

PRESENT

WJD
AM '6

Hon. **WILLIAM J. DAVIS**

Justice.

(E)

Landmark Education Corp.

— against —

Condé Nast Publications, Inc.

INDEX NUMBER 119819 RB

MOTION DATE MAR 15 1994

MOTION SEQ. NO. 001

~~Trial~~ CAL. NO. 124

The following papers numbered 1 to _____ read on this motion to _____

PAPERS NUMBERED

Notice of Motion/Order to Show Cause - Affidavits - Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Upon the foregoing papers it is ordered that this motion _____

~~Motion is decided in accordance with
accompanying memorandum decision.~~

SUPREME COURT
STATE OF NEW YORK
RECEIVED
JUL - 1 1994
I.A.S. MOTION
SUPPORT OFFICE

FILED
JUL 7 1994
COUNTY CLERK'S OFFICE
NEW YORK

Dated JUN 29 1994

WILLIAM J. DAVIS J.S.C.

SUPREME COURT : NEW YORK COUNTY
IAS : PART 3
----- X
LANDMARK EDUCATION CORPORATION,

Plaintiff,

-against-

Index No.
114814/93

THE CONDE NAST PUBLICATION, INC.
d/b/a SELF MAGAZINE, ADVANCE MAGAZINE
PUBLISHERS, INC. d/b/a SELF MAGAZINE,
and DIRK MATHISON,

Defendant.

----- X
WILLIAM J. DAVIS, J:

Defendants move for an order pursuant to CPLR 3212 granting summary judgment in their favor and dismissing the complaint in its entirety.

Plaintiff Landmark Education Corporation ("Landmark") is an employee owned, for profit corporation engaged in the business of making education programs available to the general public and corporations, on subjects including communication, time management and productivity. Its basic program is "The Forum" a three day one evening seminar which requires payment of \$290.00 for the four sessions. Participants in the Forum may and are urged to take additional seminars given by Landmark. Participants are also encouraged to recruit new participants for the program. This program is reported to have evolved from EST and was originally given by Werner Erhard and Associates whose employees bought the corporation and renamed it Landmark in 1991. Plaintiff asserts it was defamed when "The Forum" was listed as a cult

in an article appearing in the February 1993 edition of Self magazine.

Defendants are Dirk Mathison, a freelance writer and author of the alleged defamatory article, Advance Magazine Publications, Inc., d/b/a Self Magazine and the Conde Nast Publications, Inc., d/b/a Self magazine. Defendant Conde Nast Publication, Inc., is a division of Advance Magazine Publications, Inc.

The article was titled "White Collar Cults: they want your mind". On the first full page in bold eye-catching text the caption continues "and your money and six of your friends. A look at the new, white collar world of cults where 'personal growth' means brainwashing." Mathison uses the definition of cult as given by the director of the International Cult Education Program who states "we define it as a group that, one, uses coercive pressure and deception to get people to join in and, two, uses mind manipulation techniques without the consent or knowledge of the participants".

Defendant Mathison as a stylistic tool begins the article by describing the thoughts and actions of a participant in the initial sessions of an unidentified, "white collar cults". He continues by providing a definition of cult, identification of the alleged cults, their founders and leaders interspersed with additional first hand experience of

the participant as she apparently goes through a weekend seminar seemingly quite similar to "the Forum".

The article refers to the "The Forum" only in one paragraph as follows:

In 1991 after Erhard was publicly charged with sexual and mental abuse by his daughter on 60 Minutes, he filed suit against CBS. He has moved to Cost Rica, but the Forum (a toned down reincarnation of EST) continues to draw thousands of followers.

The article further advised that Erhard founded "EST, the mass movement that talked about 'getting it' and most famously, wouldn't let enrolles go to the bathroom for hours". A sidebar to the article entitled "America's most-wanted cults" specifically identifies the Forum in a list of nine alleged cults. The introduction to the sidebar identifies the sources for the cult list as the American Family Foundation, the Commission of Cults and Missionaries and the Cult Awareness Network who are referred to as leading cult awareness organizations.

Plaintiff in its complaint alleges that in the article it is defamed in the inclusion of its program as a cult and by the combination of individual statements and juxtaposition of words and statements as to cults. The article plaintiff claims states Landmark is among "American most wanted cults", and falsely alleges, inter alia, that Landmark (a) is a "cult" which (b) uses "brainwashing" and

other "mind control techniques" (c) practices "manipulative recruitment" (d) causes "psychological and emotional damage" to participants, (e) engages in "fraud and deceit in fund-raising" (f) harasses its critics and their families as well as former followers, and (g) cuts participants off from family and friends.

Defendants deny the allegations in their answer and assert herein that summary judgment is warranted in their favor because as a matter of law each of the statements complained of is (1) substantially true, (2) non-actionable opinion, and/or (3) not "of and concerning" plaintiff.

"To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212 subd [b]) and he must do so by tender or evidentiary proof in admissible form." Friends of Animals v. Associated Fur Mfrs., 46 NY2d 1065, 1067. To defeat the motion defendant must "show facts sufficient to require a trial of any issue of fact (CPLR § 3212 subd [b])." Id

Any writing which "tends to expose a person to hatred . . . or to induce an evil or unsavory opinion of him . . . [or] which tends to disparage a person in the way of his office, profession or trade "is libelous per se" (New Testament Missionary Fellowship v. E.P. Dutton & Co., Inc., 112 AD2d 55, 57 citing Tracy v. Newsday Inc., 5 NY2d 134, 135-136).

The interspersed facts and opinions throughout the article herein concerning cults "tars all the groups covered by the [article] with the same brush with language that appears to be libelous per se as it addresses the office, profession or trade of plaintiff". (Id) Thus, the Court finds the article is "of and concerning" plaintiff.

Determining whether a defamatory statement may serve as the predicate for an action in damages depends on balancing the First Amendment protection for media defendants and protection for individual reputation. Immuno AG v. Moor-Jankowski (77 NY2d 235). In Immuno AG the New York State Court of Appeals in applying rules set forth by the U.S. Supreme Court in Milkovich v. Lorain Journal Co. 497 US 1 determined that "except for special situations of loose, figurative, hyperbolic language, statements that contain or imply assertions of provably false facts will likely be actionable". Immuno AG v. Moor-Jankowski 77 NY2d 235, 245.

A libel plaintiff has the burden of showing the falsity of factual assertions Id. Whether there are factual assertions in the article entails an examination of the challenged statements to determine.

- 1) Whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are

such as to "'signal . . . readers
or listeners that what is being
read or heard is likely to be
opinion not fact'"

Gross v. New York Times 82 NY2d 146, 153.

Plaintiff specifically asserts that the qualities attributable to the cults as defined and described by the article are not its characteristics. Defendants annex and point to numerous prior media articles allegedly suggesting "the Forum" is a cult, to justify their conclusion that plaintiff is a cult. Plaintiff on the other hand points to its own manuals and procedures and submits letters of Forum participants and scholars to support its claim it does not practice the "cult like" actions described in the article.

In applying the previously outlined test it cannot be questioned that cult has a precise meaning which is readily understood as it was defined in the article. The statements made are capable of being proven true or false as "the Forum's" procedures can be matched against the defined qualities of cults as described in the article, any consistency will establish the claimed truth or falsity.

Finally, the article appears to be asserting facts given the documentation of the experience of a participant and the numerous quotes and information provided by those who on one hand assert the groups are cults and those who assert they are merely vehicles for "human potential".

As such the article appears to be one of mixed opinions and fact and is actionable. Given the voluminous

supporting documentation by each side concerning whether "the Forum" is a cult this Court believes it is for a jury to determine whether the words directed generally to the "cults" covered in the [article] would lead the reasonable reader to believe, in the context of the whole [article] that the plaintiffs had indulged in these practices. New Testament Fellowship v. E.P. Dutton & Co. supra

The motion for summary judgment is denied.

This constitutes the decision and order of this Court.

DATED: New York, New York
June 29th 1994



WILLIAM J. DAVIS

J.S.C.

FILED
JUL 7 1994
COUNTY CLERK OFFICE
NEW YORK