State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: November 5, 2026 CV-25-0785

JOSEPH A. SINAGRA,
Appellant,
v
MEMORANDUM AND ORDER
FRED COSTELLO JR., as Town Supervisor for the Town of Saugerties, et al.,
Respondents.

Calendar Date: September 15, 2026

Before: Garry, P.J., Clark, Aarons, Reynolds Fitzgerald and Ryba, JJ.

The DeNigris Law Firm, PLLC, Albany (*Stephen G. DeNigris* of counsel), for appellant.

Sokoloff Stern LLP, Carle Place (*Steven C. Stern* of counsel), for respondents.

Garry, P.J.

Appeal from an order of the Supreme Court (Sharon Graff, J.), entered April 1, 2025 in Ulster County, which granted defendants' motion to dismiss the complaint.

This defamation action arises from statements made by defendants relative to certain internal disciplinary investigations by the Town of Saugerties Police Department (hereinafter SPD) during a time when plaintiff was SPD's Chief of Police. In September 2020, plaintiff received a complaint alleging that one of SPD's officers, Dion Johnson, entered the complainant's residence while on duty and sexually assaulted her. SPD conducted an internal investigation that resulted in a finding of unbecoming conduct for

engaging in sexual conduct while on duty, among other departmental rule violations, but concluded that there was insufficient evidence that Johnson committed sexual assault or the other criminal acts alleged. Meanwhile, plaintiff also oversaw investigations into separate complaints of sexual harassment made by two female SPD officers against Johnson, one of which was sustained and one of which was deemed unfounded. Johnson thereafter accepted a command discipline settlement, whereby he forfeited 10 days of accrued leave and agreed that any similar performance issues could result in his termination. Additional complaints concerning Johnson were received, and SPD ultimately referred the matter to the Attorney General's Law Enforcement Misconduct Investigative Office pursuant to Executive Law § 75 (5) (b). In July 2023, that office publicly released a report concluding, among other things, that Johnson's conduct toward the original complainant was likely nonconsensual, that both sexual harassment complaints should have been sustained and that SPD's disciplinary response did not reflect the gravity of Johnson's misconduct. In addition to recommending Johnson's termination and referral of the matter to the local District Attorney, the Attorney General further recommended revisions to SPD's policies governing sexual misconduct and internal investigations.

Following release of the Attorney General's report, the Saugerties Town Board questioned plaintiff concerning the Johnson investigations. Although an arrangement was initially reached under which plaintiff would be permitted to act as Police Commissioner for a period of time as he sought to secure other opportunities, he was ultimately placed on paid administrative leave pending the Town Board's investigation into his handling of the Johnson matter. Plaintiff elected to retire from SPD, effective September 2023. He obtained new employment following his retirement but was terminated therefrom shortly thereafter, allegedly due to continuing media coverage of the Johnson controversy. Local media coverage of the matter had begun immediately following the Attorney General's report in July 2023 and continued into December of that year. According to the complaint, those reports contain the allegedly defamatory statements made by defendants Fred Costello Jr., Michael Ivino and Zach Horton, who respectively served as the Town Supervisor and members of the Town Board. Plaintiff alleges that his extensive subsequent efforts to obtain employment have been similarly unsuccessful.

After serving a notice of claim on December 15, 2023, plaintiff commenced this action alleging that numerous reported statements attributed to defendants constituted defamation per se by falsely portraying him as professionally incompetent in connection with the Johnson investigations. Defendants moved to dismiss the complaint pursuant to CPLR 3211 (a) (2) and (7). Supreme Court concluded, in pertinent part, that plaintiff's

notice of claim was untimely as to certain earlier publications and that the remaining statements constituted nonactionable opinion or were otherwise not reasonably susceptible of a defamatory meaning. Plaintiff appeals, principally arguing that defendants' timely challenged statements were not privileged opinions.

As "falsity is a requirement of a defamation claim and only factual assertions are capable of being proven false, defamation actions can only be premised on assertions of fact, not opinion" (*Gentile v Grand St. Med. Assoc.*, 79 AD3d 1351, 1352 [3d Dept 2010] [internal quotation marks and citation omitted]; *see Gross v New York Times Co.*, 82 NY2d 146, 153 [1993]). "Distinguishing actionable fact from a protected expression of opinion is a question of law in which several factors are weighed, including whether the allegedly defamatory words have a precise meaning that is readily understood, whether the statement can be proven as true or false, and whether the context and surrounding circumstances would indicate that the comment is an opinion" (*Hull v Town of Prattsville*, 145 AD3d 1385, 1387 [3d Dept 2016] [internal quotation marks and citations omitted]; *see Davis v Boeheim*, 24 NY3d 262, 270 [2014]).

Initially, as plaintiff does not challenge Supreme Court's determination that the notice of claim was untimely with respect to publications predating September 16, 2023, we consider only whether the cited statements published on or after that date are actionable. We also must reject plaintiff's argument that defendants' statements must be construed together with the headlines attributed to the various articles in which they were allegedly quoted. Although a headline attached to a news article is generally considered one publication when determining the defamatory effect (*see James v Gannett Co.*, 40 NY2d 415, 420-421 [1976]; *Brown v Johnson Newspapers Corp.*, 84 AD2d 636, 636 [3d Dept 1981]), the authors/publishers of the articles are not the defendants here (*compare Mann v Abel*, 10 NY3d 271, 275-277 [2008], *cert denied* 555 US 1170 [2009]; *Bonanni v Hearst Communications, Inc.*, 58 AD3d 1091, 1093-1094 [3d Dept 2009]; *Von Gerichten v Long Is. Advance*, 202 AD2d 495, 496 [2d Dept 1994]). Moreover, the subject articles are not included in the record, precluding meaningful evaluation of the headlines (*see generally Schermerhorn v Rosenberg*, 73 AD2d 276, 286-287 [2d Dept 1980]). Supreme Court thus properly focused its inquiry upon the statements attributable to defendants, considered against the broader circumstances surrounding the Johnson investigation and the Attorney General's report (*see Davis v Boeheim*, 24 NY3d at 270).

Against that backdrop, and accepting as true the allegations in the complaint, Costello was quoted in a September 2023 news article as having stated that "the controversy and [plaintiff's] handling of it played a role in how well the town Police

Department was functioning." Properly viewed, that statement expresses an evaluative judgment regarding departmental leadership during a period of significant public scrutiny. It neither identifies any specific act or omission by plaintiff nor conveys a factual assertion capable of objective verification and instead is inherently a matter upon which reasonable persons could differ (*see Coe v Town of Conklin*, 94 AD3d 1197, 1200 [3d Dept 2012]; *Clark v Schuylerville Cent. School Dist.*, 24 AD3d 1162, 1163-1164 [3d Dept 2005]; *compare Wilcox v Newark Val. Cent. School Dist.*, 74 AD3d 1558, 1561 [3d Dept 2010]).

In October 2023, Ivino was quoted in an article as having stated that there were "policies that weren't effective and just caused animosity" and that "[w]e are diligently cultivating a better workplace for the Police Department." These remarks – which do not mention plaintiff, much less accuse him of specific misconduct or convey objectively verifiable facts significant and important to his profession – concern only departmental policy, governmental priorities and/or management philosophy (*see Three Amigos SJL Rest., Inc. v CBS News Inc.*, 28 NY3d 82, 87 [2016]; *Clemente v Impastato*, 274 AD2d 771, 773-774 [3d Dept 2000]).

On two occasions in December 2023, Horton was reported as having stated, "Not that I like to speak for the other board members here but I think I can confidently say that it's not only my goal and commitment but the commitment of every other member up here to bring integrity back to this department [and] restore stability within the department." Read in the relevant context, an ordinary listener would understand these remarks as political rhetoric, expressing the Town Board's aspirational goals for SPD following a highly publicized controversy rather than asserting anything specific and verifiable about plaintiff (*see Hassig v FitzRandolph*, 8 AD3d 930, 931-932 [3d Dept 2004]).

Finally, we reject plaintiff's contention that the foregoing statements constitute actionable mixed opinion – that is, opinions implying the existence of undisclosed facts detrimental to plaintiff (*see Davis v Boeheim*, 24 NY3d at 269). Plaintiff emphasizes that defendants occupied positions of governmental authority and therefore possessed access to internal information unavailable to the public, but the factual predicate for defendants' comments was not undisclosed. The Attorney General's report had been publicly released, plaintiff's administrative leave was publicly known, and the controversy surrounding SPD's handling of Johnson had become the subject of extensive media coverage. Under these circumstances, a reasonable listener would understand defendants to be expressing conclusions drawn from publicly available information rather than

implying the existence of additional undisclosed facts regarding plaintiff's professional competence (*compare Hull v Town of Prattsville*, 145 AD3d at 1388).

As none of the timely challenged statements are reasonably susceptible to a defamatory connotation, Supreme Court properly dismissed the complaint pursuant to CPLR 3211 (a) (7). In light of our determination, we need not address the parties' remaining contentions.

Clark, Aarons, Reynolds Fitzgerald and Ryba, JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:



Robert D. Mayberger
Clerk of the Court