

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

SCAN

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

JOHN PERRINI and RAPID CAR SERVICE,
INC.

TRIAL/IAS, PART 39
NASSAU COUNTY

Plaintiffs.

- against -

Sequence No.: 004 & 005
Index No.: 027811/95

MARIO TUCCI, HICKSVILLE ILLUSTRATED
NEWS, ANTON COMMUNITY NEWSPATERS,
LONG COMMUNITY NEWSPAPERS, INC.,
and TRICIA CLARKE.

Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	X
Notice of Cross-Motion and Affidavits Annexed	X
Answering Affidavits	X
Replying Affidavits	X

Defendants Hicksville Illustrated News, Anton Community Newspapers, Long Island Community Newspapers, Inc. and Tricia Clarke move and defendant Mario Tucci cross-moves for an order precluding plaintiff from offering any evidence at trial in support of plaintiff's claims for economic damages and upon granting such motion, summary judgment dismissing the complaint. Upon reading the papers submitted and due deliberation having been had herein, defendants' motion and cross-motion are granted to the extent set forth below.

The instant matter is a libel action in which plaintiffs claim that defendant Mario Tucci caused false statements about plaintiff Perrini and his business, plaintiff Rapid Car Service, Inc. to be published in the defendant newspaper Hicksville Illustrated News in a letter from Mr. Tucci to the newspaper. Defendants Anton Community Newspapers and Long Island Community Newspapers allegedly own defendant Hicksville Illustrated News.

The court hereby precludes plaintiffs from offering any evidence in support of plaintiffs' claims for economic damages. Defendants assert and plaintiffs agree that pursuant to a

stipulation dated April 28, 2000 which was "so ordered" by the Hon. John DiNoto, plaintiffs were to provide defendants with "any and all check ledgers and deposit slips for corporation 1/93 to date or the equivalent certified bank statements and cancelled checks relative to same or be precluded from an economic damages claim at trial." The "so-ordered" stipulation further provided that plaintiff would "comply with this stip. on or before 10/26/00. This is expressly a self executing preclusion order." Plaintiffs do not dispute that they failed to provide the above referenced material and that defendants are entitled to an order which precludes plaintiff from offering any evidence at trial relative to economic damages.

Defendants' motion and cross-motion are both denied to the extent that they seek summary judgment dismissing the complaint upon granting the motion for preclusion. Defendants assert that since plaintiffs are precluded from offering any evidence as to economic damages, there are no issues of fact remaining as to damages.

In their complaint plaintiffs seek the following damages:

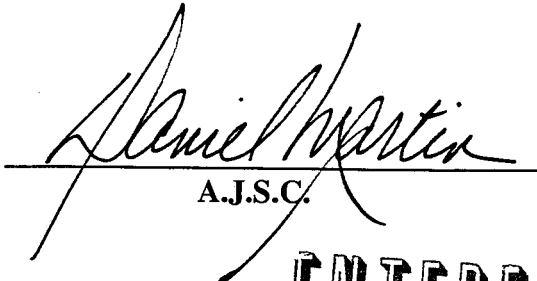
- 1) Compensatory damages in the amount of \$1,000,000.00 for both plaintiff John Perrini and plaintiff Rapid Car Service, Inc.; and
- 2) Punitive damages in the amount of \$1,000,000.00.

It has been held that in a libel action plaintiff is not limited to out of pocket or pecuniary damages. Plaintiff may recover for "...loss of reputation, humiliation and mental anguish..." Hogan v. Herald Company, 84 A.D.2d 470, 480-481 (2nd Dep't 1982). See, also, Blumenstein v. Chase, 100 A.D.2d 243 (2nd Dep't 1984). A review of the complaint reveals that plaintiffs have adequately pled that their reputations and good standing in their community have been "held up to contempt, ridicule and scorn" (See, exhibit "A" annexed to defendants' moving papers). Plaintiffs may accordingly seek damages for these enumerated injuries as compensatory damages.

That branch of defendants' motion and cross-motion which seeks to dismiss plaintiffs' claim for punitive damages is likewise denied. In a libel action, punitive damages are not dependent on the existence of actual damages. Toomey v. Farley, 2 N.Y.2d 71 (1956); Kent v. City of Buffalo, 36 A.D.2d 85 (4th Dep't 1971).

So Ordered.

Dated: February 16, 2001


A.J.S.C.

ENTERED

FEB 22 2001

NASSAU COUNTY
COUNTY CLERKS OFFICE