

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Friedman, Kapnick, Gesmer, Rosado, JJ.

2394

DONALD J. TRUMP,
Plaintiff-Respondent,

Index No. 453299/21
Case No. 2023-03021

-against-

MARY L. TRUMP,
Defendant-Appellant,

THE NEW YORK TIMES COMPANY doing business
as THE NEW YORK TIMES, et al.,
Defendants.

Gibson, Dunn & Crutcher LLP, New York (Anne Marie Champion of counsel), for appellant.

Habba Madaio & Associates, New York (Alina Habba of counsel), for respondent.

Order, Supreme Court, New York County (Robert R. Reed, J.), entered June 12, 2023, which, insofar as appealed from, denied defendant Mary L. Trump’s motion to dismiss the breach of contract claim, unanimously affirmed, without costs.

This action alleging breach of a confidentiality agreement by statements made and information supplied in connection with a book and newspaper article is an “action involving public petition and participation” subject to the anti-SLAPP law (*see* Civil Rights Law § 76-a[1]). Books and newspapers are public fora (*see Karl Reeves, C.E.I. N.Y., Corp. v Associated Newspapers, Ltd.*, ___ AD3d___, 2024 NY Slip Op 01898, *6 [1st Dept 2024]; *Carey v Carey*, 220 AD3d 477 [1st Dept 2023]), and even otherwise private information about a public figure – especially one who is running for public

office – may be of public interest (see *e.g. Hustler Mag. v Falwell*, 485 US 46, 51 [1988]; *Monitor Patriot Co. v Roy*, 401 US 265, 274-277 [1971]). Contractual claims are not categorically outside the anti-SLAPP law, which depends not on the type of claim but on the type of conduct (see *Navellier v Sletten*, 29 Cal 4th 82, 90-93 [2002]). The subject claim arises from the protected activity insofar as that activity constituted the means by which the confidentiality agreement was allegedly breached, and therefore supplied the breach element of the breach of contract claim (see generally *Park v Board of Trustees of California State Univ.*, 2 Cal 5th 1057, 1062-67 [2017]). It does not matter whether defendant waived her ability to bring an anti-SLAPP law claim because she has not asserted any such claim but simply moved to dismiss under CPLR 3211(g) (see Civil Rights Law § 70-a[1]-[2]).

The motion to dismiss was nonetheless properly denied because the breach of contract claim has a substantial basis in law.

The subject confidentiality provision is not unenforceable on the grounds of public policy, for the reasons explained in *Trump v Trump* (2020 NY Slip Op 68100[U] [2d Dept 2020]). While issues of fact exist as to the confidentiality provision's meaning and scope, it is not so vague as to be unenforceable as a matter of law (see generally *Matter of Express Indus. & Term. Corp. v New York State Dept. of Transp.*, 93 NY2d 584, 589-590 [1999]), and any ambiguity can be resolved through examination of parol evidence to discern the intent of the parties (see *e.g. DMF Gramercy Enters., Inc. v Lillian Troy 1999 Trust*, 123 AD3d 210, 214 [1st Dept 2014]; *Jacobson Family Invs., Inc. v Natl. Union Fire Ins. Co. of Pittsburgh, PA*, 102 AD3d 223, 231 [1st Dept 2012], *lv denied* 22 NY3d 948 [2013]).

Issues of fact exist as to whether the information disclosed by defendant (that is the subject of this suit) or plaintiff's prior statements (that are relied upon by defendant) are subject to the confidentiality provision. Because the confidentiality agreement contains no fixed duration, the court must "inquire into the intent of the parties" and determine – "if a duration may be fairly and reasonably fixed by the surrounding circumstances and the parties' intent" (*Haines v New York*, 41 NY2d 769, 772 [1977]). What constitutes a reasonable duration and whether one may reasonably be implied are issues of fact not capable of resolution at this stage.

At a minimum, nominal damages may still be available on the breach of contract claim even in the absence of actual damages (*see Matter of Schleifer v Yellen*, 158 AD3d 512, 513 [1st Dept 2018]; *International Flavors & Fragrances, Inc. v Royal Ins. Co. of Am.*, 46 AD3d 224, 231 [1st Dept 2007]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 30, 2024



Susanna Molina Rojas
Clerk of the Court