

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

JAMIE S. MARGOLIN,

Petitioner and Counterclaim
Respondent,

-against-

EMMA TANG,

Respondent and Counterclaim
Petitioner.

File No. 311632

Docket No. O08854-20

Hon. Alison M. Hamanjian

VERIFIED ANSWER AND VERIFIED COUNTERCLAIM PETITION

Respondent Emma Tang, by and through her undersigned counsel, as and for her Answer [and Counterclaim] to the Petition of Jamie S. Margolin, states as follows:

ANSWER TO PETITION

1. Respondent admits the allegation in paragraph 1.b, but denies knowledge and information sufficient to form a belief as to the truth of the allegation concerning Petitioner's residence.
2. The allegations set forth in paragraph 2 are denied.
3. The allegations set forth in paragraph 3 are denied.
4. Respondent denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4.
5. Respondent denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5.
6. The allegations set forth in paragraph 6 are denied.

7. [There are no allegations set forth in paragraphs 7-13 of the Petition].

8. Respondent denies knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14.

COUNTERCLAIM PETITION

Counterclaim Petitioner, Emma Tang (“Tang”), as and for her Counterclaim Petition against Counterclaim Respondent, Jamie S. Margolin (“Margolin”), by and through her undersigned counsel, hereby alleges under verification as follows:

Preliminary Statement

1. Emma Tang was sexually assaulted by Jamie Margolin on the night of October 31, 2020. The evidence, as detailed below, not only shows that Margolin, by her own admission digitally penetrated Tang when Margolin knew that Tang was extremely intoxicated, but that Margolin kept Tang from leaving the room where the assault occurred and stopped another person from intervening to help Tang.

2. Contrary to Margolin’s false allegations, the evidence shows that after Margolin assaulted Tang, it was Margolin who continued to initiate contact with Tang and Margolin who pushed to see Tang in person.

3. Over November and into the beginning of December, Tang continued to grapple with the experience and to make sense of what had happened. On or about December 18, 2020, Tang wrote a blog post in which she discussed the assault without mentioning Margolin by name. The blog post was part of Tang’s efforts to grapple with being a survivor of sexual assault. But Margolin – who is a self-described climate activist – feared that once the truth was learned about her conduct, her career would be in jeopardy.

4. Margolin filed her Petition in an ill-conceived effort to intimidate and silence Tang. But now the world will know that Margolin is twice a predator: first for sexual assault and second for using court process in an attempt to scare Tang.

Lack of Subject Matter Jurisdiction

5. This Court does not have subject matter jurisdiction over the Petition or this Counterclaim Petition. The parties did not have an “intimate relationship” within the meaning of FCA § 812.

6. As demonstrated below, the parties became acquainted with each other in early September 2020 and the only sexual contact they have ever had was on the night of October 31, 2020, when Margolin unlawfully digitally penetrated Tang when Tang was too drunk to consent. The parties have never been in an “intimate relationship.”

7. Nevertheless, the Family Court issued an ex parte Temporary Order of Protection, despite the absence of any showing whatsoever by Margolin that such an intimate relationship existed.

8. As a hearing is now set for February 11, 2021, while Tang contests the Court’s subject matter jurisdiction, Tang seeks to respond to Margolin’s baseless allegations and to set the record straight with the actual facts.

Facts

A. Background

9. Tang and Margolin are both students at New York University.

10. At the time of Margolin’s assault of Tang on October 31, 2020, Tang was 18 years old and a first-year student at NYU.

11. At the time of Margolin's assault of Tang on October 31, 2020, Margolin was 18 years old and a first-year student at NYU.

12. Tang is smaller than Margolin. Tang is approximately 5'2" whereas Margolin stands approximately six inches taller at 5'8". Upon information and belief, Margolin outweighs Tang.

13. Tang and Margolin were introduced by a mutual friend at the beginning of the fall 2020 semester, or in or around the middle of September 2020.

14. While Tang self-describes as bi-sexual and Margolin self-describes as lesbian, the two did not have a romantic relationship.

15. And at least until the events of October 31, 2020, Tang had never had sex with another woman.

B. Halloween Night 2020

16. On the evening of October 31, 2020, both Tang and Margolin attended an apartment party at an Airbnb apartment located at 990 Sterling Place, Brooklyn, NY 11213.

17. Margolin invited Tang to the apartment.

18. Margolin had also invited two other people – two of her high school friends – who flew in from Seattle, WA and Minnesota. Margolin's high school friend who flew in from Seattle is a man. Margolin's high school friend who flew in from Minnesota self-identifies as non-binary.

19. Margolin paid for the Airbnb. Upon information and belief, Margolin's two high school friends each reimbursed her for one-third of the cost.

20. All four the people at the party met at Tang's apartment and then the four of them headed over to the Airbnb apartment.

21. They arrived at the Airbnb apartment at approximately 9:00 p.m.
22. All four people at the party consumed alcohol over the course of the evening of October 31, 2020.
23. Over the course of the evening, Tang became severely intoxicated. To the best of Tang's recollection, she had consumed approximately 6-9 shots of hard liquor while at the apartment.
24. Upon information and belief, Margolin consumed over the course of several hours three hard seltzers (White Claw) and had two shots of hard liquor.
25. At around 10pm, the four persons at the party played spin-the-bottle.
26. Margolin kept trying to engineer an outcome in which her spin of the bottle pointed to Tang. Margolin said during the course of the game that she had kissed everyone else in the room except for Tang.
27. Margolin's conduct was making Tang feel uncomfortable. While Tang is sexually attracted to women, Tang is not sexually attracted to Margolin.
28. However, Tang did not make known that she was uncomfortable with Margolin's comments or the game because did not want to embarrass Margolin or make her feel uncomfortable.
29. At this point in the evening, Tang recalls that she was very intoxicated, but she recalls that Margolin kissed her in connection with the spin-the-bottle game the four were playing.
30. At some point later in the evening, Tang ended up alone in a bedroom with Margolin. Tang does not recall the events leading up to this because she was intoxicated.

31. Tang, however, does specifically recall that at one point they were in bed together in a bedroom in the Airbnb and that Margolin was on top of her. Tang has a specific recollection that Margolin's weight was pinning her down.

32. Tang also does specifically recall that at one point, she was able to get up and leave the room but that Margolin forcibly pulled her back into the bedroom.

33. Tang expects that if Margolin's high school friend from Seattle were called to testify, he would testify that at on at least one occasion (and possibly more) after Margolin and Tang were in the bedroom, he attempted to see what was going on but that Margolin ordered him to get out of the bedroom.

34. When Tang awoke the next morning, she was in bed next to Margolin and completely naked.

35. Tang quickly grabbed her clothes, left the AirBnB, and went to her residence.

C. Margolin Initiates Contact with Tang and Presses to See Tang in Person

36. On November 1, 2020, Margolin initiated communication with Tang. (Attached as Exhibit A hereto are the text messages between Margolin and Tang.)

37. On November 1, 2020, Margolin wrote to Tang: "Are you okay? Just checking in, I want to make sure you're okay."

38. Over the next two days, over November 2 and 3, 2020, Margolin repeatedly sought to engineer an in person meeting between Tang and herself.

39. Prior to October 31, 2020, the two had purchased personal self-protection equipment, including a taser and mace. Margolin texted Tang that she wanted to pick up her taser and give Tang her mace. Tang, non-confrontationally, avoided seeing Margolin and when

pressed, told Margolin that she could pick up the taser from the security desk at her (Tang's) residence.

40. On November 4, 2020, Margolin suggested, presumably as a joke within the context of the impending election, that the two move to Portugal together.

41. Margolin then indicated again that she wanted to see Tang in person ("I'm picking up food at palladium. Wanna check in and say hi for a minute."). Tang, again, avoided seeing Margolin and texted her that she was out participating in a Black Lives Matter protest event.

42. Again, on November 5, 2020, Margolin pushed for an in person meeting with Tang. Margolin texted a picture of the mace she's been holding for Tang and the hair clip that belonged to Tang that Tang had left at the Airbnb the night of October 31, 2020. Margolin wrote in conjunction with the photo of the mace and the hair clip: "When do you want to meet?"

43. Although Tang texted back that they could meet the next day, they never did.

44. On November 6, 2020, Margolin again initiated contact with Tang:

- a. Margolin: "How are you today?"
- b. Tang: "good wbu?"
- c. Margolin: "Good. I miss you, we should hang out again soon. And we should also probably talk about what happened on Halloween.."

45. Margolin evidencing a guilty mind wrote to Tang [a day later] and the following exchange ensued:

- a. Margolin: "About last weekend. I am just worried about losing you as a friend like I really don't want it to come between our friendship at all."
- b. Tang: "i hear you and understand this. i might just need a bit of space to figure out how i feel?"

- c. Margolin: “Like to be clear I very much want to be your friend and keep hanging out with you, I’ve just been worried about how you left.”
- d. Tang: “yeah I have no interest in dating”
- e. Margolin: “Neither do I. I just want to be friends. And yes I’ll respect that and give you all the space you need.”
- f. Tang: “Thank you.”

46. Margolin nevertheless continued to press Tang for an in person meeting. On November 8, 2020, Margolin texted: “I know we’re on break[.] I just wanted to pop in here real quick and say happy 19th birthday.”

47. The two still did not see each other.

48. At this point, the tone of Margolin’s texts begin to shift. Margolin presumably hoped that her assault of Tang could be smoothed over if she could confront Tang in person. But as Tang continued to refuse to see Margolin, and it began to seem to Margolin that Tang believed that Margolin had in fact sexually assaulted her, Margolin’s texts become increasingly panicked and she begins to try to white-wash her unlawful conduct.

49. On November 7, 2020, the two still had not seen each other. Margolin reached out, unbidden, to Tang to ask: “Were any boundaries crossed?”

50. Margolin continued – again, unbidden by Tang: “On my end, I didn’t feel violated or like any boundaries were crossed and despite being super drunk I was okay with everything that happened, the only thing is that I have having that know of anxiety.”

51. These texts demonstrate Margolin’s guilty mind and are evidence that Margolin was the aggressor the evening of October 31, 2020. Upon information and belief, the “knot of

anxiety” Margolin describes (and probably is still experiencing) is the guilt and shame of knowing that she raped her friend – who is physically smaller – when she was black-out drunk.

52. By November 20, 2020, Margolin’s guilty mind was beginning to plague her even more and she was becoming increasingly desperate to confront Tang in person – presumably, upon information and belief, to intimidate Tang into not saying anything publicly, making a complaint with NYU, or filing a police report. Margolin texted Tang on November 20, 2020:

So obviously last night I was having a panic attack [emoji omitted]. Given the back and forth we’ve had on this and given that Halloween was my first time in many areas, I think we really need to have a face to face sooner rather than later, so please let me know when works for you, thank you.

53. Tang’s response clearly evidences that both women understood that Margolin was the aggressor and Tang the victim: “i don’t remember a lot of what happened, but i do know that i don’t want it to happen again. my therapist and I discussed for a bit and this is the conclusion I have come to.”

54. In connection with their exchange of texts, Margolin did, as the perpetrators of assaults all too frequently do, began to try to blame Tang for being the victim:

55. Your deflection of responsibility you had in the decision to sleep with me, made me feel extremely uncomfortable and anxious. I then expressed that to you, and insisted again that I really needed to talk, and instead of showing concern for my emotions, you gave me a very cold response several days later about a conclusion you made with your therapist. * * * You said you didn’t want it to happen again and that you didn’t remember much – two things I am on the exact same page on and had already said before. I already told you I just wanted to be friends and not hook up again, and I also said that I also didn’t remember too much and was also very drunk – so none of this was unique to you, or new information.”

56. This text from Margolin shows two things. First, Margolin clearly is not the party in need of protection. She admits that it was she who kept insisting that she needed to speak with Tang in person. Second, Margolin clearly was not assaulted by Tang as she believed it was a “hook up.” Third, Margolin is lying about how much she remembers because in two prior texts, she admitted she digitally penetrated Tang and that she recalls the two of them going “all the way.”

57. A few days prior to the aforementioned text, on November 18, 2020, Margolin admitted to committing aggravated sexual assault, forcible touching, and sexual misconduct. Margolin texted:

I remember feeling some anxiety in my chest and like being really fucking annoyed at myself at why I was so anxious like I just couldn't get that know out of my chest.
I also have a vivid memory my hand being very tired but I didn't want to let you down lol [smiley face emoji]
***of my hand being very tired.**

(bold added).

58. And Margolin clearly was not as drunk as Tang. Margolin wrote on **November 20, 2020**, [VERIFY]: “Shit, If I had known you were that much drunker than me, I would have put a stop to it and told you no when you said you wanted to go all the way cause I wouldn't have felt comfortable going that far.... Sorry, did I say something wrong?”

59. Upon information and belief, Margolin clearly remembers the events of the evening notwithstanding however much alcohol she had, including digitally penetrating Tang.

60. These last two texts from Margolin, taken together demonstrate that Margolin inserted at least one finger (possibly more) into Tang's vagina when Tang was unable to consent. And that Margolin, like many perpetrators of the assault apparently believed that she was gratifying Tang rather than assaulting her.

D. Tang's Blog About Her Assault and Margolin's Petition to Family Court in Retaliation

61. Tang, like many survivors of sexual assault, struggled to understand and name what had happened to her the night of October 31, 2020. However, shortly after the assault, Tang began to confide in a few select persons. She discussed what had happened with her therapist almost immediately after the events on October 31, 2020 and told three friends.

62. On December 18, 2020, Tang wrote publicly about the assault and her feelings about what had happened. (A true and correct copy of Tang's blog post is annexed hereto as Exhibit B). Tang wrote, for example, that:

I've learned that trauma shows up in the most unexpected ways and often weeks later than the actual event. Two months ago, I got really drunk with a friend at a small, covid safe gathering. The next morning, I woke up completely naked next to someone who was at the time a good friend of mine, hungover, and with very little memory of the night before. All I knew is that I needed to leave immediately, so I got dressed and left. It took me six weeks, several therapy appointments, and multiple conversations with neutral friends to understand why I felt so uncomfortable. I was more than uncomfortable, I felt violated.

* * *

I've been told that your brain doesn't let you remember things to protect you. So my memory is still kind of wack [sic] right now but I do have a few distinct memories that point to assault. The first is that I kept trying to leave to visit our other friends in a different room and she kept coming in to pull me back into the bed. The second is that one of our mutual friends kept coming into the room and she kept kicking him out. And the last one is that I have a distinct memory of being completely naked and flat on my back and wanting to leave and stop, but I was too drunk to do anything about it and too drunk to get up and move.

* * *

I want to share this story, because this was the first time I had been assaulted and the first time that I had been with another woman. It wasn't even until last week that I used the word assault, until another survivor and fellow friend and activist told me that it was okay and valid.

63. A few days later, Tang received a threatening call and texts from Daniel Kron, who claimed to be a lawyer representing Ms. Margolin.

64. When Tang did not agree to keep silent about the assault, Margolin filed her false petition in retaliation.

WHEREFORE, Counterclaim Petitioner, Emma Tang, requests that this Court:

- A. Dismiss the ex parte Temporary Order of Protection entered against her;
- B. Enter a Temporary Order of Protection in her favor and against Margolin;
- C. To the extent the Court has subject matter jurisdiction, adjudge Margolin to have committed the family offenses alleged;
- D. Enter an Order of Protection, specifying conditions of behavior to be observed by Margolin in accordance with Section 842 of the Family Court Act;
- E. To the extent applicable, enter a finding of aggravated circumstances; and
- F. Order such other and further relief as the Court deems just and proper..

Dated: January 27, 2021
New York, NY

**COHEN, SEGLIAS, PALLAS, GREENHALL
& FURMAN, P.C.**

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*Attorneys for Respondent and
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Emma Tang*

VERIFICATION

I, EMMA TANG, being duly sworn, deposes and states that the statements made in the above Answer and Counterclaim Petition are true to my knowledge, except as to matters alleged on information and belief, and as to those matters, I believe them to be true.

Emma Tang

Sworn to before me on ____ day of January 2021

Notary Public