UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

SHYRON BYNOG, :

05 Civ. 0305 (WHP)

Plaintiff, :

MEMORANDUM AND ORDER

-against- :

SL GREEN REALTY CORP. et al., :

Defendants. :

- X

WILLIAM H. PAULEY III, District Judge:

Plaintiff pro se Shyron Bynog ("Plaintiff" or "Bynog") commenced this civil rights action asserting various discrimination, retaliation and labor law claims against Defendants SL Green Realty Corp. ("SL Green"), First Quality Maintenance, L.P., Classic Security, LLC (collectively, "Defendants") and Service Employees American International Union, Local 32BJ, AFL-CIO (the "Union") in connection with her termination from employment by SL Green. Presently before this Court is Defendants' motion for a preliminary injunction concerning Bynog's post-termination activities. Specifically, Defendants seek to enjoin her from: (1) publishing allegedly libelous statements regarding Defendants on her website; (2) communicating with Defendants, their officers, directors and employees at work; (3) communicating with SL Green tenants and real estate brokers; (4) representing herself as an SL Green employee; and (5) visiting SL Green properties and distributing flyers. For the following reasons, Defendants' motion is denied.

BACKGROUND

From 1991 until her termination in August 2004, Bynog held various positions with Defendants. (First Amended Complaint ("Compl."), dated Apr. 28, 2005 ¶¶ 16-19.) In January 2002, Bynog accepted a concierge position with SL Green at 470 Park Avenue South. (Compl. ¶ 19.) During her employment there, Bynog contends that her co-workers continuously made derogatory remarks to her concerning her race and gender and threatened her with physical harm. (Compl. ¶¶ 23-25.) Bynog alleges that she reported these incidents to Defendants' management, but they did not investigate. (Compl. ¶¶ 27-32.) Rather, according to the Complaint, management perceived Bynog as the source of the acrimony and instructed her to "get along" with her co-workers. (Compl. ¶¶ 29-30, 32.) In August 2004, SL Green terminated Bynog, allegedly in retaliation for her numerous complaints. (Compl. ¶ 33.) Bynog filed a grievance in accord with the SL Green collective bargaining agreement; however, the Union declined to pursue her claim. (Compl. ¶¶ 42-43.)

Thereafter, Bynog implemented various methods to publicize the circumstances of her termination. She maintains a website, www.thatgreengirl.com, reflecting viewer comments, a blog,[1] a timeline chronicling the events of her termination, testimonials and comments from tenants of 470 Park Avenue South. (Declaration of James M. Woolsey III, dated Oct. 6, 2005 ("Woolsey Decl.") Ex. D: Excerpts from www.thatgreengirl.com.) Bynog also directly emails officers, directors and employees of Defendants as well as SL Green tenants, real estate brokers and analysts. (Affidavit of Katherine Sherwood, dated Oct. 6, 2005 ("Sherwood Aff.) ¶¶ 6-7 & Ex. 1: Selected Email Correspondence.) Finally, Bynog visits SL Green properties to distribute flyers. (Sherwood Aff. ¶¶ 6, 13-17.)

[1] A "blog" is "an online personal journal with reflections, comments, and often hyperlinks provided by the writer." Merriam-Webster's Collegiate Dictionary (11th ed. 2005).

Bynog commenced this action on January 13, 2005 and filed an amended complaint on April 29, 2005. On May 20, 2005, Defendants answered and asserted counterclaims for prima facie tort, tortious interference with prospective economic advantage and trade libel based on Bynog's post-termination activities. (Answer and Counterclaims, dated May 20, 2005 ("Answer") ¶¶ 108-19.) Defendants contend that Bynog has commenced "a malicious campaign to harm [them], damage their professional reputations and to interfere with their present and prospective business relationships." (Answer ¶ 101.) In connection with their tortious interference and trade libel counterclaims, Defendants now seek to curb Bynog's activities.

DISCUSSION

I. Preliminary Injunction Standard

"[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (quotation and citation omitted); accord Moore v. Consol. Edison Co. of New York, Inc., 409 F.3d 506, 510 (2d Cir. 2005). Such relief may be granted only if the movant demonstrates "first, irreparable injury, and, second, either (a) likelihood of success on the merits, or (b) sufficiently serious questions going to the merits and a balance of hardships decidedly tipped in the movant's favor." Green Party of New York State v. New York State Bd. of Elections, 389 F.3d 411, 418 (2d Cir. 2004); Prayze FM v. F.C.C., 214 F.3d 245, 249-50 (2d Cir. 2000); Rosen v. Siegel, 106 F.3d 28, 32 (2d Cir. 1997); see also Wenner Media LLC v. N. Shell N. Am. Ltd., No. 05 Civ. 1286 (CSH), 2005 WL 323727, at *3 (S.D.N.Y. Feb. 8, 2005).

"Because a showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction . . . the moving party must first demonstrate that such injury is likely before the other requirements for the issuance of an injunction will be considered." Reuters Ltd. v. United Press Int'l, Inc., 903 F.2d 904, 907 (2d Cir. 1990) (internal quotation marks and citations omitted); see also Johnson Controls, Inc. v. A.P.T. Critical Sys., Inc., 323 F. Supp. 2d 525, 531 (S.D.N.Y. 2004). Further, the harm must "be imminent, not remote or speculative, and the alleged injury must be one incapable of being fully remedied by monetary damages." Reuters, 903 F.2d at 907 (citations omitted); see also Wenner, 2005 WL 323727, at *3.

As a pro se plaintiff, this Court affords Bynog the deference she is due and reads her submissions liberally and interprets them "to raise the strongest arguments that they suggest." Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994); see Salahuddin v. Coughlin, 999 F. Supp. 526, 535 (S.D.N.Y. 1998).[2]

II. Defendants' Motion

Defendants seek to curtail Bynog's expression with a preliminary injunction. It is well-established that in the context of speech, a preliminary injunction that imposes a prior restraint "bear[s] a heavy presumption against its constitutional validity." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963); accord Org. for a Better Austin v. Keefe, 402 U.S. 415, 418 (1971) ("The injunction, so far as it imposes prior restraint on speech and publication, constitutes an impermissible restraint on First Amendment rights."). Injunctions pose a particular threat in this regard as such orders "must be obeyed until modified or dissolved, and . . .

[2] This Court previously determined that a hearing on Defendants' motion was not necessary. (Order, dated Oct. 18, 2005.)

unconstitutionality is no defense to disobedience." Met. Opera Ass'n. v. Local 100, Hotel Employees & Rest. Employees Int'l Union, 239 F.3d 172, 176 (2d Cir. 2001). "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights . . . and by definition, [have] an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for the time." Nebraska Press Ass'n. v. Stuart, 427 U.S. 539, 559 (1976); see also Met. Opera Ass'n., Inc., 239 F.3d at 177.

Moreover, "for almost a century the Second Circuit has subscribed to the majority view that, absent extraordinary circumstances, injunctions should not ordinarily issue in defamation cases." Met. Opera Ass'n., 239 F.3d at 177; see Am. Malting Co. v. Keitel, 209 F. 351, 357 (2d Cir. 1913) ("[C]ourts of equity have no jurisdiction to restrain the publication of a libel" except amid acts of conspiracy, coercion or intimidation, or to "restrain the defendant from an unjustifiable and wrongful interference with the plaintiff's contracts."); see also Crosby v. Bradstreet Co., 312 F.2d 483, 485 (2d Cir. 1963) ("We are concerned with the power of a court of the United States to enjoin publication of information about a person, without regard to truth, falsity, or defamatory character of that information. Such an injunction, enforceable through the contempt power, constitutes a prior restraint by the United States against the publication of facts which the community has a right to know."); Konigsberg v. Time, Inc., 288 F. Supp. 989 (S.D.N.Y. 1968) ("A court of equity will not, except in special circumstances, issue an injunctive order retraining libel or slander or otherwise restricting free speech. To enjoin any publication, no matter how libelous, would be repugnant to the First Amendment to the Constitution.") Indeed, even when such extraordinary circumstances are present, the Second Circuit has recognized that "current First Amendment principles may prohibit granting an injunction." Met. Opera Ass'n., 239 F.3d at 177.

As set forth above, the crux of the preliminary injunction standard is imminent irreparable harm not compensable with monetary remuneration. Defendants contend that Bynog's activities interfere with their business and threaten business relations. They also extrapolate from her statements that Bynog could not satisfy a money judgment. However, Defendants offer no evidence other than Bynog's statements to support these assertions, and thus, fail to meet their burden of persuasion.

"The fact that the false statements may injure the plaintiff in his business or as to his property does not alone constitute a sufficient ground for issuance of an injunction. The party wronged has an adequate remedy at law." Am. Malting Co., 312 F.2d at 356; Met. Opera Ass'n., 239 F.3d at 177 ("[I]njunctions are limited to rights that are without an adequate remedy at law, and because ordinary libels may be remedied by damages, equity will not enjoin a libel absent extraordinary circumstances."); Donini Int'l, S.P.A. v. Satec (U.S.A.) LLC, No. 03 Civ. 9471 (CSH), 2004 WL 1574645, at *7 (S.D.N.Y. July 13, 2004) ("[T]he long-standing rule in this Circuit is that equity will not enjoin threatened libel or defamation since there are adequate legal remedies available for damages arising from harmful speech."); see also Org. for a Better Austin, 402 U.S. at 419 ("No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court.").

In support of their motion, Defendants regurgitate Bynog's statements and characterize them as libelous and defamatory. Defendants fail to make any clear showing that this case presents the extraordinary circumstances necessary to warrant preliminary injunctive relief. "Preliminary injunctions are generally granted under the theory that there is an urgent need for speedy action to protect the plaintiffs' rights. Delay in seeking enforcement of those rights, however, tends to indicate at least a reduced need for such drastic, speedy action."

Citibank, N.A. v. Citytrust, 756 F.2d 273, 276 (2d Cir. 1985); accord Tough Traveler, Ltd. v. Outbound Prods., 60 F.3d 964, 968 (2d Cir. 1995). Bynog has been sending emails to Defendants' employees, officers and directors since September 2004. (See Sherwood Aff. ¶ 7 & Ex. 1.) She created her website in November 2004 and was visiting SL Green buildings and distributing flyers since at least February 2005. (See Woolsey Decl. Ex. D; Sherwood Aff. ¶¶ 13-15 & Ex. 4.) There is nothing imminent about the harm stemming from Bynog's year long campaign. Rather, to the extent any harm exists, it has been a gradual accretion from the steady drumbeat of Bynog's activities.

Moreover, Defendants' notion that Bynog has influenced SL Green tenants to break or fail to renew their leases or that she has convinced analysts to issue reports driving down the share price of SL Green is unsupported by the record. In sum, Defendants have not offered any evidence to demonstrate that the harm they anticipate is looming or tangible. See Reuters, 903 F.2d at 907; Wenner, 2005 WL 323727, at *3; see generally Org. for a Better Austin, 402 U.S. at 419 ("Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability."); Bihari v. Gross, 119 F. Supp. 2d 309, 326-27 (S.D.N.Y. 2000). Indeed, Defendants do not submit any evidence of terminated or unrenewed SL Green leases or analyst reports that may have adversely affected the SL Green stock price.

Finally, Defendants have not offered any probative evidence that Bynog could not satisfy a money judgment. Cf. Netwolves Corp. v. Sullivan, Nos. 00 Civ. 8943, 00 Civ. 9628 (AGS), 2001 WL 492463, at *11 (S.D.N.Y. May 9, 2001) ("[W]here the defendant is insolvent, or may become insolvent during the pendency of the litigation, monetary injury is deemed

irreparable because the plaintiff may never be able to recover damages."); Federated Strategic Income Fund v. Mechala Group Jamaica Ltd., No. 99 Civ. 10517 (HB), 1999 WL 993648, at *8 (S.D.N.Y. Nov. 2, 1999).

Accordingly, because of the strong presumption against the prior restraint of expression, the established law in this Circuit against issuing preliminary injunctions in cases involving defamation and Defendants' failure to demonstrate irreparable harm, this Court concludes that a preliminary injunction is inappropriate.

CONCLUSION

For the reasons set forth above, Defendants' motion for a preliminary injunction is denied.

Dated: December 22, 2005
New York, New York

SO ORDERED:

WILLIAM H. PAULEY III
U.S.D.J.

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