



SUPREME COURT CHAMBERS

Ulster County Courthouse
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CHRISTOPHER E. CAHILL
Supreme Court Justice

SHARI S. GOLD, ESQ.
Principal Law Clerk

May 10, 2011

Mainetti, Mainetti & O'Connor, PC
PO Box 3058
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Corrigan, McCoy & Bush, PLLC
220 Columbia Turnpike
Rensselaer, New York 12144

Re: Stanton v. Veitch
Index No. 09-3948

Dear Counselors:

Enclosed please find a copy of a Decision and Order in the above-entitled matter. Kindly direct your attention to the last paragraph of the Decision and Order regarding filing, entry and notice of entry. For purposes of notice of entry, counsel can contact the Ulster County Clerk directly at (845) 340-3288 to obtain the date of filing.

Very truly yours,

Susan B. Suppies

Susan B. Suppies, Secretary to
CHRISTOPHER E. CAHILL, JSC

/sbs
Enclosure

STATE OF NEW YORK
SUPREME COURT
GREGORY STANTON,

ULSTER COUNTY

Plaintiff,

-against-

Decision & Order
Index No.: 09-3948

MICHAEL VEITCH,

Defendant.

Supreme Court, Ulster County
Motion Return Date: December 7, 2010
RJI No. 55-09-01911

Present: Christopher E. Cahill, JSC

Appearances: Mainetti, Mainetti & O'Connor, PC
Attorneys for Plaintiff
303 Clinton Avenue, PO Box 3058
Kingston, New York 12402
By: Joseph E. O'Connor, Esq.

Corrigan, McCoy & Bush, PLLC
Attorneys for Defendant
220 Columbia Turnpike
Rensselaer, New York 12144
By: Peter J. Corrigan, Esq.

Cahill, J.:

The underlying action arises out of statements made by defendant about plaintiff during a June 25, 2009 Public Access television program that defendant produces with his partner, David Menzies, entitled "Progressive Issues," a weekly commentary in which matters of public interest and concern are discussed. Plaintiff alleges that he was

defamed by statements referencing that he had worked with Michael Milken's junk bond trading firm of Drexel, Burnham, Lambert and that he was affiliated with investment firms that were located or based in India where it was suggested that he had resided for 7½ years after the fall of Drexel, Burnham, Lambert, for the purpose of running out a statute of limitations to avoid any related prosecution. At the time of the airing of such program, plaintiff had already spearheaded a massive public town clean-up effort where over 100 volunteers scoured the Town's roadways. He was also the campaign manager for the re-election of the Town Supervisor, Jeff Moran. As also the founder of an organization called Wall Street Without Walls, which advised communities on ways to tap into sources of funding to obtain capital for public projects, petitioner's public presence in Moran's campaign was relevant to defendant since the competing candidates for the town supervisor position held sharply different views on the propriety of continuing with an easement for the Comeau Property which was intended to protect it from further development. The comments made by defendant were allegedly culled from plaintiff's background and expertise as a financial expert, his prominent role in Wall Street Without Walls and his influence with Mr. Moran and its affect on the heated political climate concerning the Comeau/easement dispute.¹ In conclusion, defendant

¹Referring to a misleading reference to one of two companies listed in plaintiff's Wall Street Without Walls resume, as part of a press release issued by Ian Fiske of Wall Street Without Walls, defendant, referring to this heated campaign, commented that one of the people on Mr. Moran's committee is plaintiff and that research from the internet revealed his connection with Drexel, Burnham, Lambert and Michael Milken and how plaintiff "was a fellow executive of Michael Milken's" who, when Mr. Milken was going to jail, "apparently split the country,"

emphasized to the viewing audience the importance of their attendance at a town board meeting to be held on July 14, 2009 which would be reviewing the benefits and restrictions of continuing with the easement.

On July 2, 2009, plaintiff wrote a letter to the Woodstock Times challenging defendant's statements as false and defamatory, threatening legal action. In response, defendant wrote a letter to the editor that was published on July 9, 2009 stating that he "never meant to imply that you have done anything of a criminal nature while employed at Drexel Burnham or anywhere else. If in any way my words were misconstrued and they offended you, I publicly apologize." Defendant further explained that his motivation was to bring to the public's attention the appearance of plaintiff's influence on Mr. Moran to back away from his obligation to sign a conservation easement for the Comeau property. Plaintiff continued as Mr. Moran's campaign manager for approximately two months thereafter, appearing at meetings and speaking publicly on behalf of himself and his candidate, until he was forced to resign due to an email that he sent to over 600 members of the Woodstock Democratic Committee attacking the competing candidate for supervisor, Liz Simonson, entitled "Liz isn't Qualified."

and went to India for a period of time which reflects a "statute of limitations" which the audience should then draw their own conclusions about why he spent that specific amount of time in a foreign country. Next referencing the Wall Street Without Walls connection and how such organization is about helping communities and making a profit off of them, reference was made about mortgaging the Comeau property when town board member, Terry Rosenblum was running for office and how plaintiff, as "chairman or co-chair of Jeff Moran's re-election committee, knows that the Comeau property is worth millions and millions of dollars" which could be potentially "securitized."

After the joinder of issue and discovery, defendant made a motion for summary judgment. He contended that in light of plaintiff's insertion of himself into the contentious supervisor's race as campaign manager for the incumbent, as well as his visible presence at public meetings both in his civic capacity relating to the clean-up as well as his political capacity as the chair of the incumbent's campaign, plaintiff was a public figure and, therefore, the remarks made by defendant in his public commentary were well within the bounds of protected opinion. Plaintiff disagrees.

The first inquiry must be whether the challenged statements constitute an opinion or an objective fact since if they are deemed opinions, they are privileged (see Mann v Abel, 10 NY3d 271, 276 [2008], cert denied __ US __, 129 S Ct [2009]). To help reach that determination, the Court of Appeals has instructed that courts need to consider the following:

“ ‘whether the specific language in issue has a precise meaning which is readily understood; . . . whether the statements are capable of being proven true or false; and . . . whether the full context of the communication in which the statement appears or the broader social context and surrounding circumstances are such as to ‘signal . . . readers or listeners that what is being read or heard is likely to be opinion, not fact’ ” (Brian v Richardson, 87 NY2d 46, 51 [1995], quoting Gross v New York Times Co., 82 NY2d 146, 153 [1993]).

Courts were urged to “ ‘consider the content of the communication as a whole, as well as its tone and apparent purpose’ and in particular . . . ‘to the over-all context in which the assertions were made . . . [to] determine . . . ‘whether the reasonable reader would have believed that the challenged statements were conveying facts about the . . . plaintiff’ ”

(Mann v Abel, 10 NY3d at 276, quoting Brian v Richardson, supra at 51).

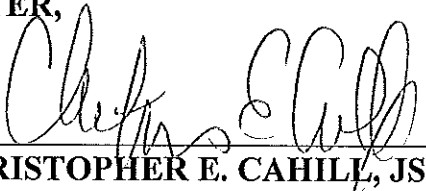
Applying these factors in the “context and content of the communication as a whole, including its tone and apparent purpose” (Versaci v Richie, 30 AD3d 648, 648-649 [2006], lv denied 7 NY3d [2006]), this Court must conclude that in light of the purpose of the show which is a weekly commentary on issues of public concern to the Woodstock Community and defendant’s continued peppering of phrases like “don’t take my word for it” and “make up your own minds,” this Court must conclude, in light of the political atmosphere at the time, that a reasonable listener would have found, when viewing the context of the challenged speech and the role assumed by plaintiff both publicly and privately, that the statements were a “ ‘full and vigorous exposition and expression of opinion on matters of public interest’ ” (Immuno AG v Moor-Jankowski, 77 NY2d 235, 255 [1991], quoting Rinaldi v Holt, Rinehart & Winston, 42 NY2d 369, 384, cert denied 434 US 969 [1977]). Hence, this Court will not engage in “hypertechnical parsing of a possible ‘fact’ from its plain context of ‘opinion’ [since it will] lose[] sight of the objective of the entire exercise, which is to assure that--with due regard for the protection of individual reputation--the cherished constitutional guarantee of free speech is preserved” (Immuno AG v Moor-Jankowski, supra at 256). Hence, defendant’s motion is granted by the finding that these “allegedly defamatory statements constitute nonactionable statements of opinion as a matter of law” (Mann v Abel, supra at 276). As to any further relief requested but not referred to herein, that request is denied.

This shall constitute the decision and order of the Court. The original decision and order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this decision and order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: Kingston, New York
May 9, 2011

ENTER,



CHRISTOPHER E. CAHILL, JSC

Papers considered: Notice of Motion and Motion for Summary Judgment Pursuant to CPLR 3212 dated October 1, 2010, Affidavit in Support of Peter J. Corrigan, Esq., dated October 1, 2010 with exhibits, Defendant's Affidavit dated October 4, 2010 with exhibits and Memorandum of Law dated October 1, 2010 with exhibit; Affirmation in Opposition of Joseph E. O'Connor, Esq., dated November 16, 2010 and Plaintiff's Affidavit in Opposition dated November 16, 2010 with exhibits; Reply Affirmation of Peter J. Corrigan, Esq., dated December 3, 2011.