

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALSTON MEADE	:	
Plaintiff,	:	
	:	
v.	:	
	:	CIVIL ACTION
CHARLES L. ANDERSON, M.D.	:	No. 97-CV-365
Defendant/Third Party Plaintiff,	:	
v.	:	
	:	
NATIONAL ASSOCIATION OF	:	
JAMAICAN AND SUPPORTIVE	:	
ORGANIZATIONS	:	
Third Party Defendant.	:	

MEMORANDUM-ORDER

GREEN, S.J. **January** , **1999**

Presently before the court is the Motion for Summary Judgment of Defendant Charles L. Anderson and Plaintiff Alston Meade’s response thereto. For the reasons set forth below, Defendant’s Motion will be granted as it relates to the statements contained in the letter dated August 17, 1996 and denied as it relates to the statements contained in the letter dated September 10, 1996.

I. FACTS

In 1996, Plaintiff and Defendant were members of the Board of Directors of the National Association of Jamaican and Supportive Organizations (“NAJASO”). Plaintiff was President of the Executive Committee and Defendant was Chairman of the Board. On August 17, 1996, Defendant issued an annual report to the Board of Directors of NAJASO that outlined Defendant’s recommendations for the following year. One of Defendant’s recommendations was “[t]he recall of Dr. Meade as President, Vernetta Byron, Executive Secretary and Joyce El-Ali as

Mid-Western Region Vice President.” (Anderson letter dated August 17, 1996). Also in the letter of August 17, 1996 was a recommendation that planning sessions be held in order to ensure “fair and honest elections and ways to maintain a strong Board and prevent abuse of the Organization by unscrupulous Executives.” (Anderson letter dated August 17, 1996).

Shortly thereafter, on September 10, 1996, Defendant distributed a letter to the general body of NAJASO that provided a detailed explanation of Defendant’s annual report. (Anderson letter dated September 10, 1996 to NAJASO Member Associations). In the September 10 letter, Defendant stated:

- 1) It is the general opinion that the three Executives in question lack respect for the Board and its Members.
- 2) It is the general opinion of the members that, the misuse of ones statements or input into the organization at times are constructively manipulated by the President to present his desired message.
- 3) It is the general opinion of the members that, the New[s]letter published by the President serves as the President’s propaganda machine magnifying an inch to look like a mile. It fails to be objective or truthful. This is at NAJASO’s expense.
- 4) Questions have been raised by members regarding the morality issue of The President and Executive Secretary and the impact they may be having on the Organization at large and in the performance of their respective duties.
- 5) Questions have been raised as to the possible wanton expenditure of the President and the Chair of the Convention. An outside audit is inevitable.
- 6) Questions have been raised by members regarding the possible falsifying of documents.

...

(Anderson letter dated September 10, 1996 to NAJASO Member Associations). Defendant enclosed a copy of the report dated August 17, 1996 and the letter dated September 10, 1996 and sent them to the Jamaican Embassy in Washington, D.C. (Anderson letter dated September 10, 1996 to Dr. B.K. Bryan, Embassy of Jamaica). Plaintiff filed the instant action alleging that the Defendant made defamatory statements in the annual report dated August 17, 1996 and the letter

dated September 10, 1996 that impugn upon Plaintiff's honesty, morality, and integrity.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment shall be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence presented must be viewed in the light most favorable to the nonmoving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

In support of his motion for summary judgment, Defendant claims that he is entitled to summary judgment because: (1) his statements are not capable of defamatory meaning because they were merely expressions of opinion; (2) Plaintiff is a public figure and has failed to allege actual malice; and (3) his statements are conditionally privileged.

III. DEFAMATORY MEANING AND OPINION

In Pennsylvania, a plaintiff in a defamation action must prove: (1) the defamatory character of communication; (2) its publication by the defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion. 42 Pa. Cons. Stat. Ann. § 8343(a). The defendant in a defamation action has the burden of proving: (1) the truth of the defamatory communication; (2) the privileged character of the occasion on which it

was published; and (3) the character of the subject matter of defamatory comment as of public concern. Id. at subsection (b).

Defamation is a communication which tends to harm an individual's reputation so as to lower him in the estimation of the community or deter third persons from associating or dealing with him. Elia v. Erie Ins. Exchange, 634 A.2d 657, 660 (Pa. Super. 1993). The test to be applied when evaluating a statement for defamatory meaning is "the effect the article is fairly calculated to produce, the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate." Baker v. Lafayette College, 532 A.2d 399, 402 (Pa. 1987). The court must determine as a matter of law, whether the statement in question is capable of a defamatory meaning, and if the court decides that it is capable of a defamatory meaning, then it is for the jury to decide if the statement was so understood by the reader or listener. U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia, 898 F.2d 914, 923 (3d Cir. 1990). To ascertain the meaning of an allegedly defamatory statement, the court must examine the statement in context. Id.

Defendant argues that the annual report dated August 17, 1996 and the letter dated September 10, 1996 are not defamatory because they were merely statements of opinion. It is well settled that "opinion without more does not create a cause of action in libel." Baker, 532 A.2d at 402. However, statements of opinion may be actionable if the "allegedly libeled party [demonstrates] that the communicated opinion may reasonably be understood to imply the existence of undisclosed defamatory facts justifying the opinion." Id.

Given these general considerations, we examine the content of the allegedly defamatory statements of the Defendant. The disputed statements contained in the August 17, 1996 annual

report are Defendant's general recommendations for the organization, and this court concludes that these statements are mere opinions and too vague and general to be capable of defamatory meaning. Furthermore, this court concludes that the statements made in the August 17 letter are subject to a conditional privilege, and Plaintiff has not set forth sufficient evidence to create a genuine issue of material fact that Defendant abused this privilege in making these statements. Therefore, Defendant's Motion as it relates to the statements in the August 17, 1996 letter will be granted.

The statements in the September 10, 1996 letter, however, are capable of defamatory meaning. The statements related to a "morality issue of the President and Executive Secretary," "wanton expenditures," "falsifying of documents" and that Plaintiff was not "truthful" are capable of harming Plaintiff's reputation as they impute dishonest and corrupt business practices as well as immoral behavior to the Plaintiff. Furthermore, the manner in which the statements were made could reasonably lead the reader to conclude that Defendant has a factual basis for the expressed opinions. Accordingly, this court concludes that Defendant's statements in the September 10, 1996 letter taken as a whole are capable of defamatory meaning.

IV. PUBLIC FIGURE

Defendant argues that Plaintiff is a public figure. The Court in New York Times Co. v. Sullivan, 376 U.S. 254, 279-280 (1964), stated that a public figure must prove "actual malice" to recover damages against the media in a defamation action. Defendant has cited no precedent in Pennsylvania where a plaintiff who was the president of a board of directors, such as Plaintiff, was declared a public figure in a defamation suit. The dispute in this matter is not of a public nature nor did Plaintiff inject himself into an issue of public interest. See Hutchinson v.

Proxmire, 443 U.S. 111, 134 (1979); Iafrate v. Hadesty, 621 A.2d 1005, 1007-1008 (Pa. Super. 1993). Additionally, Defendant has not provided the court with any case law where the publishing entity in a public figure controversy was not a media organization. Accordingly, for purposes of the case at bar, Plaintiff is not a public figure.

V. CONDITIONAL PRIVILEGE

Defendant also argues that he had a duty, and thus a privilege, to disclose to the NAJASO board of directors and membership his view of Plaintiff's conduct. Defendant maintains that the Constitution and Bylaws of NAJASO required that he "report to the Board any acts or omissions of any Executive Officer that is contrary to the advancement of the objectives of the Association, or its Constitution and/or By-Laws." It is well settled that the publisher of a defamatory statement is not liable if the publication was made subject to a privilege, and the privilege was not abused. Elia v. Erie Ins. Exchange, 634 A.2d 657, 660 (Pa. Super. 1993). "Communications made on a proper occasion, from a proper motive, in a proper manner, and based upon reasonable cause are privileged." Miketic v. Baron, 675 A.2d 324, 329 (Pa. Super. 1996). Thus, a conditional privilege arises where: (1) an interest of the publisher of the defamatory statement is involved; (2) an interest of some third party or the recipient is involved; or (3) a recognized interest of the public is involved. See id.

Pennsylvania courts have allowed corporations and directors of corporations to claim a conditional privilege as a defense to defamation actions. Simms v. Exeter Architectural Products Inc., 916 F. Supp. 432, 436 (M.D. Pa. 1996). In the present case, the statements published by the Defendant pertain to allegations of impropriety on the part of Board members, which if true, could affect the interests of NAJASO members. Therefore, the members of NAJASO had an interest in

being notified of a need to implement changes in the leadership of NAJASO, and Defendant enjoyed a conditional privilege in notifying NAJASO's members of his recommendations.

Once the court has determined that a conditional privilege exists, it is a question for the jury whether or not the privilege has been abused. Id. at 436. Thus, this court now must determine whether a genuine issue of material fact exists as to whether Defendant abused this privilege. Conditional privileges are abused when the publication: (1) is motivated by malice or is the result of negligence; (2) is made for a purpose other than that for which the privilege was granted; (3) is made to a person not reasonably believed to be necessary for the accomplishment of the privileged purpose; or (4) includes defamatory statements not reasonably believed to be necessary for the achievement of the purpose. Elia, 634 A.2d at 661. This court concludes that a genuine issue of material fact does exist as to whether Defendant abused this privilege by publishing the statements to the Jamaican Embassy and by including allegedly defamatory matter not reasonably believed to be necessary for the purpose of informing the members of NAJASO of the desire to implement changes within the organization.

VI. CONCLUSION

For the reasons stated above, Defendant's motion for summary judgment will be granted as it relates to the statements contained in the letter of August 17, 1996 and denied as it relates to the statements made in the letter of September 10, 1996. An appropriate order follows.

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ALSTON MEADE	:	
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Defendant/Third Party Plaintiff,	:	
v.	:	
	:	
NATIONAL ASSOCIATION OF	:	
JAMAICAN AND SUPPORTIVE	:	
ORGANIZATIONS	:	
Third Party Defendant.	:	

ORDER

AND NOW, this day of January, 1999, upon consideration of Defendant Anderson's Motion for Summary Judgment and Plaintiff Meade's Response thereto, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED as it relates to the statements contained in the letter dated August 17, 1996 and DENIED as it relates to the statements contained in the letter dated September 10, 1996.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.