

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 32

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In the Matter of the Application Pursuant to CPLR Sec.3102:  
WOODBIDGE STRUCTURED FUNDING, LLC,

Index No. 100336/13

Petitioner, :

- against - :

PISSED CONSUMER AND PISSEDCONSUMER.COM :  
and OPINION CORP. and MICHAEL PODOLSKY,

Respondents. :

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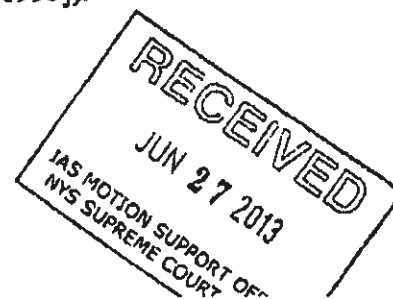
CAROL E. HUFF, J.:

In this special proceeding, petitioner seeks a pre-action order, pursuant to CPLR 3102(c) compelling respondents to disclose the identity of the person or persons who posted allegedly defamatory statements on respondent's weblog or blog.

CPLR 3102(c) provides that disclosure "to aid in bringing an action" may be obtained by court order. "Pre-action disclosure is available only upon a showing that the petitioner has a meritorious cause of action and that the information sought is material and necessary to an actionable wrong." Thomas v MasterCard Advisors, LLC, 74 AD3d 464, 465 (1<sup>st</sup> Dept 2010).

Defamation is defined as the making of a false statement of fact which "tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace" (Rinaldi v Holt, Rinehart & Winston, 42 NY2d 369, 379 [1977], cert. denied 434 US 969 [1977] [citations omitted] ). "Since falsity is a sine qua non of a libel claim and since only assertions of fact are capable of being proven false, . . . a libel action cannot be maintained unless it is premised on published assertions of fact," rather than on assertions of opinion (Brian v Richardson, 87 NY2d 46, 51 [1995]).

Sandals Resorts Intl. Ltd. v Google, Inc., 86 AD3d 32, 38 (1<sup>st</sup> Dept 2011).



Petitioner, whose trade involves private finance and structured settlements, complains that the person or persons who posted on the site stated that petitioner "Lie[s] To Their Clients!" and "this company will come across as your best friend but the moment that you sign the settlement agreement with them they will forget about you and even more importantly they will forget all the promises they made to you. These people will tell you whatever you want to hear so that you sign on the dotted line."

In Sandals, supra, the First Department denied pre-action disclosure aimed at revealing the identity of an internet poster of allegedly defamatory material. It found that, even if a cause of action for defamation were otherwise stated, "it is necessary to consider the writing as a whole, as well as the 'over-all context' of the publication, to determine 'whether the reasonable reader would have believed that the challenged statements were conveying facts about the libel plaintiff.'" Id. at 42 quoting Immuno AG v Moor-Jankowski, 77 NY2d 235, 254 (1991). "[C]ourts must consider the content of the communication as a whole, as well as its tone and apparent purpose." Id., quoting Mann v Abel, 10 NY3d 271, 276 (2008), cert. denied 555 US 1170 (2009).

The Sandals court goes on to discuss the nature of internet postings:

The culture of Internet communications, as distinct from that of print media such as newspapers and magazines, has been characterized as encouraging a "freewheeling, anything-goes writing style" (see Cheverud, Comment, Cohen v Google, Inc., 55 NYL Sch L Rev 333, 335 [2010/11]).

"It is . . . imperative that courts learn to view libel allegations within the unique context of the Internet. In determining whether a plaintiff's complaint includes a published 'false and defamatory statement concerning another,' commentators have argued that the defamatory import of the communication must be viewed in light of the fact that bulletin boards and chat rooms 'are often the

repository of a wide range of casual, emotive, and imprecise speech,' and that the online 'recipients of [offensive] statements do not necessarily attribute the same level of credence to the statements [that] they would accord to statements made in other contexts.' Because the context of a statement impacts its potentially defamatory import, it is necessary to view allegedly defamatory statements published on the Internet within the broader framework on which they appear, taking into account both the tenor of the chat room or message board in which they are posted, and the language of the statements. The low barrier to speaking online allows anyone with an Internet connection to publish his thoughts, free from the editorial constraints that serve as gatekeepers for most traditional media of disseminating information. Often, this results in speech characterized by grammatical and spelling errors, the use of slang, and, in many instances, an overall lack of coherence" (O'Brien, Note, Putting a Face to a (Screen) Name: The First Amendment Implications of Compelling ISPs to Reveal the Identities of Anonymous Internet Speakers in Online Defamation Cases, 70 Fordham L. Rev 2745, 2774-2775 [2002] [citations omitted]).

The observation that readers give less credence to allegedly defamatory remarks published on the Internet than to similar remarks made in other contexts, specifically addresses posted remarks on message boards and in chat rooms. However, it is equally valid for anonymous Web logs, known as blogs. . . . Indeed, the anonymity of the e-mail [at issue in Sandals] makes it more likely that a reasonable reader would view its assertions with some skepticism and tend to treat its contents as opinion rather than as fact.

Sandals, *supra*, at 43-44.

In the instant case, there is every indication that a reasonable reader would perceive the postings as opinion. The term "pissed" in the site name, the hyperbolic and emotional language of the postings, the repeated postings of the same comments and the overall appearance of the site would alert any reasonable reader that the information offered is opinion. Consequently, petitioner has not established that it has a "meritorious cause of action" that would justify compelling respondent to reveal the identity of the poster of the blog comments.

Accordingly, it is

**ADJUDGED** that the petition is denied and the proceeding is dismissed.

Dated: **JUN 24 2013**

  
**CAROLE E. HUFF**  
J.S.C.

EA  
6/26/13  
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **CAROL E. HUFF**  
Justice

PART 32

Woodbridge Structured  
-v- Fundings LLC  
Pressed Consumer..

INDEX NO. 100336/13  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 01  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notica of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits \_\_\_\_\_

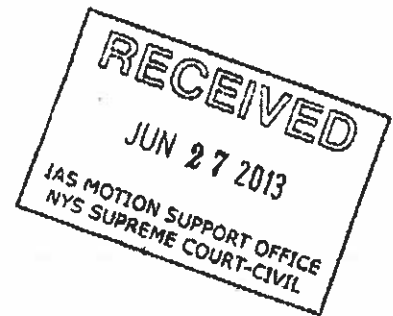
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this \_\_\_\_\_

motion is decided in accordance  
with accompanying memorandum decision



Dated: JUN 24 2013

**CAROL E. HUFF**

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):