

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: Part 32, No. 14

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ORLANDO RODRIGUEZ

Plaintiff,

v.

Index No. CV-038293-09/BX

E & S WHOLESALE MEATS INC., &  
EVAN WEXLER,

Defendants.

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**CIVIL COURT  
BRONX COUNTY**

DECISION

In this defamation action, Movant-Defendants seek to dismiss Plaintiff's Complaint under CPLR 3211(a)(5) & 3211(a)(8), which this Court hereby **GRANTS**.

The issue revolves around which concrete causes of action were expressly stated in Plaintiff's March 20, 2009 Complaint in order to assess whether those claims have been barred by the statute of limitations. See Verified Complaint at Ex. B of Def.'s Aff.

Based on the reading of the Complaint, only ¶ 11 implies the intentional tort of defamation<sup>1</sup> which occurred on or about December 1, 2005. Id. at ¶¶ 10-11. Pursuant to CPLR 215(3), there is a one-year statute of limitation in which to start a defamation action. The Complaint<sup>2</sup> was filed with Bronx Civil Court on or about March 20, 2009, well beyond the one-year mark. As such, the defamation claim is out of time.

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<sup>1</sup> According to *Black's Law Dictionary*, 7th ed., "defamation" is "[t]he act of harming the reputation of another by making a false statement to a third person."

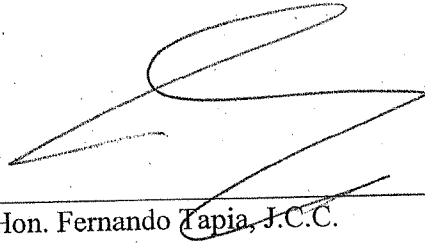
<sup>2</sup> The Complaint also stated two other issues: [1] a NYS Department of Labor claim which was resolved; and [2] Defendant's filing of a criminal complaint in NY County against Plaintiff which was later dismissed. See Pl.'s Opp. at Exs. E & F.

Plaintiff counters that its Complaint includes an action based on fraud.<sup>3</sup> See Pl.'s Opp. at ¶ 6. Thus, the action would be still viable, as the statute of limitations for fraud is six years. See CPLR 213(8). This, however, also fails because as Defendant cogently pointed out, the Complaint asserts that Defendant-Wexler perpetrated a fraud on the NYPD, and not against Plaintiff himself. See Def.'s Reply at ¶ 11; see also Pl.'s Opp. at ¶ 8. More importantly, the Complaint did not state in detail the circumstances constituting the fraud, pursuant to CPLR 3016(b). Accordingly, there is also no actionable claim for fraud.

**WHEREFORE** Defendant's motion to dismiss Plaintiff's Complaint is hereby **GRANTED**. This case is therefore dismissed with prejudice.

This constitutes the Decision and Order of this Court.

Dated: November 9, 2009  
Bronx, NY



Hon. Fernando Tapia, J.C.C.

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<sup>3</sup> According to *Black's Law Dictionary*, 7th ed., "fraud" is "[k]nowing misrepresentation of truth or concealment of a material fact to induce another to act to his detriment."