Summary Judgment – Defamation

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Matthew H. Greene and Kristen N. Annunziato recently obtained dismissal of an action pursuant to MRCP Rule 12(b)(6) for their clients, a public relations firm and its individually named employee. The case involved a local municipality's decision to close a series of commercial buildings after it identified a series of alleged building and safety code violations. BSL's public relations clients issued a press release on behalf of the municipality announcing the closures to the public. The commercial tenants in the closed buildings later brought suit against the property owners alleging breach of warranties, constructive eviction, and a violation of M.G.L. ch. 93A associated with the closures. The property owner brought a third-party action against the municipality that ordered the closures, the public relations firm, and its individual employee who authored the press release. The suit claimed, in relevant part, that the contents of the press release published about the closures was defamatory. The third-party complaint raised counts of defamation, commercial disparagement, tortious interference, and civil conspiracy against the public relations defendants.

After a hearing, the Court agreed that two separate privileges could be applied at the motion to dismiss stage, which largely shielded the public relations defendants from liability. Both the fair report privilege and the conditional privilege afforded to statements from government actors applied to any and all statement in the press release that were merely direct quotes from a public official. While questions of "fairness" and "accuracy" are often issues of fact that cannot be resolved on a motion to dismiss, they were not contested in this case. The third-party complaint attributed the quotes to the municipality, but nevertheless challenged the public relations defendant's republication. The Court held that the fair report privilege is designed to apply in precisely this scenario, and held that a public relations firm, like a news reporter, could not be found liable for merely republishing these quotes.

After the Court applied these privileges, and discarded the statements in the press release that the third-party plaintiff conceded were true, and therefore not defamatory, it was left with only two allegedly defamatory sentences. On review of these statements, and the pleading alleging they were defamatory, the Court agreed with the public relations defendants that the statements were not defamatory as their face. The sentences in question did not allow an average reader to draw a defamatory inference from the statements in question. The Court proceeded to dismiss all counts raised against the public relations defendants under the same logic.

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