

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Meagan McGough v. Phillips & Associates, PLLC

McGough, 2026 NY Slip Op 00315 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Case No. 2025-03668; Appeal No. 5643; Index No. 153216/24 · Decided January 22, 2026

SUMMARY

The Appellate Division, First Department modified an order dismissing Meagan McGough’s complaint against Phillips & Associates, PLLC. It reinstated claims for tortious interference with prospective business relations and defamation based on alleged out-of-court statements, while affirming dismissal of the abuse of process and intentional infliction of emotional distress claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Webber, J.; Friedman, J.; González, J.; Michael, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 22, 2026
DOCKET	Case No. 2025-03668; Appeal No. 5643; Index No. 153216/24
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendant's motion to dismiss the complaint.
STANDARD OF REVIEW	On a motion to dismiss, the court accepted plaintiff's allegations as true and considered whether defendant's submissions conclusively refuted those allegations.
PRECEDENTIAL VALUE	Published New York appellate decision
PARTIES	Meagan McGough v. Phillips & Associates, PLLC

TOPICS

- motions to dismiss
- intentional interference with expectancy
- defamation
- appellate procedure
- civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

torts

defamation

remedies

QUESTIONS PRESENTED

1. Whether commencement of the underlying sexual-harassment lawsuit, allegedly motivated by malice, constituted abuse of process.
2. Whether the allegations stated a claim for intentional infliction of emotional distress.
3. Whether the allegations that defendant filed the underlying action despite knowing evidence disproved its allegations were sufficient to invoke the sham exception to the Noerr-Pennington doctrine and support a tortious interference with prospective business relations claim.
4. Whether the litigation privilege barred the defamation claim based on statements in the complaint and whether it also barred alleged circulation of the draft complaint to plaintiff's students.
5. Whether plaintiff should be granted leave to amend the complaint.

HOLDINGS

1. The mere commencement of an action, even with a malicious motive, does not constitute abuse of process absent an improper use of process after it was issued.
2. The commencement of a baseless lawsuit, and even false statements to police resulting in arrest and incarceration, is not sufficiently outrageous to support an intentional infliction of emotional distress claim under the circumstances alleged.
3. A claim predicated on commencement of litigation may proceed under the sham exception to the Noerr-Pennington doctrine when the plaintiff alleges that the defendant filed the action despite awareness of evidence disproving its allegations, and the defendant's correspondence does not conclusively refute those allegations at the pleading stage.
4. The litigation privilege bars a defamation claim based on statements in the complaint or otherwise made to the court in the underlying action, but it does not bar a claim based on alleged circulation of the draft complaint to persons unrelated to the litigation.
5. Leave to amend was properly denied because plaintiff did not identify potentially outcome-changing amendments.

KEY QUOTATIONS

*"The mere commencement of the underlying sexual harassment lawsuit brought against plaintiff in the United States District Court for the Southern District of New York, even if filed with a malicious motive, was not an abuse of process, nor has plaintiff alleged any "improper use of the process after it was issued"" ([*1])*

*"while not to be condoned, is not so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" ([*1])*

FACTUAL BACKGROUND

Plaintiff alleged that defendant commenced an underlying sexual-harassment action against her despite defendant's awareness of evidence disproving the allegations. Plaintiff also alleged that defendant circulated a draft of that complaint to her students, thereby making defamatory statements outside the litigation. The appellate court evaluated claims for abuse of process, intentional infliction of emotional distress, tortious interference with prospective business relations, and defamation.

PROCEDURAL HISTORY

Supreme Court, New York County, granted defendant's motion to dismiss the complaint in an order entered on or about March 19, 2025. The Appellate Division unanimously modified the order, reinstating the tortious interference with prospective business relations claim and the portion of the defamation claim based on out-of-court statements, while affirming the order in all other respects.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reinstate the tortious interference with prospective business relations claim and the portion of the defamation claim premised on out-of-court statements; otherwise leave the dismissal in place.

CASES CITED

- Hodges v. McGough Enterprises LLC, Index No. 7:23-cv-05016
- Curiano v. Suozzi, 63 N.Y.2d 113, 116-117 (1984)
- Sharp v. Bar Fluid LLC, 237 A.D.3d 628, 629 (1st Dep't 2025)
- Kaye v. Trump, 58 A.D.3d 579, 579 (1st Dep't 2009), leave denied, 13 N.Y.3d 704 (2009)
- Schnur v. Balestriere, 208 A.D.3d 1117, 1118-1119 (1st Dep't 2022)
- Sutton 58 Assoc. LLC v. Pilevsky, 189 A.D.3d 726, 728 (1st Dep't 2020)
- Matter of People v. Northern Leasing Sys., Inc., 169 A.D.3d 527, 530 (1st Dep't 2019)
- Singh v. Sukhram, 56 A.D.3d 187, 192 (2d Dep't 2008)
- Holder v. Jacob, 231 A.D.3d 78, 86-87 (1st Dep't 2024)
- Front, Inc. v. Khalil, 24 N.Y.3d 713, 718 (2015)
- Gottwald v. Sebert, 40 N.Y.3d 240, 253-254 (2023)
- Aguirre v. Best Care Agency, Inc., 961 F. Supp. 2d 427, 456 (E.D.N.Y. 2013)
- Long v. Marubeni America Corp., 406 F. Supp. 2d 285, 294 (S.D.N.Y. 2005)
- Aponte v. Town of Islip, 236 A.D.3d 424, 426 (1st Dep't 2025)

OPINION

McGough v. Phillips & Assoc., PLLC 2026 NY Slip Op 00315

PER CURIAM.

McGough v Phillips & Assoc., PLLC (2026 NY Slip Op 00315) McGough v Phillips & Assoc., PLLC 2026 NY Slip Op 00315 Decided on January 22, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 22, 2026 Before: Manzanet-Daniels, J.P., Webber, Friedman, González, Michael, JJ. Index No. 153216/24|Appeal No. 5643|Case No. 2025-03668| [*1]Meagan McGough, Plaintiff-Appellant, v Phillips & Associates, PLLC, Defendant-Respondent. Hegge & Confusione, LLC, New York (Michael Confusione of counsel), for appellant. Phillips & Associates, Attorneys at Law, PLLC, New York (Kelsey Tubman of counsel), for respondent. Order, Supreme Court, New York County (Paul A. Goetz, J.), entered on or about March 19, 2025, which granted defendant's motion to dismiss the complaint, unanimously modified, on the law, the motion denied as to the tortious interference with prospective business relations claim and as to the portion of the defamation claim premised on statements made out of court, those claims reinstated, and the order otherwise affirmed, without costs. The abuse of process claim was properly dismissed. The mere commencement of the underlying sexual harassment lawsuit brought against plaintiff in the United States District Court for the Southern District of New York (Hodges v McGough Enterprises LLC , Index No. 7:23-cv-05016) (the Hodges Action), even if filed with a malicious motive, was not an abuse of process, nor has plaintiff alleged any "improper use of the process after it was issued" (see Curiano v Suozzi , 63 NY2d 113, 116-117 [1984]; Sharp v Bar Fluid LLC , 237 AD3d 628, 629 [1st Dept 2025]). The intentional infliction of emotional distress claim was also properly dismissed, as the commencement of a baseless lawsuit, and even the making of false statements to police resulting in arrest and incarceration, "while not to be condoned, is not so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (Kaye v Trump , 58 AD3d 579, 579 [1st Dept 2009], lv denied 13 NY3d 704 [2009] [internal quotation marks omitted]; see Schnur v Balestriere , 208 AD3d 1117, 1118-1119 [1st Dept 2022]). Plaintiff has abandoned any separate claim for tortious interference with "advantageous business relationships" insofar as she cites only the standard for tortious interference with prospective business relations in her brief. However, this latter claim was not properly dismissed because, although predicated on the commencement of the Hodges Action and thus falling within the general ambit of the Noerr-Pennington doctrine (see Sutton 58 Assoc. LLC v Pilevsky , 189 AD3d 726, 728 [1st Dept 2020]), plaintiff's allegations that defendant filed the Hodges Action despite its awareness of evidence disproving the allegations therein were sufficient to invoke the "sham exception" to that doctrine (see Matter of People v Northern Leasing Sys., Inc. , 169 AD3d 527, 530 [1st Dept 2019]; Singh v Sukhram , 56 AD3d 187, 192 [2d Dept 2008]). The correspondence submitted by defendant in support of its motion to dismiss does not conclusively refute these allegations, which must be taken as true at this stage (see generally Holder v Jacob , 231 AD3d 78, 86-87 [1st Dept 2024]). The court's dismissal of the

defamation claim on the basis of the litigation privilege was correct only insofar as premised on statements made in the complaint (or otherwise to the court) in the Hodges Action (see generally *Front, Inc. v Khalil* , 24 NY3d 713, 718 [2015]). There is no sham exception to the privilege based on such statements (see *Gottwald v Sebert* , 40 NY3d 240, 253-54 [2023]). However, to the extent the claim is premised on defendant's alleged circulation of the draft complaint in the Hodges Action to plaintiff's students, such out-of-court statements to persons not related to the litigation are not covered by the privilege (see *Aguirre v Best Care Agency, Inc.* , 961 F Supp 2d 427, 456 [ED NY 2013]; *Long v Marubeni America Corp.* , 406 F Supp 2d 285, 294 [SD NY 2005]). We note that defendant has submitted no proof in support of its assertion that it did not show the draft complaint to anyone but its client or plaintiff's counsel. Although defendant denies showing the draft complaint to anyone other than its client and plaintiff's counsel, it has submitted no proof in support of this assertion. We decline plaintiff's request for leave to amend, as she has not identified any potentially outcome-changing modifications that she would include in the amendment (see generally CPLR 3025[b]; *Aponte v Town of Islip* , 236 AD3d 424, 426 [1st Dept 2025]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 22, 2026
PER CURIAM.

McGough v Phillips & Assoc., PLLC (2026 NY Slip Op 00315) *McGough v Phillips & Assoc., PLLC* 2026 NY Slip Op 00315 Decided on January 22, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 22, 2026 Before: Manzanet-Daniels, J.P., Webber, Friedman, González, Michael, JJ. Index No. 153216/24|Appeal No. 5643|Case No. 2025-03668| [*1]Meagan McGough, Plaintiff-Appellant, v Phillips & Associates, PLLC, Defendant-Respondent. Hegge & Confusione, LLC, New York (Michael Confusione of counsel), for appellant. Phillips & Associates, Attorneys at Law, PLLC, New York (Kelsey Tubman of counsel), for respondent. Order, Supreme Court, New York County (Paul A. Goetz, J.), entered on or about March 19, 2025, which granted defendant's motion to dismiss the complaint, unanimously modified, on the law, the motion denied as to the tortious interference with prospective business relations claim and as to the portion of the defamation claim premised on statements made out of court, those claims reinstated, and the order otherwise affirmed, without costs. The abuse of process claim was properly dismissed. The mere commencement of the underlying sexual harassment lawsuit brought against plaintiff in the United States District Court for the Southern District of New York (*Hodges v McGough Enterprises LLC* , Index No. 7:23-cv-05016) (the Hodges Action), even if filed with a malicious motive, was not an abuse of process, nor has plaintiff alleged any "improper use of the process after it was issued" (see *Curiano v Suozzi* , 63 NY2d 113, 116-117 [1984]; *Sharp v Bar Fluid LLC* , 237 AD3d 628 , 629 [1st Dept 2025]). The intentional infliction of emotional distress claim was also properly dismissed, as the

commencement of a baseless lawsuit, and even the making of false statements to police resulting in arrest and incarceration, "while not to be condoned, is not so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Kaye v Trump* , 58 AD3d 579, 579 [1st Dept 2009], lv denied 13 NY3d 704 [2009] [internal quotation marks omitted]; see *Schnur v Balestriere* , 208 AD3d 1117, 1118-1119 [1st Dept 2022]). Plaintiff has abandoned any separate claim for tortious interference with "advantageous business relationships" insofar as she cites only the standard for tortious interference with prospective business relations in her brief. However, this latter claim was not properly dismissed because, although predicated on the commencement of the Hodges Action and thus falling within the general ambit of the Noerr-Pennington doctrine (see *Sutton 58 Assoc. LLC v Pilevsky* , 189 AD3d 726, 728 [1st Dept 2020]), plaintiff's allegations that defendant filed the Hodges Action despite its awareness of evidence disproving the allegations therein were sufficient to invoke the "sham exception" to that doctrine (see *Matter of People v Northern Leasing Sys., Inc.* , 169 AD3d 527 , 530 [1st Dept 2019]; *Singh v Sukhram* , 56 AD3d 187 , 192 [2d Dept 2008]). The correspondence submitted by defendant in support of its motion to dismiss does not conclusively refute these allegations, which must be taken as true at this stage (see generally *Holder v Jacob* , 231 AD3d 78 , 86-87 [1st Dept 2024]). The court's dismissal of the defamation claim on the basis of the litigation privilege was correct only insofar as premised on statements made in the complaint (or otherwise to the court) in the Hodges Action (see generally *Front, Inc. v Khalil* , 24 NY3d 713, 718 [2015]). There is no sham exception to the privilege based on such statements (see *Gottwald v Sebert* , 40 NY3d 240 , 253-54 [2023]). However, to the extent the claim is premised on defendant's alleged circulation of the draft complaint in the Hodges Action to plaintiff's students, such out-of-court statements to persons not related to the litigation are not covered by the privilege (see *Aguirre v Best Care Agency, Inc.* , 961 F Supp 2d 427, 456 [ED NY 2013]; *Long v Marubeni America Corp.* , 406 F Supp 2d 285, 294 [SD NY 2005]). We note that defendant has submitted no proof in support of its assertion that it did not show the draft complaint to anyone but its client or plaintiff's counsel. Although defendant denies showing the draft complaint to anyone other than its client and plaintiff's counsel, it has submitted no proof in support of this assertion. We decline plaintiff's request for leave to amend, as she has not identified any potentially outcome-changing modifications that she would include in the amendment (see generally CPLR 3025[b]; *Aponte v Town of Islip* , 236 AD3d 424 , 426 [1st Dept 2025]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 22, 2026