

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

PRESENT: HON. PHILLIP HOM PART IAS MOTION 2

Justice

-----X

MEGAN GRIFFITH,

Plaintiff,

- v -

THE DAILY BEAST, NOAH SHACHTMAN, MAXWELL TANI

Defendant.

-----X

INDEX NO. 100114/2020

MOTION DATE March 10, 2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ORDERED that the motion in denied in its entirety.

Plaintiff, a former magazine editor alleges in her Amended Complaint that Defendants defamed her in a January 23, 2019 article in The Daily Beast. The alleged defamatory article described her as an individual who frequently made racist, homophobic and transphobic comments in the workplace and that she was an incompetent journalist and supervisor. The article was written by Defendant Maxwell Tani, a media reporter and it was published in The Daily Beast, an online media company. Defendant Noah Shachtman is the editor-in-chief of The Daily Beast.

Defendants move under CPLR §§3211(a) (1) and (a) (7) to dismiss the First Amended Complaint. Defendants argue that Plaintiff “has not pled and will never be able to show that Defendants were grossly irresponsible in publishing the article.” They also argue that the article is “substantially true” (E23 at 8). Plaintiff opposes the motion stating that she has sufficiently pled facts which establish that the statements at issue were essentially false and that they had a

defamatory meaning. Moreover, she argues that the first amended complaint contains sufficient facts to establish that Defendants acted with gross irresponsibility (E 35 at 11-12).

On a motion to dismiss the complaint the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Wiesen v New York Univ.* 304 AD2d 459, 460 [1st Dept 2003]). In order to establish a cause of action for defamation, a plaintiff must establish a false statement of fact concerning the plaintiff which was published to a third party that either causes special harm to the plaintiff or is defamatory *per se* and which was published with constitutional malice, gross irresponsibility or negligence (*Chapadeau v Utica Observer-Dispatch, Inc.*, 38 NY2d 196, 198-199 [1975]). Plaintiff claims that due to Defendants’ defamatory statements she lost her job and has been shunned by the industry.

Under §3211(a)(7), the court’s role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). While a court may dismiss a complaint if documentary proof disproves an essential element of the complaint, this court finds that the documentary evidence submitted by the Defendants do not relate to the First Amended Complaint and are not “incorporated by reference” into the first amended complaint as Defendants allege. This Court finds that Plaintiff has sufficiently pled a cause of action for defamation.

In accordance with the foregoing, the motion is denied in all respects. Defendants shall serve and file their answer within 30 days from today.

