

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Bremner v. Bush

Bremner, 2025 NY Slip Op 07271 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2021-02001; 2021-02002 · Decided December 24, 2025

SUMMARY

The New York Appellate Division, Second Department affirmed orders denying portions of Charlotte Bush's motions to dismiss a defamation action brought by Jonathan Bremner, Lucid Studios, LLC, and Robyn Sky. The court held that the plaintiffs sufficiently alleged defamatory statements and common-law malice overcoming a qualified common-interest privilege, and that emails, text messages, and Facebook materials did not constitute documentary evidence under CPLR 3211(a)(1). The court also held that the 2020 anti-SLAPP amendments did not apply retroactively and that Bush's second dismissal motion was barred by CPLR 3211(e)'s single-motion rule.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Barry E. Warhit; Helen Voutsinas; Phillip Hom
JURISDICTION	New York Supreme Court, Appellate Division, Second Judicial Department
DECIDED	December 24, 2025
DOCKET	2021-02001; 2021-02002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from two interlocutory orders denying portions of motions to dismiss an amended complaint alleging defamation, libel per se, and slander per se.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the court gives the pleading a liberal construction, accepts the alleged facts as true, and affords the plaintiff every favorable inference. When evidentiary material is considered without converting the motion to summary judgment, dismissal is proper only when the plaintiff has no cause of action and the movant establishes that a material factual allegation is not a fact at all with no significant dispute. Under CPLR 3211(a)(1), documentary evidence

	must utterly refute the factual allegations and conclusively establish a defense as a matter of law.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Charlotte Bush v. Jonathan Bremner, Lucid Studios, LLC, Robyn Sky, an unincorporated business entity

TOPICS

defamation motions to dismiss pleadings civil procedure appellate procedure

PRACTICE AREAS

defamation civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether the amended complaint adequately pleaded defamation claims, including malice sufficient to overcome the common-interest qualified privilege, under CPLR 3211(a)(7).
2. Whether the materials submitted by the defendant constituted documentary evidence that utterly refuted the amended complaint and established a defense under CPLR 3211(a)(1).
3. Whether the 2020 anti-SLAPP amendments applied retroactively to the action.
4. Whether the defendant's second motion to dismiss claims asserted by Lucid Studios, LLC, was barred by CPLR 3211(e)'s single motion rule.

HOLDINGS

1. The amended complaint adequately stated defamation claims because the plaintiffs sufficiently alleged that Bush made false statements of fact with common-law malice, which, if proven, could overcome the common-interest qualified privilege.
2. Dismissal under CPLR 3211(a)(1) was properly denied because the emails, text messages, and Facebook messages and posts submitted by the defendant were not documentary evidence within the meaning of the rule and did not utterly refute the complaint.
3. The 2020 anti-SLAPP amendments did not apply retroactively to this action because, when the action commenced, Bush was not a public applicant or permittee and the action was therefore outside the scope of the former anti-SLAPP statute.
4. The second motion to dismiss the amended complaint insofar as asserted by Lucid Studios, LLC, was barred by the single motion rule because the defendant had already made a CPLR 3211 motion and the later motion raised alternative grounds.

KEY QUOTATIONS

“Here, the Supreme Court properly denied that branch of the first motion which was to dismiss the amended complaint insofar as that branch sought dismissal pursuant CPLR 3211(a)(7), as the plaintiffs sufficiently

*alleged, inter alia, that the defendant made false statements of fact with common-law malice so as to overcome the common-interest privilege” (*2)*

*“Thus, the emails, text messages, and Facebook messages and posts, which the defendant submitted, are not documentary evidence as contemplated by CPLR 3211(a)(1) and cannot utterly refute the factual allegations in the amended complaint” (*2)*

*“Here, the defendant violated the single motion rule of CPLR 3211(e) when she moved, among other things, pursuant to CPLR 3211(a)(1) and (7) to dismiss the amended complaint and then made a subsequent motion, inter alia, pursuant to CPLR 3211(a) to dismiss the amended complaint insofar as asserted by Lucid Studios, LLC, on alternative grounds.” (*2)*

FACTUAL BACKGROUND

The plaintiffs alleged that Charlotte Bush posted numerous defamatory statements about Jonathan Bremner on Facebook, accusing him of sexually assaulting her. They asserted claims for defamation, libel per se, and slander per se. Bush submitted emails, text messages, and Facebook messages and posts in support of her motion to dismiss.

PROCEDURAL HISTORY

The plaintiffs commenced the action on October 25, 2018. The defendant made a first motion under CPLR 3211(a)(1) and (7) to dismiss the amended complaint and later made a second motion under CPLR 3211(a)(3) and (7) to dismiss the amended complaint insofar as asserted by Lucid Studios, LLC. The Supreme Court, Kings County, denied the challenged portions of both motions, except that it directed dismissal of certain paragraphs of the amended complaint. The Appellate Division affirmed the orders insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Greenberg v Spitzer, 155 AD3d 27, 41, 43
- Stone v Bloomberg L.P., 163 AD3d 1028, 1029
- Ferrara v Esquire Bank, 153 AD3d 671, 673
- Laguerre v Maurice, 192 AD3d 44, 49-50
- Davidoff v Kaplan, 217 AD3d 918, 919
- Tsamasiros v Jones, 232 AD3d 816, 817
- Kamchi v Weissman, 125 AD3d 142, 159
- Rosas v Morales, 235 AD3d 678, 679
- Stamp Rite Tool & Die Corp. v Branded Leather, Inc., 236 AD3d 1076, 1079
- Silber Inv. Props., Ltd. v BJG Islandia Realty, LLC, 236 AD3d 953, 954
- Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326

- Kalaj v 21 Fountain Place, LLC, 169 AD3d 657, 657-658
- Cajahuanca v City of New York, 231 AD3d 1006, 1008
- VIP Pet Grooming Studio, Inc. v Sproule, 224 AD3d 78, 89
- Newlands Asset Holding Trust v Vasquez, 218 AD3d 786, 787
- Bailey v Peerstate Equity Fund, L.P., 126 AD3d 738, 739

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