

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-092384

03/29/2006

HON. MARK F. ACETO

CLERK OF THE COURT
T. Soto
Deputy

FILED: 03/30/2006

CONSTANTIN QUERARD

DAVID L ABNEY

v.

TOM LIDDY

THOMAS M RYAN

MINUTE ENTRY

Following trial, the Court took this matter under advisement. The ruling of the Court follows.

Plaintiff Constantin Querard asserts two claims in this lawsuit: defamation *per se* and false light invasion of privacy. Both claims arise from one paragraph in an email response sent by Defendant Tom Liddy. At the time, Liddy was chairman of the Maricopa County Republican Party. The paragraph upon which Plaintiff's lawsuit is based is this:

Enforcing the law and protecting the reputation of the Republican party is Pro Republican. Utilizing illegal tactics to launder tax exempt non profit money into politics does not help Pro-Family candidates it HARMS them.

THE DEFAMATION CLAIM

In his defamation claim, Plaintiff alleges that Defendant is guilty of defamation *per se*. Plaintiff has not asserted a defamation per quod claim.

Defendant twice moved for judgment as a matter of law on the defamation claim. The Court took these motions under advisement. The Court finds that it is in the best interest of all concerned that the Court address Plaintiff's claims as a fact finder.

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Under the circumstances,

IT IS ORDERED denying Defendant's motions for judgment as a matter of law on the defamation claim.

The Court has reviewed the statement in question in the context of Exhibit 14 (a newspaper article which apparently prompted an email to Defendant; both Plaintiff and Defendant are quoted in the article); Exhibit 3 (the email which prompted Defendant's email); and Exhibit 4 (the email of Defendant which contains the paragraph upon which Plaintiff's lawsuit is based).

Plaintiff bears the burden of establishing that the statement in question constitutes libel *per se*. "Words that are libelous *per se* do not need an innuendo because they are libelous in and of themselves. Words that need an innuendo are not libelous *per se*." *Central Arizona L. & P. Co. v. Akers*, 45 Ariz. 526, 636 (1935). Innuendo is defined as indirect insinuation. Insinuation is defined as indirect suggestion.

Plaintiff has not convinced the Court that the complained of statement constitutes libel *per se*. For example, while it can be argued that the statement in question by innuendo or insinuation criticizes Plaintiff, Defendant never directly states that either Defendant or anybody else is guilty of any criminal conduct. While such a statement might constitute libel *per quod*, Plaintiff has not made a libel *per quod* claim in this case.

Even if it is assumed for the sake of discussion that the statement in question constitutes libel *per se*, the Court would still find in favor of Defendant based on the evidence. This is so because of the Court's belief and finding, to the extent it is inferred that the statement relates to Defendant, that the statement is true.¹

A separate reason would also compel the Court to find in favor of Defendant on Plaintiff's defamation claim. "In Arizona, a communication is protected by a conditional privilege when the speaker has a duty to make the communication, and it is made in the performance of this duty. [Citation omitted.] The duty may be a legal, moral or social one." *Aspell v. Am. Contract Bridge League*, 122 Ariz. 399, 400 (1979). The Court finds that the statement in question was made by Defendant pursuant to a duty. Thus, the conditional privilege applies and Plaintiff has the burden of establishing that Defendant "acted in reckless disregard of the truth, or with actual knowledge that their statements were false." *Aspell* at 401. Based on the evidence, the Court finds that Plaintiff has failed to do so.

¹ It could be argued that Plaintiff used money contributed to a 501 (c)(4) corporation to create and support things of value and that it was these things of value, rather than money itself, which were ultimately used to support candidates running for office. "Substantial truth is an absolute defense to a defamation action in Arizona." *Read v. Phoenix Newspapers, Inc.*, 169 Ariz. 353, 355 (1991). Thus, there is no significance in the context of this case to the arguable distinction between money and things of value created by that money.

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FALSE LIGHT INVASION OF PRIVACY

Plaintiff filed a "Memorandum Regarding Elements of Claims" on February 21, 2006. Therein, Plaintiff admits that his burden of proof regarding the false light claim is "clear and convincing" evidence. In that memo, Plaintiff also concedes that he must establish, among other things, (1) that Defendant gave publicity to a matter that placed Plaintiff in a false light before the public and (2) that Defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the Plaintiff would be placed. Based on the evidence, the Court finds that Plaintiff has not established these things.

Based on the evidence, with respect to all remaining claims in the case, the Court finds in favor of Defendant and against Plaintiff.

IT IS ORDERED placing this case on the inactive calendar for dismissal on May 29, 2006. If a proposed judgment is not submitted before that date, the case will be dismissed without further notice.

The Court is faxing this minute entry to counsel.

Dated this 29th day of March, 2006.

Hon. Mark F. Aceto

JUDICIAL OFFICER OF THE SUPERIOR COURT