To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE
---X

MARY DUFFY,

Plaintiff,

-against-

MONROE FREE LIBRARY; BOARD OF TRUSTEES OF THE MONROE FREE LIBRARY; MARILYN J. McINTOSH, individually and in her official capacity; PATRICIA C. SHANLEY, individually and in her official capacity; CAROL BEZKOROWAJNY, individually and in her official capacity,

Defendants.
---X

DECISION AND ORDER
INDEX NO.: EF002026-2022
Motion Date: 7/18/22
Sequence No. 1

SCIORTINO, J.

The following papers numbered 1 to 11 were considered in connection with the application of defendants for an Order dismissing Counts I, II and IV of plaintiff's complaint, brought pursuant to CPLR 3211(a)(1) and (7) or CPLR 3211(c):

PAPERS	NUMBERED
Notice of Motion/Attorney's Affirmation (Green)/Exhibit A-B/ Defendant's Memorandum of Law	1 - 5
Affirmation in Opposition (LoPresti)/Exhibits A-C[1]/Memorandum of Law in Opposition	6 - 10
Memorandum of Law in Reply	11

Background and Procedural History

This action sets forth four causes of action: violation of plaintiff's rights under Labor Law §740 (prohibition against retaliation); violation of the Human Rights Law by age discrimination;

[1]To avoid confusion, plaintiff's exhibits should be tabbed numerically instead of alphabetically.

defamation, and declaratory judgment deeming the Board's action null and void. . Plaintiff is the Assistant Director of the Monroe Free Library (Library). In or around October 2020, the then-Executive Director of the Library, defendant McIntosh, announced her intention to retire. Plaintiff expressed an interest in applying for the job. In January 2021, the Board of Trustees (Board) formed a search committee. The committee was comprised of defendant Shanley and other members of the Board. An advertisement for the position was drafted by defendant McIntosh. After the advertisement was published, plaintiff submitted an application.

Defendant McIntosh, although not on the search committee, reviewed the resumes received, watched Zoom interviews, and advised the Board regarding candidates. Plaintiff was interviewed twice for the position and was one of two finalists. The position was not offered to her. On April 12, 2021, the search committee recommended another individual as its candidate. The Board voted to accept the search committee's recommendation. The other candidate was hired.

On or about July 12, 2021, the within defendants, as well as the County of Orange, Town of Monroe, the New York State Education Department and the Board of Regents of the State University of New York were served with a Notice of Claim (Exhibit A to Complaint, defendants' Exhibit A), wherein plaintiff sought damages including loss of pay, lost career opportunity, damage to reputation, mental anguish, psychological humiliation, reputational harm, trauma, financial expense, liquidated damages, injunctive relief, costs and attorneys fees.

On April 4, 2022, plaintiff filed a summons and complaint (Defendants' Exhibit A), in which she asserted four causes of action. She asserted that since beginning her employment with the Library in 2004, she never received a bad performance evaluation or criticism of her work. In 2019, defendant McIntosh indicated that she believed plaintiff would succeed if she were chosen to

succeed her as Executive Director. (Exhibit A at 3)

When the COVID-19 pandemic began, however, defendants ignored the protocols, refusing to use PPE or take other precautions. Plaintiff asserts that she spoke out against the non-existent COVID measures and made "diligent efforts to protect the health and safety of the staff and patrons of the Library". (Exhibit A at 5) In return, she alleges that she was isolated and ostracized at work and excluded from work participation and job assignments.

More specifically, plaintiff's complaint alleges, in relevant part, that during the search committee's process and the Board's deliberations, defendants McIntosh, Shanley and Bezkorowajny "published and/or facilitated in the ongoing dissemination of defamatory, reckless, disparaging, false and unsubstantiated statements about [plaintiff] and her character....[including] that plaintiff "shouldn't be trusted," and "went behind McIntosh's back to get a raise," thereby damaging the Library's budget. She was characterized as "not a team player" who "hid in her office" during COVID and "was against paying staff during COVID." Other derogatory remarks about her abilities, reputation and her age were made. Defendant Bezkorowajny made these statements to the Board during the Board's April 7, 2021 selection meeting. Other defamatory statements were made concerning plaintiff's 2016 request for a raise, which defendant Bezkorowajny characterized as "going behind McIntosh's back to receive a pay increase." Bezkorowajny accused plaintiff of having thrown the Library's budget into turmoil, with money for plaintiff's raise having had to be taken from other budget lines.

On April 15, 2021, defendant McIntosh told plaintiff that she did not support plaintiff for the Executive Director position because plaintiff objected to McIntosh's policy requiring management staff to work in-person during COVID.

The first Count of the complaint, against all defendants, asserts that, because plaintiff raised objections to defendant McIntosh about the Library's requirement that management staff work in-person and its lax COVID protocols, defendants retaliated against her, including preventing her from working her scheduled shifts; excluding her from work opportunities; isolating and marginalizing her, and revoking support for her application. By doing so, defendants sabotaged her candidacy for the Executive Director position.

Plaintiff's Count II, a violation of Human Rights Law prohibitions against age discrimination, is not the subject of this motion.

Count III asserts claims of defamation against defendants McIntosh, Shanley and Bezkorowajny. Plaintiff alleges that statements they made were intended to be statements of fact, known by defendants to be false, which were recklessly, negligently and intentionally published to third persons and the community. They were communicated recklessly, maliciously, fraudulently and oppressively, with the intention to injury plaintiff. Such statements injured plaintiff's personal, business and professional reputation,, causing her injury including loss wages and future earnings.

Plaintiff's Count IV seeks a declaratory judgment that the Board's reliance on the selection committee's statements or opinions was misplaced and unwarranted; that the Board did not rely on reliable opinions, statement or advice; that the Board discharged its duties recklessly and/or in bad faith; and that the Board's action constituted wrongful, discriminatory, retaliatory and unconscionable conduct.

Motion to Dismiss

By Notice of Motion filed June 10, 2022, defendants seek dismissal of Counts I, III and IV of the complaint. They contend that the complaint fails to state a cause of action for defamation or

defamation *per se*. All of the alleged defamatory statements were made to members of the Board on topics on which the parties shared a common interest: plaintiff's character and fitness to be the Executive Director of the Library.

Assuming (without conceding) that the comments were made, they are subject to the qualified common interest privilege and, as such, are not actionable. The privilege can be defeated if a plaintiff demonstrates that defendant spoke with either common law or constitutional malice; but mere conclusory allegations, such as contained in the complaint will not sustain plaintiff's burden.

Nor can plaintiff show that the statements were motivated solely by malice. Defendants contend that the complaint has no factual basis by which it could be concluded that defendants had the requisite malicious motive; but, instead, made statements in furtherance of their bona fide effort to raise their legitimate concerns about plaintiff's candidacy.

Regardless, the statements are constitutionally-protected expressions of opinion which are privileged, and, even if offensive, are not actionable as defamation. The alleged statements are vague, ambiguous and hyperbolic, all telltale indicators of opinion. Moreover, employment reviews are nonactionable expression of opinion, to which an employer has a right. The statements cannot be categorized as true or false, and lack any precise factual meaning. Such subjective nature makes them opinion and not fact.

Defendants further argue that the complaint fails to allege special damages. The required special damages must consist of loss having economic or pecuniary value which flows directly from the defamation. Special damages must be pled with sufficient particularity to enable defendants to identify actual losses. Nonspecific conclusory allegations do not meet this threshold. The allegations

at bar are conclusory, nonspecific and unidentified. While claims of defamation *per se* imply damages, the alleged defamatory statements claimed by plaintiff do not rise to that level. Rather, the statements critique plaintiff's character and not the quality of her exercise of her profession.

Defendants contend that the alleged defamatory statements are too vague to be deemed a sufficient pleading under CPLR 3016, which requires the complaint to set forth the particular words complained of, as well as the time, place and manner of the statement and to whom it was made. Here, several of the complaint's allegations fail to identify who made the particular alleged statement, and who heard the statements. The absence of this information is fatal to the defamation claim.

Finally, while defendants asserted in the moving papers that the Labor Law §740 claim must be dismissed because the Library is a public employer, their position appears to have changed when responding to plaintiff's opposition. However, they argue that, with respect to such claims, the National Labor Relations Board has exclusive jurisdiction over these matters; and, any question as to jurisdiction must be resolved by the NLRB, not by the state courts.

On these bases, defendants claim that three of the four counts[2] of the complaint must be dismissed.

Opposition

Plaintiff first argues that the Library is a private employer, whose employees are entitled to the protection of Labor Law §740, which prohibits retaliation against employees. As noted *infra*, defendants no longer appear to contest the status of the Library as a private employer. Nor are the claims preempted by the NLRB. Small libraries such as the defendant Library are specifically

---

[2]Defendants do not seek dismissal of the second cause of action, for age discrimination.

excluded from NLRB jurisdiction. Moreover, there has been no showing that plaintiff was engaged in the "concerted activity" which the NLRA seeks to protect.

The complaint sufficiently states a cause of action for statements which are "reasonably susceptible of a defamatory connotation." Plaintiff's claims include the time, place and manner of each statement: the statements were made "during the Executive Director selection process and during the Board of Trustees' deliberations" which occurred in early April 2021, and specifically, on or about April 7, 2021.

Defendants may not claim that the statements are protected by the common interest privilege, as they were made with malice, knowledge of their falsity, and with admitted malice. It is not incumbent on plaintiff to show an evidentiary basis to support allegations of malice in opposition to a motion to dismiss. In this matter, malice can be inferred from the pleadings. According plaintiff the benefit of every reasonable inference, where, as here, individuals acted together to damage and defame plaintiff, malice is implied.

Moreover, plaintiff's complaint pleads instances where defendant McIntosh admitted ill-will or spite towards her, and an (unnamed) Board member admitted defendants' wrongful actions to plaintiff. Such admissions constitute malice *per se*.

Nor were the statements expressions of opinion or "loose, figurative hyperbole" opinions. Rather, they were specific, demonstrably false claims that defendants knew were untrue. As the statements are capable of objective proof, they allege false facts and, as such, are actionable. At the very least, the statements may be deemed "mixed opinions", i.e., opinions which imply they are based upon facts which justify the opinion but are unknown to the listeners. In short, if a reasonable person would view the statements as conveying facts about plaintiff, they are actionable.

Plaintiff further argues the statements are slander *per se* as they injure her in her trade, business or profession. Damages are presumed for such statements. The statements must be made with reference to matters of significance or importance with respect to the operation of the business, and may not be simply general reflections on the plaintiff's character or qualities. Because plaintiff's position requires her to excel at financial management, organizational and collaborative skills, the statements attributed to defendants injure her directly in her business.

Finally, plaintiff denies that the statements have been insufficiently pled, asserting that each statement sets forth the time, place and manner of statement: all the statements were made by defendants McIntosh, Bezkorowajny and Shanley to the defendant Board, during the Executive Director selection process and during the Board's deliberations to choose the Executive Director. Specifically, statements were made on and about April 7, 2021 and April 9-12, 2021. Plaintiff cannot be held to more precise standard, as her requests for information from defendants have been repeatedly denied.

Reply

In reply, defendants reiterate the argument that the NLRB has exclusive jurisdiction over this Labor Law §740 claim, as every "arguable question of jurisdiction" must be left to the NLRB and not the state courts. Here, plaintiff has engaged in concerted activity for the purpose of mutual aid or protection under the NLRA. Her emails to defendant McIntosh protesting allegedly unsafe working conditions served not only her own interests but that of other employees. Plaintiff sought to enable all staff to work from home during the COVID shutdown. The NLRB has specifically taken jurisdiction over matters concerning protests of COVID workplace safety.

With respect to the statements themselves, defendants reiterate that the common interest

privilege protects each from action. Contrary to her claims, plaintiff has not shown that defendants spoke with ill will, or actual knowledge of the falsity of their claims, or even a high degree of awareness of their probable falsity. Her allegations of malice are strictly surmise and conjecture. Plaintiff offers no facts to support her claim that any defendant had the requisite malicious motive. Nor can plaintiff show that the defendants were motivated *solely* by malice. The alleged "first-hand" statements plaintiff pleads do not address the statements which she claims were maliciously motivated, and, instead, claim only Trump/MAGA related politics. Conclusory allegations of malice do not defeat the common interest privilege. Instead, the statements, to the extent made, are constitutionally-protected opinion statements.

Finally, plaintiff's failure to identify the individual respondents to whom statements were made, claiming only that the statements were made "to the Board," is fatal to her claim.

The Court has fully considered the lengthy submissions of the parties.

Discussion

For the reasons which follow, defendants' application is granted in part and denied in part.

It is fundamental that on a motion to dismiss pursuant to Civil Practice Law & Rules §3211(a)(7), the pleading is to be afforded a liberal construction. The Court must accept the facts as alleged in the complaint to be true, and accord the plaintiff the benefit of every possible favorable inference, determining only whether the facts as alleged fit within any cognizable legal theory. CPLR 3211(a)(7); (*Kempf v. Magida*, 37 AD3d 763 [2d Dept 2007])

The Court must examine whether the pleading states a cause of action, and not whether the proponent has a cause of action. (*Butler v. Magnet Sports & Entertainment Lounge, Inc.*, 135 A.D3d 680 [2d Dept 2016]) Its determination is limited to whether the factual allegations fit within any

cognizable legal theory. (*El Jamal v. Weil*, 116 AD3d 732, 733 [2d Dept 2014]; *quoting, Leon v. Martinez*, 84 NY 2d 83, 87 [1994])

Count One: NLRB preemption

Count One of the complaint asserts violations of New York Labor Law §740's prohibition against retaliation in the workplace. Defendants argue that such conduct is under the exclusive jurisdiction of the NLRB, which preempts State law in addressing concerted efforts to protest unsafe working conditions. The Court disagrees.

Action is "concerted" if an individual act has "some demonstrable link with group action" (*Meyer Tool, Inc. v. NLRB*, 763 F. App'x 5, 7 [2d Cir. 2019]), but may also include "employees bringing truly group complaints to the attention of management." and "the lone employee who is acting alone...such as bringing group complaints to the attention of management." (*Bimler v. Stop & Shop Supermarket Co.*, 965 F. Supp 292, 298 [D. Conn. 1997]; *see also, Haven Salon + Spa*, 2021 WL 1734297 [2021]) The NLRB, on its website, provides that "a single employee may...engage in protected concerted activity if he or she is....bringing group complaints to the employer's attention." If the sole factor in considering NLRB preemption was the existence of concerted activity, the Court may well have found that the NLRB's exclusive jurisdiction should make that initial determination.

However, the jurisdictional standards of the NLRB provides that it has statutory jurisdiction over "private sector employers whose activity in interstate commerce exceeds a minimal level....[its jurisdiction is very broad and covers....non-profits." For non-retailers, jurisdiction is based on the amount of goods sold or services provided by the employer out of state, or purchased by the employer from out of state. The Board takes jurisdiction when annual inflow or outflow is at least $50,000. Federal, state and local governments, including public schools, libraries and parks are

excluded from NLRB jurisdiction. www.nlrb.gove/about-nlrb/rights-we-protect/the-law/jurisdictional-standards

Here, defendants originally argued that the Library is a public employer, an entity not covered by NRLB. Assuming, without finding, that defendants now accept that the Library is a private employer, there has been no showing that the Library's activities would qualify it as an entity participating in interstate commerce in any meaningful way. Accordingly, the Court does not find that the NLRB has or would exercise initial jurisdiction in this matter. The motion to dismiss Count One is denied.

Count Three Defamation

To state a cause of action for defamation, "a plaintiff must allege that, without privilege or authorization, and with fault judged, at a minimum, by a negligence standard, the defendant published to a third party a false statement." The statement must cause special harm (which must be pled) or constitute defamation *per se*. (*El Jamal*, 116 AD3d at 733; *citing, Liberman v. Gelstein,* 80 NY 2d at 435; *Tsatskin v. Kordonsky*, 189 AD3d 1296, 1299 [2d Dept 2020]) The complaint must set forth the particular words allegedly constituting defamation, and must also allege the time, place and manner of the false statement and specify to whom it was made. (*Tsatskin*, 189 AD3d at 1299) (alleged defamatory statements made over a two-year period of time are insufficiently specific with respect to time). "Expressions of opinion, as opposed to assertions of fact, are deemed privileged, and, no matter how offensive, cannot be the subject of an action for defamation." (*Fon v. Krowe*, 204 AD3d 889, 890 [2d Dept 2022], *quoting, Mann v. Abel*, 10 NY 3d 271 [2008]) The issue of whether a particular statements constitutes opinion or objective fact is a question of law. (*Stolatis v/ Hernandez*, 161 AD3d 1207, 1208 [2d Dept 2018])

A pure opinion may take one of two forms: it may be a "statement of opinion accompanied by a recitation of the facts upon which it is based," or "an opinion not accompanied by such a factual recitation" so long as "it does not imply that it is based on undisclosed facts." (*Davis v. Boeheim*, 24 NY 3d 262, 269 [2014]) Such "pure opinions" cannot be the subject of a defamation claim. (*Id.*)

However, an opinion that "implies that it is based upon facts which justify the opinion but are unknown to those reading or hearing it...is a 'mixed opinion' and is actionable." (*Id.*; *Steinhilber v. Aphonse*, 68 NY 2d 283 [1986]) In differentiating between facts and opinion, the court considers four factors: (1) an assessment of whether the specific language in issue has a precise meaning which is readily understood or whether it is indefinite and ambiguous; (2) whether the statement is capable of being objectively characterized as true or false; (3) an examination of the full context of the communication in which the statement appears; and (4) a consideration of the broader social context or setting surrounding the statement. (*Steinhilber*, 68 NY 2d at 292-93; *Greenberg v. Spitzer*, 155 AD3d 27, 41-42 [2d Dept 2017])

In this matter, plaintiff's claims of defamation rest on the following paragraphs of the complaint:

Paragraph 6: Defendants McIntosh, Shanley and Bezkorowajny referred to plaintiff as "not a team player"; that she "hid in her office" during the pandemic; that she lacked the ability to perform her job or achieve promotion and that she was just too old.

Paragraph 69: The same defendants stated that plaintiff "shouldn't be trusted", that she "went behind [McIntosh's] back to get a raise", that her raise "threw the Library's budget into a turmoil", that she was not a team player, that "during Covid-19 she never came out of her office", that she "hid in her office", that she "was against paying staff

during Covid-19"

Paragraph 71: Bezkorowajny told the staff that "[plaintiff] opposed staff being paid during the shutdown" and "was upset that staff members were being paid."

Paragraph 72: Bezkorowajny told members of the Board that plaintiff had "hid in her office" and that she "never came out of her office" during Covid-19" and that plaintiff was "not a team player" and "can't make decisions." She repeated the statement that plaintiff had opposed paying staff.

Paragraph 75: "On about April 7, 2021" during the selection process, McIntosh told Board members that plaintiff went behind [McIntosh's] back to get a pay increase in 2016, and was "not a team player", insinuating that plaintiff was dishonest, untrustworthy and unscrupulous. McIntosh repeated to the Board that plaintiff's raise "threw the library's already calculated budget into a turmoil, with that money having to be taken from the materials and programming lines."[3]

Under New York law, statements made by employers criticizing their employees' performance are generally protected statements of opinion, including statements that someone has acted unprofessionally or unethically. (*Curto v. Med. World Commc'ns, Inc.*, 388 F. Supp. 2d 101, 111 [E.D.N.Y. 2005]) But even defamatory statements may be protected by "a qualified privilege...[which extends] to a communication made by one person to another upon a subject in which both have an interest...a party has a right to communicate 'defamatory' statements to others

[3]Plaintiff asserts further claims of defamation at paragraphs 141-152 of the Complaint; however an examination of those allegations reveals that they go to damage, and not the alleged defamation itself.

with a legitimate interest." (*Pusch*, 11 Misc.3d at hn 4) The rationale for applying the privilege in appropriate circumstances is that "so long as the privilege is not abused, the flow of information between persons sharing a common interest should not be impeded." (*Liberman v. Gelstein*, 80 NY 2d at 437) Examples of common interest warranting a qualified privilege include (as here) those between the employees of an organization or business entity, members of a faculty tenure committee, and associations members of an apartment complex. (*Herlihy v. Metro. Museum of Art*, 214 AD3d 250, 258 [1st Dept 1995])

The Court finds that the majority of the alleged statements constitute non-actionable statements of opinion, including plaintiff:

- was not a team player;
- lacked the ability to do her job or achieve promotion;
- was just too old[4];
- went behind McIntosh's back;
- can't make decisions; and
- was upset that staff was being paid during the pandemic.

These statements both lack precise meaning, and are generally incapable of being proven true or false.

Subjective characterization of plaintiff's behavior and an evaluation of her job performance constitute a nonactionable expression of opinion. (*Farrow v, O'Connor, Redd, Gollihue & Sklarin, LLP*, 51 AD3d 626, 627 [2d Dept 2008]l *Ruppmann v. Broadreach Group, Inc.*, 2010 WL 11692366

---

[4]While protected as opinion from a defamation claim, this statement may well be relevant to the age discrimination claims contained in Count Two.

at hn4 [NY Co. 2010]) "Expressions of opinion...no matter how offensive, cannot be the subject of an action for defamation." (*Fon*, 204 AD3d at 890; *quoting, Mann v. Abel*, 10 NY 3d at 276; *Pusch v. Pullman*, 11 Misc. 3d 1074(A) [NY Co. 2003])

Others of the allegedly defamatory statements constitute non-actionable "rhetorical hyperbole: plaintiff "hid in her office" and "never came out".

Not only do such statements qualify as pure opinions, they are also protected by the qualified privilege, as they were allegedly made to other staff members and members of the Board, all of whom have an interest in the welfare of the Library. It is undisputed that such communications were made to other persons "upon a subject in which both have an interest." (*Liberman*, 80 NY 2d at 437)

Once a defendant has raised the common interest privilege, the plaintiff must allege malice, either common law, or actual, in order to withstand dismissal. Such allegations must be more than conclusory. (*O'Neill v. New York Univ.*, 97 AD3d 199, 213 [1st Dept 2012]; *Meckel v. Quality Bldg. Servs. Corp.*, 2021 NY Slip Op. 30865(U) at 5 [NY Co. 2021]) Plaintiff alleges that defendants' statements were motivated by malice, both common law and actual. To the extent, however, that the statements were made to further an interest protected by the privilege, "it matters not that defendant[s] *also* despised plaintiff." (*Liberman*, 80 NY 2d at 439) (emphasis in original)

Here, plaintiff fails to raise a triable issue as to malice. "[A] triable issue is raised only if a jury could reasonably conclude that 'malice was the one and only cause for the publication." (*id.*) The allegations of malice are conclusory at best with respect to the above statements. As such, they do not suffice to defeat the qualified privilege. (*See, L.Y.E. Diamonds, Ltd. v. Gemological Inst. Of Am., Inc.*, 169 AD3d 589, 591 [1st Dept 2019])

On this basis, Count Three of the complaint is dismissed as to all of the above statements.

One alleged statement, however, is an exception to the pure opinion statements noted above. In paragraph 75 of the complaint, plaintiff alleges that McIntosh told the Board that plaintiff's 2016 raise "threw the library's already calculated budget into a turmoil, with that money having to be taken from the materials and programming lines."

Unlike the "pure opinion" statements, this is an example of a "mixed opinion." A mixed opinion is differentiated from a privileged, pure opinion, by "the implication that the speaker knows certain facts, unknown to [the] audience, which support [the speaker's] opinion and are detrimental to the person" being discussed. (*Davis*, 24 NY 3d at 269; *quoting, Steinhilber,* 68 NY 2d at 290) (internal citations omitted) In *Davis*, the Court of Appeals held that '[t]he dispositive inquiry...is whether a reasonable [reader] could have concluded that [the statements were] conveying facts about the plaintiff." (*id.* at 269-270) Three factors determine whether a reasonable reader would consider the statement to connote fact or nonactionable opinion: (1) whether the specific language in issue has a precise meaning which is readily understood; (2) whether the statements are capable of being proven true or false; and (3) whether either the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal...readers or listeners that what is being read or heard is likely to be opinion, not fact. (*id.*; *citing, Mann,* 10 NY 3d at 276)

Here, the statement that plaintiff's raise required the Library to take money for her from materials and programming lines has a precise meaning, readily understood, which is capable of being proven true or false. Coming, as is alleged, from the Executive Director, McIntosh, a listener could have reasonably concluded that the statement was conveying a fact. i.e., that plaintiff's raise required invasion of other budgetary lines that could have jeopardized the Library financially.

Such a statement, in addition to being an actionable mixed opinion, may also be a statement "of a kind incompatible with the proper conduct of business...[and[made with reference to a matter of significance and importance for that purpose, rather than a general reflection upon the plaintiff's character or qualities." (*Rufeh v. Schwartz*, 50 AD3d 1002, 1004-5 [2d Dept 2008]) A false statement constitutes defamation *per se*, if it, *inter alia*, "tends to injure another in his or her trade, business or profession." (*Davydov v. Youssefi*, 205 AD3d 881, 882 [2d Dept 2022]) The complaint alleges that this particular statement was made with knowledge that the statement was false. Plaintiff is not obligated to further show evidentiary facts to support the allegation. (*Shaw v. Club Managers Ass'n of Am., Inc.*, 84 AD3d 928 [2d Dept 2011])

As noted above, if, "upon any reasonable view of the stated facts, plaintiff would be entitled to recovery for defamation, the complaint must be deemed to sufficiently state a cause of action." (*Davis*, 24 NY 3d at 268) Thus, for purposes of determining whether the cause of action should survive a motion to dismiss, the Court finds that dismissal of the cause of action is not warranted, solely with respect to the statement that plaintiff's raise "threw the library's already calculated budget into a turmoil, with that money having to be taken from the materials and programming lines." (Paragraph 75)

Count Four Declaratory Judgment

The application to dismiss the fourth cause of action is denied. If plaintiff successfully demonstrates either age discrimination or defamatory statements, the declaratory relief sought may be warranted.

Conclusion

On the basis of the foregoing, it is hereby ORDERED that:

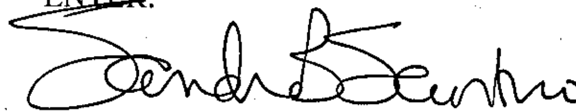
1. Defendants' application to dismiss Count One of the complaint is denied;
2. Defendants' application to dismiss Count Three of the complaint is denied as to the statement that plaintiff's raise "threw the library's already calculated budget into a turmoil, with that money having to be taken from the materials and programming lines." The application to dismiss Count Three is in all other respects granted.
3. Defendants' application to dismiss Count Four of the complaint is denied.
4. Defendants shall file a responsive pleading not later than October 28, 2022.
5. The parties shall appear for virtual Preliminary Conference on Monday, November 28, 2022 at 12:00 noon. A Microsoft Teams link will be provided in advance of the conference. Counsel is to confer in advance of the conference regarding a proposed discovery schedule.

All matters not decided herein are denied.

This decision shall constitute the order of the Court.

Dated: October 6, 2022
Goshen, New York

ENTER:



HON. SANDRA B. SCIORTINO, J.S.C.

To: *Counsel of Record via NYSCEF*