

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASHOT EGIAZARYAN, :

Plaintiff, : REPORT AND RECOMMENDATION

-v.- :

11 Civ. 2670 (PKC) (GWG)

PETER ZALMAYEV, :

Defendant. :

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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

Plaintiff Ashot Egiazaryan brought this action for defamation and injurious falsehood against Peter Zalmayev. Zalmayev counterclaimed for defamation and violation of New York Civil Rights Law §§ 70-a and 76-a, which permit a victim of what are commonly called “strategic lawsuits against public participation,” or “SLAPP” suits, to make a claim for attorney’s fees, costs, and damages. All claims and counterclaims have been dismissed except for Zalmayev’s anti-SLAPP counterclaim. Before the Court are the parties’ motions for summary judgment on that counterclaim. For the following reasons, the counterclaim should be dismissed.

I. BACKGROUND

A. Procedural History

Egiazaryan brought this action asserting claims of defamation and injurious falsehood. See Complaint, filed April 19, 2011 (Docket # 1). Zalmayev moved to dismiss Egiazaryan’s complaint for failure to state a claim. See Motion to Dismiss, filed June 21, 2011 (Docket # 15). He also filed counterclaims, alleging that Egiazaryan defamed him and that Egiazaryan’s suit was a SLAPP suit. See Answer and Counterclaim, filed Aug. 5, 2011 (Docket # 26) (“Answer”

or “Counterclaim”). Following a cross-motion by Egiazaryan to dismiss Zalmayev’s counterclaims, Judge Castel dismissed Egiazaryan’s injurious falsehood claim and three of the defamation claims. Egiazaryan v. Zalmayev, 2011 WL 6097136, at *6-9 (S.D.N.Y. Dec. 7, 2011) (“Egiazaryan I”). He granted Egiazaryan’s motion to dismiss Zalmayev’s defamation counterclaim but denied his motion to dismiss the anti-SLAPP counterclaim. Id. at *9, 10-12.

Following this decision, Egiazaryan filed an amended complaint, which we will refer to as “the complaint.” See Amended Complaint, filed Feb. 29, 2012 (Docket # 110) (“Compl.”). The complaint omitted the injurious falsehood claim but asserted the same four defamation claims contained in the original complaint. Id. After Zalmayev moved to dismiss, Judge Castel granted the motion as to all four defamation claims and denied leave to further amend. Egiazaryan v. Zalmayev, 880 F. Supp. 2d 494, 507-13 (S.D.N.Y. 2012) (“Egiazaryan II”). Following this decision, all that remained was Zalmayev’s anti-SLAPP counterclaim. The parties engaged in discovery on the counterclaim. Each side has now moved for summary judgment.¹

¹ See Notice of Motion by Egiazaryan for Summary Judgment, filed Apr. 19, 2013 (Docket # 221); Memorandum of Law in Support of Egiazaryan’s Motion for Summary Judgment, filed Apr. 19, 2013 (Docket # 222) (“Pl. Mem.”); Plaintiff’s Statement of Material Facts Pursuant to Local Rule 56.1, filed Apr. 19, 2013 (Docket # 223); Declaration of Jason T. Cohen in Support of Egiazaryan’s Motion for Summary Judgment, filed Apr. 19, 2013 (Docket # 224) (“Cohen Decl.”); Notice of Cross-Motion by Zalmayev for Summary Judgment, filed June 6, 2013 (Docket # 229); Memorandum of Law in Opposition to Egiazaryan’s Motion for Summary Judgment and Supporting Zalmayev’s Cross-Motion for Summary Judgment, filed June 6, 2013 (Docket # 230) (“Def. Mem.”); Declaration of James P. Golden in Support of Zalmayev’s Opposition and Cross-Motion, filed June 6, 2013 (Docket # 231) (“Golden Decl.”); Zalmayev’s Statement of Material Facts Pursuant to Local Rule 56.1, filed July 3, 2013 (Docket # 232) (“Def. 56.1 Stat.”); Zalmayev’s Response to Egiazaryan’s Rule 56.1 Statement, filed June 3, 2013 (Docket # 233) (“Def. 56.1 Response”); Memorandum of Law in Further Support of Egiazaryan’s Motion for Summary Judgment, filed July 3, 2013 (Docket # 235); Declaration of Jason T. Cohen in Support of Egiazaryan’s Motion for Summary Judgment, filed July 3, 2013 (Docket # 236); Egiazaryan’s Response to Zalmayev’s Rule 56.1 Statement, filed July 3, 2013

B. Facts

The following facts are undisputed unless otherwise noted.

1. Parties

Egiazaryan is a former banker and former member of the Duma, Russia's lower house of parliament. Answer ¶ 4; Def. 56.1 Stat. ¶ 12. He was first elected as a member of the Duma in 1999 and continued in that role until 2010, when he left Russia for the United States, although new elections for Duma members were not held until December 2011. Deposition of Ashot Egiazaryan ("Egiazaryan Dep.") 29, 32 (annexed as Ex. 34 to Golden Decl. and Ex. 44 to Cohen Decl.). Egiazaryan alleges that he has been engaged in a "complex, international legal dispute resulting from a Russian 'corporate raid' orchestrated by Russian Senator and billionaire Suleyman Kerimov to steal [Egiazaryan's] ownership interest in a project to rebuild and develop the landmark Moskva Hotel." Compl. ¶ 16. Egiazaryan also alleges that Kerimov was behind various violent threats leveled against his family and, as a result, he moved to the United States with his family. *Id.* ¶ 23. Once in the United States, Egiazaryan applied for asylum. *See, e.g.*, Order, dated Mar. 14, 2012 (Docket # 112); Transcript of Conference held Apr. 11, 2012, at 2-21 (Docket # 140). However, since his arrival in the United States, Egiazaryan believes he has been the victim of a "black (*i.e.*, negative) public relations campaign . . . designed to . . . undermine his chances of remaining in the United States and force him to return to Russia." Compl. ¶ 27.

(Docket # 237); Memorandum of Law in Further Support of Zalmayev's Cross-Motion for Summary Judgment, filed July 18, 2013 (Docket # 239) ("Def. Reply Mem."); Egiazaryan's Letter Brief in Response to Order of October 8, 2013, filed Oct. 16, 2013 (Docket # 243); Zalmayev's Letter Brief in Response to Order of October 8, 2013, filed Oct. 16, 2013 (Docket # 242); Egiazaryan's Letter Brief in Response to Order of November 4, 2013, filed Nov. 11, 2013 (Docket # 248); Zalmayev's Letter Brief in Response to Order of November 4, 2013 (Docket # 247) ("Def. Nov. 11 Letter").

Zalmayev’s counterclaim states that he is the executive director of the New York-based “Eurasia Democracy Initiative,” which he founded to “promote democracy, the rule of law and tolerance in post-Communist societies and countries in Eastern and Central Europe, the Caucasus and Central Asia.” Counterclaim at 22, ¶ 5. He believes that Egiazaryan fled Russia because the Duma voted to eliminate his legislative immunity and because he was indicted in Moscow. Id. at 28-29, ¶¶ 26, 27, 29. Zalmayev is “opposed to Mr. Egiazaryan’s asylum application and has written and collaborated with others to oppose [his] continued presence in the United States.” Id. at 4, ¶ 18. In furtherance of this effort, Zalmayev has written or drafted several articles and letters urging the United States to deny Egiazaryan asylum, as has been alleged in the complaint. Deposition of Peter Zalmayev (“Zalmayev Dep.”) 157-59; 171-73; 179-80; 183-84; 225-28; 293-95; 418-22; 589-94 (annexed as Ex. 4 to Cohen Decl. and supplemented Oct. 22, 2013 (Docket # 245)); Compl. ¶¶ 32, 36, 38-51.² Zalmayev concedes that he was paid \$100,000 by a person named Andrey Vavilov in connection with these activities, Zalmayev Dep. 277-78; Def. 56.1 Response ¶ 3, and that the objective was to “prevent Egiazaryan from obtaining asylum in the United States,” Def. 56.1 Response ¶¶ 3, 7. More specifically, Zalmayev has admitted that “Andrey Vavilov retained Rinat Akhmetshin, who in turn retained [Zalmayev], to engage in a project the objective of which was to prevent Egiazaryan from obtaining asylum in the United States.” Id. ¶ 8.³ Thus, Zalmayev “received

² Zalmayev uses the word “commentaries” rather than articles. See, e.g., Counterclaim at 9, ¶ 43; Def. 56.1 Response ¶ 9.b. The Court’s use of the term “articles” has no bearing on the resolution of the motion.

³ Egiazaryan’s complaint describes Akhmetshin as the “Washington, D.C.-based director of the International Institute for Economic and Political Research and a paid political consultant and lobbyist.” Compl. ¶ 9.

the money indirectly from Vavilov, who paid Akhmetshin directly.” Id. ¶ 4. Zalmayev paid Leonid Komarovsky, a friend and Boston-based radio host, \$7,000 in connection with this campaign, see Zalmayev Dep. 571-72, and has also retained an individual named Douglas Bloomfield for this purpose, Def. 56.1 Response ¶ 4. Bloomfield testified at his deposition that he was paid \$20,000 for his participation. Deposition of Douglas Bloomfield (annexed as Ex. 3 to Cohen Decl.) 34. Zalmayev has also testified that “from the very beginning of [his and Akhmetshin’s] engagement on this project, it was clear to [him] that Mr. Vavilov was Mr. Akhmetshin’s paid client who had a grievance against Mr. Egiazaryan.” Zalmayev Dep. 127. Zalmayev also conceded that “[t]here was a degree of animosity” held by Vavilov toward Egiazaryan. Id. at 95. Akhmetshin testified at his deposition that “Vavilov hates [Egiazaryan’s] guts.” Deposition of Rinat Akhmetshin (“Akhmetshin Dep.”) 102 (annexed as Ex. 2 to Cohen Decl. and supplemented Oct. 22, 2013 (Docket # 244)). Zalmayev has not personally paid any of the legal fees in this litigation; instead, his legal fees have been paid by Vavilov. See Def. Mem. at 30-31. As of July 2012, Vavilov had already paid approximately \$1,141,441 in legal fees. See Defendant’s Responses to Plaintiff’s Second Set of Interrogatories to Defendant, Response to Interrogatory No. 1, dated Apr. 17, 2012 (annexed as Ex. 5 to Cohen Decl.) (identifying Vavilov as the source of payments to Zalmayev’s lawyers for “legal work concerning this case or Mr. Egiazaryan”); Scanned Check Images from Andrey Vavilov to Zalmayev’s Legal Team (annexed as Ex. 46 to Cohen Decl.). These payments are in addition to the payments made by Vavilov to Akhmetshin and Zalmayev. See id.

2. Conduct Giving Rise to Egiazaryan’s Claims

On March 9, 2011, the Jewish Journal published an article titled “Hiding in Beverly Hills” with Zalmayev listed as the author. See Jewish Journal Article (annexed as Ex. 5 to

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