standard and that (4) causes special harm, unless the statement constitutes defamation per se (*Stepanov v Dow Jones & Co.*, 120 AD3d 28, 34 [1st Dept 2014]; *Frechtman v Gutterman*, 115 AD3d 102, 104 [1st Dept 2014]). A defamation cause of action will survive a motion to dismiss under CPLR 3211(g) if the complaint sufficiently alleges factual detail to support the conclusion that defamation has occurred (*see Smartmatic*, 213 AD3d at 512). Additionally, the anti-SLAPP statutes requires that plaintiff establish, by “clear and convincing” evidence, that the alleged defamatory statement was made with actual malice, meaning “with knowledge of falsity or with reckless disregard of whether it was false” (*see Civil Rights Law § 76-a[2]*). However, plaintiff is not required to establish actual malice by “clear and convincing” evidence at a pre-answer motion to dismiss (*see Zeitlin v Cohan*, 220 AD3d 631, 632 [1st Dept 2023]).

Plaintiff has adequately plead a substantial basis for his claim of defamation. Plaintiff alleges that, on April 28, 2021, Defendant held a press conference in which she falsely accused plaintiff of sexually assaulting her 20 years earlier, while she worked for Plaintiff’s campaign (NYSCEF Doc. No. 1 at 5-6). Defendant also allegedly stated that Plaintiff groped her and put his hands down her pants without her consent (*id.*). Plaintiff further alleges that Defendant repeated these accusations to the press and on social media throughout 2021 and that the accusations were repeated by Congresswoman Maloney in August 2022 (*id.* at 6-9). These statements, if false, are defamatory per se (*see Lindell v Mail Media Inc.*, 575 F Supp 3d 479, 486 [SDNY 2021] [“New York courts require a publication to impute serious sexual misconduct to be defamatory per se” (internal quotation marks omitted)]; *see also Rejent v Liberation Publications, Inc.*, 197 AD2d 240, 245 [1st Dept 1994] [““One who publishes a slander that imputes serious sexual misconduct to another is subject to liability to the other without proof of special harm”” (quoting Restatement (Second) of Torts § 574)]).

Plaintiff has also adequately pled a substantial basis for actual malice. Plaintiff alleges Defendant engaged in a campaign to ruin his political career after he declined to give her a position in his campaign, and she went to work for his opponent (NYSCEF Doc. No. 1 at 4). Plaintiff further alleges that, despite the alleged sexual assault having occurred 20 years earlier, Defendant first raised her allegations during Plaintiff’s campaign for mayor, when Plaintiff was gaining momentum in his campaign and the allegations would be widely circulated (*id.* at 5) The defamatory statements were then repeated to the press by Congresswoman Maloney on August 20, 2022, shortly after Defendant attended a campaign event with Maloney, who was running against defendant’s mentor (*id.* at 9). Thus, for the purposes of the instant motion, Plaintiff has shown a substantial basis in the law for actual malice (*see Celle v Filipino Reporter Enterprises Inc.*, 209 F3d 163, 183 [2d Cir 2000] [“Evidence of ill will combined with other circumstantial evidence indicating that the defendant acted with reckless disregard of the truth or falsity of a defamatory statement may also support a finding of actual malice”]).

Accordingly, Defendant’s motions to dismiss pursuant to CPLR 3211 are denied.

This constitutes the decision and order of the Court.

9/9/2024			
DATE			RICHARD G. LATIN, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE