

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK COUNTY OF NASSAU

SCAN

Present:

HON. BERNARD F. McCaffrey

Justice

TRIAL/JAS, PART 1
NASSAU COUNTY

MARLANDO WILLIAMS,

INDEX NO. 14182/01

-against-

MOTION SUBMISSION
DATE: 8/19/02

Plaintiff,

MOTION NO. 1

GRANDINETTE & SERIO LLP and
JOHN T. SERIO,

Defendants.

Defendants motion for summary judgment is granted.

Plaintiff is a New York State Trooper. Defendant John Serio is a member of the defendant law firm. Defendant Grandinette & Serio, LLP. In June, 2001, defendants were retained by one Michael Sosa to defend Sosa against assault charges brought by plaintiff. Plaintiff brought the charges when in his capacity as a landlord, Sosa refused to let plaintiff enter a premises Sosa rented from plaintiff. The premises is located in Queens Village, New York. A fight ensued and both plaintiff and Sosa were arrested on assault charges. Protective orders were issued against plaintiff and Sosa to keep away from each other.

Plaintiff began proceedings in Landlord and Tenant Court to remove Sosa and his family from the apartment. Serio represented Sosa in the Landlord Tenant matter. In the course of the Landlord and Tenant matter, Sosa contends plaintiff deliberately turned off the electricity to Sosa's apartment. At the time it was 95° farenheit and Sosa was concerned since his child has asthma and needs the air conditioning, refrigerated medicine and the electricity to power on an assistive medical device.

Sosa called Serio and Serio called the police. The police arrived at Sosa's apartment and filed an incident report that alleged an "illegal eviction" (see exhibit C annexed to defendants' notice of motion). Defendants contend the report means the police at the scene must have determined Sosa's allegations were substantiated. A locksmith was summoned to open the locked door containing the circuit breaker box to which defendants allege plaintiff had access and a key to the door.

Defendants stated based on the above events, Serio sent a letter to plaintiff's attorney (in the Landlord and Tenant matter) with copies to plaintiff's New York State Police supervisors. Basically, Serio stated plaintiff cut off the electricity to "handle" the Landlord Tenant proceeding and plaintiff used his badge to attempt to intimidate Sosa (see exhibit E annexed to defendants' motion).

Plaintiff denies that he deliberately cut off the electricity (he contends the power to Sosa's apartment had a history of shutting down), and he contends the letter was defamatory.

Here, plaintiff, a police officer, is a public official or figure as a matter of law (Derrig vs. Quinlan, 125 AD2d. 777; Orr vs. Lynch, 60 AD2d. 949, affd. 45 NY2d. 903) who must satisfy the "actual malice" standard to recover damages of defamation (New York Times Co. vs. Sullivan, 376 U.S. 254).

An allegedly defamed plaintiff who is a public official carries a constitutional burden of proof of malice with "convincing clarity" (Rinaldi vs. Holt, Rinehart & Winston, 42 NY2d. 369).

The test for actual malice is a deliberately subjective one and the relevant inquiry asks whether a defendant realized that his (or their) statements were false or whether he or she or they subjectively entertained serious doubt as to the truth of the statement such that it was published with a high degree of awareness of the probable falsity (Goldblatt vs. Seaman, 225 AD2d. 585).

Actual malice is measured by what the defendant actually believed and not by whether a reasonably prudent man could have "published" or would have investigated before publishing (St. Amant vs. Thompson, 390 U.S. 727).

In determining whether a defendant made a statement with actual malice, the issue for a court on a motion for summary judgment is whether the plaintiff has met the burden of presenting evidence that would demonstrate with convincing clarity that a defendant either knew that the statements were false or stated them with a high degree of awareness that they were probably false (Goldblatt vs. Seaman, supra.).

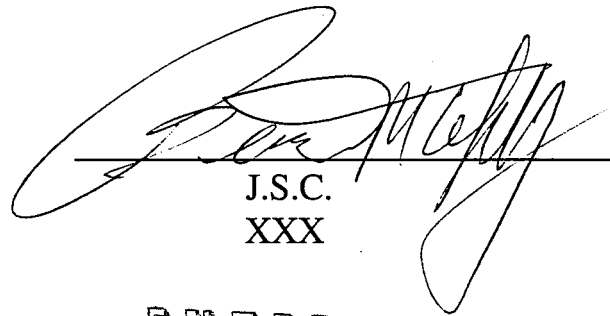
Here, the record shows that defendants believed, in good faith, in the truthfulness of their client's statement and that such statements as to the incident were credible; the defendants did not entertain serious doubts as to the truth of the incident as described by their client (Jee vs. New York Post Co., Inc., 260 AD2d. 215 lv. to app den. 93 NY2d. 817).

Defendant's state of mind cannot support a finding that defendants made the statements with actual malice (Sweeney vs. Prisoners' Legal Services of N.Y., 84 NY2d. 786).

Outside of conclusory assertions, nowhere has the plaintiff tendered evidentiary proof of the defendants' attempt to inflict harm with a falsehood (Garrison vs. Louisiana, 379 U.S. 64). Plaintiff has not met the "convincing clarity" test (Rinaldi vs. Holt, Reinhart and Winston, supra.). Defendants represented a client and took his word for what transpired. They also alleged they and the New York Police Department did some investigation. This constitutes a valid explanation or justification (see Kerwick vs. Orange County Publications Division, 53 NY2d. 625).

In conclusion, defendants relied on the statements of their client. With the past history between the plaintiff and defendants' client, circumstances, and the investigation of the charges, the defendants had no reason to seriously doubt the truth of the statement that plaintiff, the landlord, cut off the electricity to their client's apartment.

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J.S.C.
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