



people allegedly associated with Senator Kerry) either did not occur at all, or were grossly exaggerated.

Plaintiff Sherwood, who is described in the complaint, at length, as an award-winning journalist of great integrity and renown, concluded that Senator Kerry had insulted the honor of all Vietnam vets, and that the negative aspects of his character should be brought to light before the 2004 presidential election. Accordingly, in June of that year, Mr. Sherwood established the plaintiff Red, White and Blue, Inc., an independent film company, which produced a documentary "Stolen Honor: Wounds That Never Heal." Plaintiffs entered into an arrangement with Sinclair Broadcasting, through which Sinclair agreed to show the 42-minute film in its entirety on all of Sinclair's 62 television stations nationwide, on October 22, 2004. Plaintiffs also made arrangements to rent a movie theater in Abington, Pennsylvania, for the showing of the film on October 29, 2004.

Senator Kerry's supporters learned of these plans. Umbrage was taken. The Democratic National Committee issued press releases. A group of 17 Democratic senators made their displeasure known to Sinclair Broadcasting. Sinclair thereupon decided not to broadcast the entire film, but only about five minutes of it; and the owner of the Abington movie theater decided not to permit plaintiffs to show the film there.

Plaintiffs are suing Senator Kerry and his Pennsylvania campaign manager, Anthony T. Podesta, for defamation, business disparagement, interference with prospective and existing contractual relations, and civil conspiracy. Defendants have filed motions to dismiss the complaint with prejudice.

Addressing first the defamation count, there are several problems. The only specific allegations are that, on October 12, 2004, the Democratic National Committee issued an "action alert" stating that plaintiffs' film "Stolen Honor" was "written, produced and funded by extreme right-wing activists" and was "false." The same press release suggested that Sinclair Broadcasting would be compromising "journalistic integrity" if it showed the film, thus implying that Mr. Sherwood's film fell below the standard of "journalistic integrity." I do not believe any of these statements are actionable since they constitute expressions of opinion, and must be viewed in the context of a hard-fought political campaign. More importantly, I am not aware of any basis for holding a political candidate personally responsible for statements made in press releases issued by his party's national committee.

The complaint also alleges that, on October 15, 2004, the defendant Podesta, in his capacity as Pennsylvania Campaign Manager for the Kerry-Edwards Campaign, circulated an email which described plaintiff Sherwood as a "disgraced former journalist"

who "crawled out of the gutter," and as a "Bush hack." The email further asserted that "Carlton Sherwood should be ashamed of his dishonesty, and the Republican attack machine should be ashamed for stooping below even its own miserable standards in relying on Carlton Sherwood." Here again, I conclude that in the context of a heated presidential campaign, these statements are not actionable.

In Hustler Magazine Inc. v. Falwell, 485 U.S. 46 (1988), the Court held that the use of hyperbole which a reasonable person would not interpret as a statement of actual fact cannot support a defamation claim. Context is of crucial importance. In Greenbelt Cooperative Publishing Assoc. v. Bresler, 398 U.S. 6 (1970), the Court held that, in the context of a heated city council meeting, characterizing a statement as constituting "blackmail" was not defamatory. In similar vein, our Third Circuit Court of Appeals has held that, in the context of a heated town meeting, the statement "you people at Beverly are all criminals" was merely a hyperbolic rebuke, not actionable. Beverly Enterprises, Inc. v. Trump, 182 F.3d 183, 187 (3d Cir. 1999).

As explained by Judge Bork in his concurring opinion in Ollman v. Evans, 750 F.2d 970, 1002 (D.C. Cir. 1984) (en banc), the test for determining whether a statement is capable of defamatory meaning "is whether the person alleging defamation has

in some real sense placed himself in an arena where he should expect to be jostled and bumped in a way that a private person need not expect. Where politics and ideas about politics contend, there is a First Amendment arena. The individual who deliberately enters that arena must expect that the debate will sometimes be rough and personal." There are, of course, limits upon what can be said, even in a political campaign, without risking liability for defamation. Thus, a newspaper article reasonably construed as stating that a public official is in fact a rapist and an obstructor of justice is actionable. Cianci v. New Times Publishing Co., 639 F.2d 54 (2d Cir. 1980). None of the statements attributable to the defendant Podesta can reasonably be interpreted as factual assertions of that magnitude.

To summarize, I conclude that plaintiffs cannot prevail on their defamation claims against either of the defendants. Senator Kerry is not responsible for any of the allegedly defamatory statements; Mr. Podesta is not responsible for most of the alleged defamatory statements; and none of the alleged defamatory statements are actionable, given the leeway permitted in political campaigns.

I conclude, further, that plaintiffs cannot prevail on their remaining claims (commercial disparagement, interference with prospective and existing contractual relations, and civil

conspiracy). In the first place, defendants' status as targets of the accusations made by plaintiffs in their movie "Stolen Honor" does not make them responsible for what their sympathizers may have done to discourage dissemination of the film. The notion that either of the defendants can be rendered liable because of actions taken by a group of United States senators seems farfetched. But, more importantly, on the basis of the allegations in plaintiffs' complaint, it is clear that the defendants had an absolute right to protect their own interests by persuading Sinclair Broadcasting to limit dissemination of the movie, and to persuade the owner of the Abington movie theater to decide not to show the film. In order to establish intentional interference with a contractual relationship, plaintiffs must show "the absence of privilege or justification on the part of the defendant." Strickland v. University of Scranton, 700 A.2d 979, 987 (Pa. Super. 1997).

Finally, because the statements complained of were not defamatory, and because defendants had a right to protect their own interests, neither defendant can be held liable for conspiracy.

For all of the foregoing reasons, defendants' motions to dismiss will be granted.

An Order follows.

