
First Department Clarifies “Substantial Basis” Standard Under New York’s Anti-SLAPP Statute

New York’s anti-Strategic Lawsuit Against Public Participation (SLAPP) statute aims to protect free speech by providing an accelerated summary dismissal procedure for claims that discourage participation in matters of public interest. Under the statute’s burden-shifting framework, if the defendant can demonstrate that an action against it involves “public petition and participation,” the plaintiff must show that its cause of action has a “substantial basis in law” or face dismissal.¹

In *Reeves v. Associated Newspapers, Ltd.*, 2024 WL 3892069 (N.Y. App. Div. 1st Dep’t Aug. 22, 2024), the New York Appellate Division, First Department clarified that “substantial basis” under the anti-SLAPP statute (1) means “such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact” and (2) is “more exacting” than the general motion to dismiss standard under CPLR 3211(a)(7).² In addition, the First Department opined on amendments made to the statute in 2020 and confirmed that defendants are entitled to mandatory attorneys’ fees under New York Civil Rights Law § 70–a(1)(a) if the plaintiff fails to meet the “substantial basis” threshold.³ *Reeves* solidifies a reading of New York’s anti-SLAPP statute that—in line with the statute’s 2020 amendments—provides defendants with expanded protection against SLAPP suits.

I. Factual and Procedural Background

In July 2019, Associated Newspapers Ltd., doing business as Mail Online and The Daily Mail, published a story about the contentious divorce and custody dispute between Karl Reeves, Chief Executive of Consolidated Elevator Industries, Inc. (“CEI”), and his ex-wife, Julianne Michelle. The article—titled “Seriously, I’ll kill both of them: NY socialite and actress is locked in vicious custody battle with ‘racist ketamine-snorting millionaire’ CEO husband after he accused her of Pornhub fame and threatened to kill her parents”—discussed Reeves’ history of arrests and substance abuse. The article included Reeves’ threatening text messages to Michelle, video footage of Reeves taking drugs, and audio of Reeves using racist and abusive language. The article also included court documents from his criminal proceedings.⁴ In June 2020, Reeves and CEI sued Associated Newspapers and Annetta Konstantinides, the article’s author, in the Supreme Court of New York, New York County, alleging defamation,

¹ CPLR 3211(g)(1).

² *Reeves*, 2024 WL 3892069, at *1, *9.

³ *Id.* at *5.

⁴ *Id.* at *2; see also Annetta Konstantinides, ‘Seriously, I’ll kill both of them’: NY socialite and actress is locked in vicious custody battle with ‘racist, ketamine-snorting’ millionaire CEO husband after he accused her of Pornhub fame and threatened to kill her parents, DAILY MAIL (July 2, 2019), <https://www.dailymail.co.uk/news/article-7054511/New-York-socialite-locked-vicious-custody-battle-CEO-accused-racism-drug-use.html>.

intentional infliction of emotional distress, negligent infliction of emotional distress, tortious interference with contract, tortious interference with prospective business relationships, and prima facie tort.⁵

Defendants moved to dismiss under CPLR 3211(a)(1) and (a)(7), for failure to state a claim, and under CPLR 3211(g), New York's anti-SLAPP statute.⁶ Defendants argued that the action "involv[ed] public petition and participation," triggering CPLR 3211(g)'s application and attorneys' fees, because the case involved a public defamation lawsuit arising from a divorce involving allegations of spousal abuse against a member of a prominent New York family and the resolution of criminal proceedings.⁷ Defendants also argued (1) as to the defamation claim, that the twelve statements at issue were either substantially true based on documentary evidence or were protected as accurate reporting of court proceedings and records under New York Civil Rights Law § 74's fair report privilege and (2) as to the tort claims, that they were without merit and merely "tag along" claims duplicative of the defamation claim.⁸ Plaintiffs asserted that the anti-SLAPP statute did not apply because neither Reeves nor his ex-wife were public figures, and because their divorce and custody disputes were matters of private concern.⁹

In August 2021, the New York Supreme Court (Hon. J.) granted Defendants' motion to dismiss under CPLR 3211(a)(1) and (a)(7), finding that each alleged defamatory statement was non-actionable, and that the tort claims were legally deficient.¹⁰ However, the Court denied Defendants' request for attorneys' fees under the anti-SLAPP statute for reasons including that (1) the Court did not need to reach Defendants' attorneys' fees arguments because it dismissed the complaint pursuant to CPLR 3211(a)(1) and (a)(7) rather than 3211(g); (2) attorneys' fees were not mandatory even if the anti-SLAPP statute applied; and (3) Plaintiffs' action was not frivolous.¹¹ Both sides appealed.

II. The First Department's Decision

On August 22, 2024, the First Department modified the Supreme Court's order, holding that (1) CPLR 3211(g) applied and Defendants' motion to dismiss thereunder should have been granted and (2) Plaintiffs failed to show that their claims had a substantial basis in law, which entitled Defendants to mandatory attorneys' fees.¹² The First Department otherwise affirmed.¹³

First, in determining that the anti-SLAPP statute applied, the First Department explained that, because the 2020 statutory amendments expanded CPLR 3211(g)(1)'s definition of "action involving public petition and

⁵ *Reeves*, 2024 WL 3892069, at *2; *Karl Reeves v. Associated Newspapers*, 2021 N.Y. Misc. LEXIS 11084, at *7–10 (Sup. Ct. Aug. 4, 2021).

⁶ *Reeves*, 2024 WL 3892069, at *3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*; *Reeves*, 2021 N.Y. Misc. LEXIS 11084, at *10–11.

¹¹ *Reeves*, 2024 WL 3892069, at *3; *Reeves*, 2021 N.Y. Misc. LEXIS 11084, at *51–52.

¹² On April 9, 2024, the First Department issued a decision which, while nearly identical to the August 22, 2024 decision, did not include a determination that the allegedly defamatory statements were substantially true based on documentary evidence. See *Reeves v. Associated Newspapers, Ltd.*, 228 A.D.3d 75 (N.Y. App. Div. 1st Dep't 2024), *recalled and vacated*, 2024 WL 3892069. On that basis, on June 6, 2024, Defendants moved to correct the April 9, 2024 decision, see Motion to Correct Decision and Order, *Reeves*, No. 154855/2020 (N.Y. App. Div. 1st Dep't June 6, 2024), NYSCEF No. 52, which the First Department granted the same day it issued the instant decision, see Order Granting Motion to Correct Decision and Order, *Reeves*, No. 154855/2020 (N.Y. App. Div. 1st Dep't Aug. 22, 2024), NYSCEF No. 56.

¹³ The First Department concluded that the trial court properly dismissed Plaintiffs' defamation and tort claims under CPLR 3211(a)(1) and (a)(7) because the allegedly defamatory statements were either privileged under Civil Rights Law § 74 or substantially true, and because the tort claims were without merit and duplicative of the defamation claim. *Reeves*, 2024 WL 3892069, at *3–4.

participation” to encompass “claims based on public communications on matters of public interest”—which New York Civil Rights Law § 76–a(1)(d) defines as “any subject other than a purely private matter”—the anti-SLAPP statute applied to Plaintiffs’ claims.¹⁴ The First Department noted that “public interest” should be “broadly construed” and should “embrace ‘matters of political, social, or other concern to the community,’” including allegations involving domestic violence, judicial proceedings, and criminal conduct.¹⁵

Second, since Defendants demonstrated that CPLR 3211(g)(1) applied, the burden shifted to Plaintiffs to show that their claims had a substantial basis in law. The First Department found that Plaintiffs failed to do so, thus warranting dismissal and triggering mandatory attorneys’ fees under the anti-SLAPP statute’s 2020 amendments.¹⁶

In rendering this conclusion, the First Department provided significant guidance on the substantial basis standard, noting that the term has “no single recognized meaning,” is not defined by the anti-SLAPP statute, and that “[l]egislative history and existing caselaw fail to shed direct light” on its meaning.¹⁷ To interpret the term, the First Department turned to CPLR 3211(h), another provision where the term appears, for guidance. It then adopted the definition set forth in a legislative memorandum concerning the 1996 act that codified CPLR 3211(h), which stated that the “‘substantial basis’ standard is intended to mean such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact. It is intended to be less than a preponderance of the evidence standard.”¹⁸ In further support of its conclusion to rely on CPLR 3211(h), the First Department noted that (1) CPLR 3211(g) and (h) are “sister parts of the same statute”; (2) the Legislature would not have “employ[ed] the same phrase twice in the statute but intend[ed] for it to have different meanings”; and (3) the legislative history underlying the anti-SLAPP statute’s 2020 amendments gave “no indication that the Legislature intended to update the phrase.”¹⁹

The First Department also explained that the substantial basis standard is akin to the standard for a summary judgment motion—that is, whether there exists triable issues of material fact.²⁰ It is thus “more than the liberal pleading standard applicable to ordinary CPLR 3211(a)(7) motions,” and where a complaint fails to state a claim under 3211(a)(7), it “necessarily lacks a ‘substantial basis in law’ for purposes of CPLR 3211(g).”²¹ Accordingly, because Plaintiffs’ complaint did not state a claim, they failed to show that their claims had a substantial basis, which “entitled [D]efendants to attorneys’ fees pursuant to Civil Rights Law § 70-a(1)(a),” with the calculation beginning as of November 10, 2020, the effective date of the 2020 amendments.²² Finally, in finding that Plaintiffs

¹⁴ *Id.* at *6 (quoting N.Y. Civ. Rights Law § 76–a(1)(d)).

¹⁵ *Id.* (quoting *Aristocrat Plastic Surgery, P.C. v. Silva*, 206 A.D.3d 26, 29 (N.Y. App. Div. 1st Dep’t 2022)).

¹⁶ *Id.* at *6–10.

¹⁷ *Id.* at *6–7.

¹⁸ *Id.* at *8 (quoting L 1996, ch 682, Bill Jacket at 13). The legislative memorandum borrowed language from *300 Gramatan Avenue Associates v. State Division of Human Rights*, 45 N.Y.2d 176 (1978), a New York Court of Appeals case and the “leading decision on the meaning of ‘substantial evidence.’” *See id.* The First Department noted that the definition of “substantial basis” in the memorandum was “the very same definition of ‘substantial evidence’ articulated by the Court of Appeals in *300 Gramatan Ave.*,” which indicated that the “familiar ‘substantial evidence’ standard should be utilized as the benchmark in determining whether a claim has a ‘substantial basis’ under CPLR 3211(h).” *Id.* (citing *300 Gramatan Avenue Associates*, 45 N.Y.2d at 180; *Castle Vil. Owners Corp. v. Greater N.Y. Mut. Ins. Co.*, 58 A.D.3d 178, 183 (N.Y. App. Div. 1st Dep’t 2008)).

¹⁹ *Id.*

²⁰ *Id.* at *9.

²¹ *Id.*

²² *Id.* at *10. The First Department remanded solely for the calculation of those fees.

failed to show a substantial basis, the First Department emphasized that Plaintiffs did not avail themselves of “any tailored discovery, pursuant to CPLR 3211(g)(3),” which could have “aid[ed] them” in making that showing.²³

Justice Oing penned a concurrence, joined by Justice Webber, that expressed disagreement with the majority’s reliance on the standards set forth in CPLR 3211(a)(7) and (h) to inform the meaning of substantial basis.²⁴ As to the former, in Justice Oing’s view, “the better practice would be for Supreme Court to analyze a CPLR 3211(g) motion regardless of whether a CPLR 3211(a)(7) is granted or denied.”²⁵ And, as to the majority’s reliance on CPLR 3211(h), Justice Oing asserted that the majority “unnecessarily conflated” the two provisions, since 3211(h) implicates summary disposition in the absence of factual issues, while 3211(g) addresses a pleading’s sufficiency.²⁶

III. Conclusion

Reeves provides important clarification regarding the “substantial basis” standard under New York’s anti-SLAPP statute—specifically, that it is akin to the standard employed on a motion for summary judgment and is more demanding than the motion to dismiss standard for failure to state a claim. In addition, the First Department’s analysis and application of the anti-SLAPP statute’s 2020 amendments confirms the broadened definition of public interest (in turn confirming the broadened application of the statute), as well as the mandatory nature of attorneys’ fees under New York Civil Rights Law § 70a-(1)(a). *Reeves* further benefits defendants by clarifying that a complaint that fails to state a claim necessarily fails to state a substantial basis in law for purposes of attorneys’ fees requests. *Reeves* also clarifies that courts may consider a plaintiff’s failure to utilize the statute’s discovery provision, CPLR 3211(g)(3), in determining whether the substantial basis standard has been met. While it is unclear whether other New York appellate courts will follow suit, it appears that, at least for now, the statute’s 2020 amendments are having the effect intended by the Legislature.

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²³ *Id.* at *3, *10.

²⁴ See *id.* at *11 (Oing, J., concurring).

²⁵ *Id.*

²⁶ *Id.*

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