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publication in the New York Reports.

No. 155
Erno Nussenzweig,
Appellant,
v.
Philip-Lorca diCorcia, et al.,
Respondents.

Jay Goldberg, for appellant.
Lawrence C. Barth, for respondents.
The New York Times Company et al., amici curiae.

PIGOTT, J.:

Between 1999 and 2001, defendant Philip-Lorca diCorcia, an artist and photographer, took candid photographs of individuals walking through Times Square. None of those photographed were aware that diCorcia had taken their picture.

In the fall of 2001, diCorcia exhibited certain of the

photographs at an art gallery owned by defendant Pace/MacGill, Inc. In conjunction with that event, Pace/MacGill published and sold a catalogue containing images on display at the exhibition. Moreover, ten limited edition prints of each photograph were created for sale to the public.

One of the images was that of plaintiff Erno Nussenzweig. However, it was not until nearly four years later, in March of 2005, that plaintiff first learned that his photograph had been taken, used as part of the exhibition and sold to the public. Shortly thereafter, plaintiff commenced this action asserting that defendants had violated his statutory right of privacy as set forth in Civil Rights Law §§ 50 and 51.

Defendants moved for summary judgment dismissing the complaint on the ground that any claim of a Civil Rights § 50-51 violation had to have been commenced within one year of the initial display of the photograph, not one year from plaintiff's discovery of the display as he argued. Supreme Court granted defendants' motions for summary judgment and the Appellate Division affirmed, but granted plaintiff leave to appeal to this Court to answer the certified question "Was the order of Supreme Court, as affirmed by this Court, properly made?"

Pursuant to CPLR 215(3), "an action to recover damages for . . . libel, slander . . . or a violation of the right of privacy under section fifty-one of the civil rights law" must be brought within one year. In Gregoire v G.P. Putnam's Sons, this

Court formulated the single publication rule, which states that a cause of action for defamation accrues on the date the offending material is first published (298 NY 119, 125-126 [1948]). Our holding in Gregoire was premised on the underlying policy that statutes of limitation are "designed 'to spare the courts from the litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost'" (id. at 125, quoting Chase Securities Corp. v Donaldson, 325 US 304, 314 [1945]).

Since our decision in Gregoire, New York appellate courts addressing the timeliness of statutory right of privacy claims have generally applied the single publication rule (see E.B. v Liberation Publs., 7 AD3d 566, 567 [2d Dept. 2004], citing Castel v Jean Norihiko Sherlock Corp., 159 AD2d 233 [1st Dept. 1990]; see also Costanza v Seinfeld, 279 AD2d 255, 255-256 [1st Dept. 2001]; but see Russo v Huntington Town House, Inc., 184 AD2d 627, 628 [2d Dept. 1992] [holding that the statute of limitations on Civil Rights Law §§ 50 and 51 claims runs from the date of the most recent violations of the statute]). The policy underlying the adoption of that rule is likewise implicated here and we therefore hold that the single publication rule applies to claims brought pursuant to Civil Rights Law §§ 50 and 51. Because the publishing event giving rise to plaintiff's right of privacy claims first occurred no later than the fall of 2001, more than one year before he commenced suit, plaintiff's claims

are time-barred.

Accordingly, the order of the Appellate Division should be affirmed, with costs, and the certified question answered in the affirmative.

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Order affirmed, with costs, and certified question answered in the affirmative. Opinion by Judge Pigott. Judges Ciparick, Graffeo, Read, Smith and Jones concur. Chief Judge Kaye took no part.

Decided November 15, 2007