**ROBERT TRUMP V MARY L. TRUMP (II)**

**Closed**

**United States, North America**

**EXPANDS EXPRESSION**

**MODE OF EXPRESSION**

Books/Plays

**DATE OF DECISION**

July 13, 2020

**OUTCOME**

Temporary Restraining Order of the Supreme Court of New York Vacated and Preliminary Injunction Denied.

**CASE NUMBER**

**M271756**

**JUDICIAL BODY**

First Instance

**TYPE OF LAW**

Constitutional Law

**THEMES**

Content Regulation/Censorship

**TAGS**

Prior Restraint

**CASE ANALYSIS**

**Case Summary and Outcome**

The Dutchess County Supreme Court of the State of New York vacated the Temporary Restraining Order (TRO) against Mary L. Trump and denied a motion for preliminary injunction against Mary L. Trump and Simon & Schuster, the publisher of her book *“Too Much and Never Enough: How My Family Created World’s Most Dangerous Man”.* The Plaintiff, had approached the Supreme Court for a Temporary Restraining Order and Preliminary injunction against Mary L. Trump and Simon & Schuster from publishing, printing or distributing any book or any portions thereof including but not limited to the book entitled: *‘Too Much and Never Enough, How My Family Created the World’s Most Dangerous Man’*, in any medium containing descriptions or accounts of [Ms. Trump’s] relationship with [the plaintiff], Donald Trump, or Maryanne Trump Barry. On June 30, 2020 the Supreme Court had issued a restraining order against Mary L. Trump and Simon & Schuster with a hearing date of July 10, 2020 for the preliminary injunction. Dissatisfied with the restraining order, the defendants approached the Appellate Division of the Supreme Court seeking to vacate or modify the restraining order as granted against them. The Appellate Division on July 1, 2020 vacated the restraining order against Simon & Schuster but denied the application to vacate same against Mary L. Trump. On July 13, the court eventually heard the application for preliminary injunction against Mary L. Trump and Simon & Schuster and vacated the Temporary Restraining Order against Mary L. Trump and also denied the Plaintiff’s motion for preliminary injunction against Mary L. Trump and Simon & Schuster. In arriving at its decision, the court reasoned that the Plaintiff failed to establish any of the requirements for a preliminary injunction against any of the parties and also observed that thousands of copies of the book were already printed and distributed to booksellers, which in itself would render any injunction moot. Further, the court remarkably noted that Simon & Schuster was not a signatory to the Settlement Agreement containing the confidentiality provision relied upon by the Plaintiff for the preliminary injunction.

**Facts**

The Plaintiff is Robert Trump who is a brother to Donald J. Trump, the President of the United States. The first Defendant is Mary L. Trump, niece to the Plaintiff and President Donald Trump. The second Defendant Simon & Schuster is an international book publisher and in this instance, publisher of the book-*‘Too Much and Never Enough, How My Family Created the World’s Most Dangerous Man’* authored by the first Defendant. The plaintiff’s father, Frederick Christ Trump (also known as Fred C Trump), a famous figure in New York real estate, died in June 25, 1999, and the mother, Mary Anne Trump, died a little longer than a year afterwards. Litigation ensued at the instance of Mary L. Trump and his brother Fred C. Trump III concerning the Estates of Fred Trump and of Mary Anne Trump, as well as multiple intra-family disputes were litigated in Queens County Surrogate’s Court, *(Will of Fred C. Trump*, File No 3949-1999) and Nassau County Supreme Court, *Trump v. Trump*, Index No. 6795-2000). The two matters were amicably settled by an “Agreement and Stipulation” (the Agreement) dated April 10, 2001. The parties to the settlement agreement comprised Ms. Trump, Fred C. Trump III, Linda C. Trump and Lisa Trump, who were the objectants to probate, on one hand, and Donald J. Trump, Maryanne Trump Barry and the Robert Trump, the plaintiff in this case, individually and as co-executors of the Estate of Fred C. Trump, who were the proponents of probate, on the other hand. The Plaintiff had disclosed that for the resolution, Mary L. Trump did receive valuable consideration in the settlement arrangement which included a substantial sum, mutual releases and a confidentiality agreement to her benefit. Resolving that the public must be kept out of details of the resolution of the probate dispute and that litigants must be protected, a confidentiality provision was included in the Settlement Agreement containing reciprocal provisions which bar any party to the agreement from disclosure of the terms of the settlement or the description of the litigation or their relationships without consent of the other side.

On June 15, 2020, Mary L. Trump announced that she would be releasing a book titled “*Too Much and Never Enough, How My Family Created the World’s Most Dangerous Man”* which would be an insider’s narrative about President Donald Trump and the Trump’s family. Robert Trump became aware of the announcement and immediately instituted an action at the Queens Surrogates Court in New York. It was the same court where the Probate Proceeding on the Will of FRED C. TRUMP a/k/a FREDERICK CHRIST TRUMP, the Plaintiff’s father and the First Defendant’s grandfather, held. The matter was however dismissed for lack of jurisdiction by Hon Peter J. Kelly of the Surrogate Court on June 25, 2020 where he distinguished the probate matter that ended in 2001 and the current claim where the Plaintiff seeks a declaratory judgment. The Surrogate Court therefore advised the matter to be instituted at the Supreme Court which is the appropriate forum.

Subsequently, the Plaintiff proceeded to the Dutchess County Supreme Court on June 26, 2020 where he filed Summons and Verified Complaint against the defendants. The Plaintiff in his Verified Complaint sought essentially specific performance of the Settlement Agreement, an allegation of anticipatory breach of the Agreement and claim for monetary damages. He also filed an Order to Show Cause (OSC) seeking a Temporary Restraining Order (TRO) and Preliminary Injunction (PI) against the defendants. On Monday, June 29, 2020 the Court conducted a chambers conference by Skype with counsel representing all parties. On Tuesday June 30, 2020 the Court granted a Temporary Restraining Order restraining and enjoining both defendants from further activities in publishing and distributing the Book and gave a July 10, 2020 as a return date for hearing of the argument for preliminary injunction and defence by the defendants.

Dissatisfied with the grant of the TRO, the defendants on July 1, 2020 approached the Appellate Division of the Supreme Court (Second Department) with separate applications to vacate or modify the Temporary Restraining Order granted by the Supreme Court. Upon hearing oral argument from the defendants only, Judge Scheinkman of the Appellate Division by Decision and Order on Application dated July 1, 2020 vacated the TRO as against Simon &Schuster and modified the TRO as against MARY L. TRUMP. On July 2, 2020 Ms. Trump filed an Affidavit in support of her opposition to the Plaintiff’s Motion for Preliminary Injunction. In the said Affidavit, Ms Trump deposed to the facts that from May 7, 2020 when Simon & Schuster accepted to publish her book, she relinquished every control on the book including publishing, printing and distribution of the book to Simon & Schuster and she therefore cannot determine any activity about the book from that day.

On Friday July 10, when the matter came up for hearing at the Supreme Court, Judge Greenwald adopted Order of the Appellate Division as handed and ordered the adjournment of the hearing to Monday July 13, 2020 when the motion for preliminary injunction was finally heard. Before the Supreme Court, the Plaintiff’s case is that is that by virtue of the Settlement Agreement of April 10, 2001 to which Mary L. Trump was a signatory she is therefore estopped from releasing any information about the family or any one of them including by a book without consent. He further submitted that Simon & Schuster should be enjoined in the preliminary injunction as it is an agent for Ms. Trump and working to publish the book on the instruction of Ms. Trump. Mary L. Trump who is the first defendant questioned the validity of the Agreement and indeed the terms of the agreement. She further argued that her right to publish and release the book is a First Amendment right that cannot be restricted by contractual agreement. She asked the court to vacate the TRO against her and deny the motion for preliminary injunction. Simon & Schuster who is the second Defendant stated that it was not a party to the Settlement Agreement and was not aware of any of such agreement as at the time of contracting to publish the book for Ms Trump. Simon & Schuster further submitted that the contents of the book bother on her personal perspectives of Donald Trump who is the President of United States and being a matter of public interest, prior restraint cannot be permitted. Simon & Schuster therefore urged the court to deny the motion for preliminary injunction.

**Decision Overview**

Judge Hal B. Greenwald delivered the Decision and Order of the Dutchess County Supreme Court of the State of New York in this case. The main issue the court considered in the action is whether the Plaintiff is entitled to a preliminary injunction against the defendants. Having noted that the Plaintiff premised his case on the Settlement Agreement of 2001 to which only Mary L. Trump was a signatory, the court swiftly considered the propriety and validity of seeking to enjoin Simon & Schuster in the preliminary injunction before proceeding to determine whether the preliminary injunction can be sustained against Mary L. Trump. It is trite in law that granting a preliminary injunction is a matter of sound discretion of the court. The Supreme Court noted that as the court is trusted with such latitude of discretion, party seeking such preliminary injunction nonetheless has a duty to show the court that he is entitled to the injunction by placing before the court “clear and convincing evidence”. *Liotta v Mattone, 71 A.D.3d 741 (2nd Dep’t, 2010)*.The court therefore went further to state that to seek preliminary injunction upheld against a party three requirements must be met and the requirements are: (1) Likelihood of success on the merits, (2) Irreparable injury absent granting of a preliminary injunction, (3) and a Balancing of the equities in the movant’s favor.

SIMON & SCHUSTER

*Likelihood of success on the merits*

The court noted that two of the causes of action by the Plaintiff expressly bother on the Settlement Agreement and they are (i) Claim for money damages against Ms. Trump for breach of contract, and (ii) Specific Performance. The court reiterated the fact that Simon & Schuster was not a party to the Settlement Agreement and as such cannot be held liable for a breach of a contract or to specifically perform a contract it was not a party to. In support of this view, the court cited the cases of *Black car & Livery Ins., Inc. v H & W Brokerage, Inc*, 28 A.D.3d 595 (2nd Dep’t, 2006) (*see Blank v. Noumair,* 239 A.D.2d 534, (2nd Dep’t, 1997); *Walz v. Todd & Honeywell,* 195 A.D.2d 455, (2nd Dep’t, 1993). In the circumstance, the court held that there could be no cause of action against Simon & Schuster particularly as to specific performance or breach of contract. In the circumstance there is no likelihood of success against Simon & Schuster in this regard.

*Irreparable Harm*

The court noted that the Plaintiff had claimed that the release of the book which contains confidential information is the irreparable harm. The court however stated that the Trump family members have been commenting on the Agreement. Furthermore, the court took note of the fact that thousands of copies of the book are already in circulation around the country with booksellers. The real harm here, it must be noted, must be to the party seeking injunction and that must be proved. In the circumstance however, the court noted that it is even obvious that if there would be any harm whatsoever, such harm would be resulted from stopping the release of the public who have a right to know, more importantly, when the book is about the nation’s President who is also standing for a re-election. In the words of Judge Greenwald, the court noted that “*The Trumps were local in 2001. The leader of the Trump family in 2020 is global. Yet, this action was brought by ROBERT L. TRUMP and no one else. It is he who had to substantiate a claim for irreparable harm, no other Trump family member is specified*” [Pg.9] The court cited the recent decision of the District Court of Columbia in *United States v Bolton*, 2020 WL 3401940 where the plaintiff sought to have the Court order the publisher, “*…to take any and all available steps to retrieve and destroy any copies of the book that may be in the possession of any third party*.”, the court refused to do so. The court noted that in that case, *“Bolton was dealing with information pertaining to national security, not 20-year-old family history”* [Pg.9]

*Balance of Equities*

As to balancing of equities, the court state that since there is no likelihood of success against Simon & Schuster as I was not part of the Agreement and there is no evidence of irreparable harm likely to be occasioned to the Plaintiff by not granting the injunction, the court held that the balancing of equities stands in favor of Simon & Schuster.

MARY L. TRUMP

*Likelihood of success on the merits*

The court had noted that the Plaintiff claimed that irreparable harm will be occasioned if the confidential information contained in the book is released to the public. In this regard, the court noted that the Plaintiff is unaware of the details of the book by which the court was not convinced that the Plaintiff could prove the likelihood of success of his case. On the other hand, the court noted that it appears there is already much information about the Plaintiff in the public. The court therefore is not convinced that the Plaintiff has shown the likelihood of success of his case against the defendant. The further stated that even if the standards of likelihood were to be relaxed, the case of the Plaintiff/Movant appears too weak to show likelihood of success in the case against the defendant. The court therefore held that the Plaintiff has not *“demonstrated by “clear and convincing’ evidence that he has a likelihood of success on the merits of his case on the merits of his case”* [Pg.9]

*Irreparable Harm*

The court gave a robust view on the concept of irreparable harm at this stage. In the view of the court the standard of “irreparable harm” is high and not just what can be proved by a mere contract’s clause. The court cited the case of *Eastview Mall, LLC v. Grace Holmes, Inc.*, 182 A.D.3d 1057, (4th Dep’t, 2020) where the court held that *“[i]rreparable injury, for purposes of equity, ... mean[s] any injury for which money damages are insufficient”* [Pg.11]. To establish “irreparable harm” therefore means that such harm must not be one that can be remedied with money. From the case of the Plaintiff as disclosed in the Verified Complaint filed, it is obvious and logical that the remedy for the harm alleged by the Plaintiff is monetary. It therefore flows to hold that whatever harm to the Plaintiff in this case is not irreparable. The court further stated that it not just enough for the Plaintiff/Movant to disclose possibility of an irreparable harm but must establish that there is a likelihood of irreparable harm.

While reiterating that obtaining an injunction is a matter of discretion of the court, Judge Greenwald stressed a party cannot be entitled to one by mere entering into a contract as no one can contract for a right to an injunctive relief. Further, the court cited the case of *Art Capital Grp., LLC v. Getty Images, Inc.*, 24 Misc. 3d 1247(A), 2009 WL 2913531 (N.Y. Sup) to hold that where injury has already been sustained, there can be no irreparable harm anymore. This is the situation of this case as thousands of copies of the book are already in the hands of third parties (booksellers) so whatever injury sought to prevent would have been sustained already. The court therefore concluded that the Plaintiff (Robert Trump) failed to establish how the release of the book would occasion a direct, irreparable harm to him to him to be entitled to an injunction as the Plaintiff’s allegations are mere conclusory and unsubstantiated. It is of note that the subject of the book focuses on Donald Trump and not Robert Trump and so the Plaintiff/Movant must show how the irreparable harm constitutes a direct, irreparable harm to his person, failure of which motion for preliminary injunction will fail.

*Balance of Equities*

The balancing of the equities is between the Plaintiff/Movant and the Defendant. It must be noted however that in establishing the balancing of equities is it must be between the Plaintiff/Movant who stands to suffer irreparable and the Defendant. It is however clear that the information contained in the book concerns the President of the United States who is not even a party in this suit.

The court stressed the fact that person around whom the book contents revolve is the President of the United States who is standing for re-election in the current year Presidential election this therefore goes to the root of the right to know by the public. The court noted that the right of the public to know about their Presidential who is also a Presidential candidate in the forthcoming election underscores the requirement of the balancing of the equities. The court then held that to offence the Agreement to occasion a prior restraint on the book would offend public policy. In driving this position home, the court quoted some of the words of Justice Scheinkman of the Appellate Division of the Supreme Court when the defendants earlier applied to the Division to vacate the Temporary Restraining Order as contained in his Order dated July 1, 2020 when the Appellate Judge stated that:

*The passage of time and changes in circumstances may have rendered at least some of the restrained information less significant than it was at the time and, conversely, whatever legitimate public interest there may have been in the family disputes of a real estate developer and his relatives may be considerably heightened by that real estate developer now being President of the United States and a current candidate for re-election.* [Pg. 14]

The court further noted that the confidentiality provision contained in the Settlement Agreement which was meant to resolve the probate-related disputes that resulted to litigation at the Surrogate Court apparently was meant to protect the financial part of the Agreement which may be of no interest now, but might really be in 2001. To the court, the non-financial part of the Agreement which is the family relationships will evidently be of interest to American public now that the Presidential election is approaching.

The court took a significant note of the fact that at the appellate level and before the instant court, Mary L. Trump did submit arguments in respect of First Amendment and Prior Restraint backed up with caselaw. In her argument, Mary L. Trump characterized the book as “political speech” citing the case of. *Procter & Gamble v Bankers Trust Co.*, 78 F.3d 219 (6th Cir.1996). She also hinged her defence on “Freedom of speech” as decided in *N.Y.Times Co. v Sullivan*, 376 U.S.254 (1964). Mary L. Trump argued that Prior restraint is deemed unconstitutional relying on the case of *Neb. Press Ass’n v Stuart*, 427 U.S. 539 (1976). In emphasizing free speech, the court cited the case of *CBS, Inc. v Young* 522 F.2d 234 (6th Cir. 1975); *Chase v Robson*, 435 F.2d 1059 (7th Cir. 1970) to establish that even where litigation is involved and injunction was sought to prevent participants from addressing the media on the case the injunction was denied.

The following cases of *Nihon Keizai Shimbun, Inc. v Comline Business Data, Inc.*, 166 F.3d 65 (2d Cir. 1999), *Dallas Cowboys Cheerleaders, Inc. v Pussycat Cinema, Ltd.*, 604 F.2d 200 (United States Court of Appeals, Second Circuit, 1979) , *Coca-Cola Company v Purdy*, 382 F.3d 774 (*United* States Court of Appeals, Eighth Circuit, 2004), *Macdonald v Clinger*, 84 A.D.2d 482 (4th Dep’t, 1982) and *Interplay Entertainment Corp. v Topware Interactive, Inc.*, 751 F. Supp. 2d (United States District Court, C.D. California, 2016) relied upon by the Plaintiff were in all found to be unavailing, as they do not apply to the instant case.

The court noted that the Applicant who has failed to show any damages either to himself individually or to the public if the Book is published and has indeed failed to establish any of the three requirements to obtaining a preliminary injunction, must have made the application without the knowledge that the book has been published.

In the end, the court noted that aside, applicant’s failure to justify preliminary injunction and prior restraint of free speech protected by First Amendment, the court noted that given that copies of the book are already with people across the country granting an injunction in itself at this stage will be moot. Justice Greenwald clearly stated that *“There is no doubt that the Book is out in the public eye in significant quantities and has reached millions of people by the tremendous attention it has gained by the media. Another “balancing” test for the Court is between plaintiff and S&S. Comparing the potential enormous cost and logistical nightmare of stopping the publication, recalling and removing hundreds of thousands of books from all types of booksellers, brick and mortar and virtual, libraries and private citizens, is an insurmountable task at this time. To quote United States v. Bolton, 2020 WL 3401940 (United States District Court, District of Columbia)( Lambeth, J.) “By the looks of it the horse is not just out of the barn, it is out of the country.”* [Pg.18] Consequently, the court vacated the Temporary Restraining Order against Mary L. Trump and denied the preliminary injunction sought against Mary L. Trump and her publisher, Simon & Schuster.

**DECISION DIRECTION**

**Expands Expression**

The decision expands expression when it denied the preliminary injunction sought against the two defendants and vacated the Temporary Restraining Order earlier issued against Mary L. Trump. The decision is significant as it shows that beyond the Plaintiff’s failure to establish the requirements for obtaining a preliminary injunction, it also noted that given the fact that issuing a preliminary injunction against the release of the book is tantamount to prior restraint on a First Amendment right, the Plaintiff also failed to discharge the heavy burden placed on him to be entitled to such a restraint. The decision also agreed remarkably with the position of Ms Trump that the Settlement Agreement cannot be enforced to violate First Amendment, not only because an injunction cannot just be obtained by reason of clause in an Agreement, but also that the confidentiality Clause of the Agreement on its face in 2001 sought only to protect the financial part of the agreement and not the family relationships or person of the President of the United States.

**GLOBAL PERSPECTIVE**

**National standards, Laws or Jurisprudence**

*US, BDO Seidman v Hirshberg*, 93 NY2d 382, 389

*US, New York Times Co. v United States*, 403 US 713, 714

*US, Allen v. Pollack,* 289 A.D.2d 426, 427 [2d Dept 2001] )

*US,Macdonald v Clinger*, 84 A.D.2d 482 (4th Dep’t, 1982)

*US,Coca-Cola Company v Purdy*, 382 F.3d 774 (*United* States Court of Appeals, Eighth Circuit, 2004)

*US,Dallas Cowboys Cheerleaders, Inc. v Pussycat Cinema, Ltd.*, 604 F.2d 200 (United States Court of Appeals, Second Circuit, 1979)

*US,Nihon Keizai Shimbun, Inc. v Comline Business Data, Inc.*, 166 F.3d 65 (2d Cir. 1999)

*US,First National Bank of Boston v Bellotti*, 435 U.S. 765 (1978)

*US,New York Times Co. v United States*, 403 U.S. 713 (1971)

*US,Nihon Keizai Shimbun, Inc. v Comline Business Data, Inc.*, 166 F.3d 65 (2d Cir. 1999)

*US,Crosby v Bradstreet* Company, 312 F.2d 483

*US,Dr. Seuss Enterprises v. Penguin Books*, 109 F.3d 1394 (9th Cir. 1997)

*US,Rodgers v United States Steel Corp.*, 536 F.2d 1001 (3rd Cir. 1976

*US,Trump v Trump*, 179 A.D.2d 201 (1st Dep’t, 1992)

*US,Ronnie Van Zant, Inc. v. Cleopatra Records, Inc*, 906 F.3d 253, 257 (2d Cir. 2018)

*US, Speken v Columbia Presbyt. Med. Ctr.,* 278 A.D.2d 154 (1st Dep’t, 2000)

*US, Speken v. Columbia Presbyterian Med. Ctr.*, 304 A.D.2d 489 (1st Dep’t, 2003)

*US, Democratic National Committee v. Republican National Committee*, 673 F.3d 192 (2012)

*US, United States v. Bolton*, 2020 WL 3401940 (United States District Court, District of Columbia)

**CASE SIGNIFICANCE**

The decision establishes binding or persuasive precedent within its jurisdiction.

**OFFICIAL CASE DOCUMENTS**

Supreme Court’s Decision and Order

Appellate Division’s Decision & Order

Supreme Court’s modifying Order

Mary L. Trump’s Affidavit

AMICUS Brief