

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 15

**FONTAINE SHERIDAN and DONALD
SHERIDAN,**

Plaintiffs,

-against-

**CINDY CARTER, DOMESTIC WORKERS
UNITED and STAND UP MINISTRY,**

Defendants.

-----X

INDEX NO. 18320/05

**MOTION DATE: 6/09/06
SEQUENCE NO. 03,04,05**

2-Notices of Motion, Affs. & Exs.....	<u>1-2</u>
Notice of Cross-Motion, Affs. & Exs.....	<u>3</u>
Affirmation In Opposition & Exs.....	<u>4-5</u>
Reply Affirmation & Exs.....	<u>6</u>
Defendant's Memoranda of Law.....	<u>7-8</u>

Upon the foregoing papers, it is ordered that the motion by defendant Domestic Workers United for an order dismissing the Complaint against them pursuant to CPLR 3211 (a)(7) is granted; the separate motion by defendant Cindy Carter for an order granting summary judgment dismissing the Complaint against her is granted; and plaintiffs' cross-motion for an order granting leave to amend the Verified Complaint to add additional allegations is denied.

In this action plaintiffs seek damages from all defendants for defamation per se and a permanent injunction against defendants further slandering plaintiffs' names and characters.

Plaintiffs in January 2003 hired defendant Cindy Carter through an employment agency to work in their home as a child care provider for plaintiffs' three children. In 2005, the relationship deteriorated and a domestic dispute resulted in plaintiff Fontaine Sheridan's plea of guilty to a criminal harassment charge (PL§240.26(1)). After the criminal case was concluded, defendant Domestic Workers United on behalf of defendant Cindy Carter wrote to plaintiffs with demands for an apology and money in connection with the acrimonious employer-employee relationship. Upon plaintiffs' rejection of the demands, defendant Domestic Workers United contacted newspapers which resulted in at least 5 newspaper articles with photographs of plaintiffs and their children. The newspaper articles described the alleged mistreatment of defendant Cindy Carter by plaintiffs during her employment. Subsequent to the publication of these articles, defendant Stand Up Ministry along with defendant Domestic Workers United began protesting and picketing in front of plaintiff's home and plaintiff Donald Sheridan's place of business in Manhattan.

Domestic Workers United seeks an order dismissing the two causes of action against them: (1) defamation from distribution of flyers outside Donald Sheridan's place of business on November 10, 2005; and (2) slander during demonstration outside Donald Sheridan's office building and near plaintiffs' home beginning in October of 2005.

The Court has examined the Complaint in a manner consistent with uncontested law. "To determine whether a pleading is sufficient to withstand a challenge under CPLR 3211[a][7], the court must consider whether the pleading,

taken as a whole, fails to state a cause of action. Looseness, verbosity and excursiveness, must be overlooked on such motion if any cause of action can be spelled out from the four corners of the pleading" (*Foley v. D'Agostino*, 21 AD2d 60 (1st Dept., 1964)).

With respect to considering plaintiff's evidentiary exhibits in the determination of this motion, the Court is mindful of the Second Department's position on this issue. "When the moving party offers evidentiary material, the court is required to determine whether the proponent of the pleading has a cause of action, not whether she has stated one" (*Meyer v. Guinta*, 262 AD2d 463, 464 (2nd Dept., 1999)).

It is uncontested that speech in constitutionally protected and privileged when the subject constitutes a public concern.

Movant contends that this issue is of public concern and plaintiffs must demonstrate actual malice in the Complaint in order to overcome the constitutional threshold and recover damages (*Huggins v. Moore*, 94 NY2d 296 (1999)).

The question before the Court is whether an issue of public concern is presented in this case. There are no empirical rules for determining when public statements involve matter of genuine public concern. It could be argued that movant's allocation of resources consistent with its mission statement is an indication that the employment conditions of domestic workers is a public interest. However, a matter is not of public concern if it involves an issue directed at a limited audience (*Chapadeau v. Utica Observer-Dispatch, Inc.*, 38 NY 196 (1975)).

Under the circumstances, it is undisputed that the events that precipitated defendants' activities are a matter of public record. The criminal charges and subsequent plea were "current event" news items in print and on television independent of defendant Domestic Workers United efforts. It is not unreasonable to

find the underlying issues to be of genuine public concern. Hence, the Complaint must articulate malice or reckless disregard for the truth with particularity (CPLR 3126(a)).

With respect to the motion by defendant Cindy Carter for an order granting summary judgment dismissing the Complaint against her, the Complaint includes a cause of action in defamation and libel by defendant Cindy Carter against both plaintiffs.

Most of the specific acts and words presented in the Complaint occurred after plaintiff Fontaine Sheridan's guilty plea in the criminal case that precipitated this action. Defendant Cindy Carter was employed by both plaintiffs thus, both are reasonably subject of public comment and concern. It is undisputed that defamation is the making of a false statement which tends to subject plaintiffs to public ridicule and induce an evil opinion of them by right thinking people (*Rinaldi v. Holt, Rinehart & Winston*, 42 NY2d 369 (1977)). There is a recognized qualified privilege where the communication is made to others with a common interest in the subject matter (*Park Knoll Assocs. v. Schmidt*, 59 NY2d 205 (1983)). To overcome this defense plaintiffs would have to show the statements were maliciously made (*Mihlovan v. Grozavu*, 72 NY2d 506 (1988)).

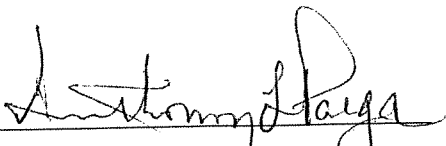
The Complaint and opposition to this motion contain conclusory statements as to the truth of defendants' statements and defendants' intent in their publication, thus defendant Cindy Carter's motion is granted.

Plaintiffs' cross-motion for an order granting leave to amend the Verified Complaint to add additional allegations is denied. The proposed Amended Verified Complaint adds publications by Channel 12, Channel 2 and other television transmissions to the first cause of action against defendant Cindy Carter. The

proposed pleading does not meet the aforementioned standards to compel the Court to grant the requested relief.

The Court notes that it is not clear as to the status of Stand Up Ministry in this litigation. The plaintiff and the defendant, Stand Up Ministry, are directed to appear for the conference scheduled for August 1, 2006.

Dated: June 30, 2006.



Anthony L. Parga, J.S.C.