



03/11/82 JESSE COLPO v. FRANK SHEERAN

1982 | Cited 0 times | Superior Court of Delaware | March 11, 1982

ANDREW D. CHRISTIE, JUDGE

UNREPORTED OPINION

When this action was commenced in 1977 the complaint named more than 70 persons as defendants. It was alleged that all the defendants had some part in preparation or publication of a certain flyer disseminated during the 1976 campaign for officers of Teamsters Local Union 326. Among the defendants were Frank Sheeran and Thomas Byron, who were candidates for union office. It was on their behalf, and on behalf of other members of the Sheeran-Byron slate, that the flyer was prepared. Other persons named as defendants were George Mycock, Willaim Miller, and Robert Thomas, who were listed as officers of the Stewards Committee formed to support the Sheeran-Byron slate. The other defendants were members of the Stewards Committee whose names were printed in the left-hand margin of the flyer.

On October 10, 1978 a complaint was filed against Arthur Frieze. The complaint filed against Arthur Frieze corresponded to the amended complaint in the original action, and that action was later consolidated with this action.

After taking discovery, the plaintiff dismissed his complaints against all of the defendants except for Sheeran, Byron, Mycock, Miller, Thomas, Frieze, and a David Wilks (a member of the Stewards Committee).

Motions for summary judgment were filed on behalf of all of the remaining defendants. The purpose of this letter is to announce the Court's decision as to those motions (except as to Frieze who has not pressed his motion).

Plaintiff asserts that the flyer contains seven libelous statements concerning him. Specifically, Colpo has asserted that the flyer falsely accuses him of being dishonest in the handling of money, misappropriating funds invested in his invention and being unable to account for such funds, mishandling the Eastern Auto Forwarders Defense Fund, soliciting money from Jimmy Hoffa and being turned down by Jimmy Hoffa because Mr. Hoffa was aware of Colpo's duplicity and ambiguousness, "screwing" thirty-eight men out of their seniority at Eastern Forwarders, demonstrating his incompetence by calling a meeting of his supporters and leaving them standing there because he did not appear himself, and attempting to assault a police officer. Sheeran has not, for purposes of the pending motion, challenged Colpo's assertion that the foregoing statements were



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libelous as to Colpo, but he does seem to argue that statements which might be libelous under other circumstances are not actionable in this case because they were made in connection with a union election. See *Linn v. United Plant Guard Workers of America, Local 114*, 383 U.S. 53 (1966); *Old Dominion Branch No. 496, National Association of Letter Carriers, AFL-CIO v. Austin*, 418 U.S. 264 (1974). It is clear, however, that the statements are libelous even though they were made in the heat of a union election and that a trier of fact could find that those making or endorsing such statements by distribution thereof did so with malice. Therefore, the principal issue to be resolved on the motions now before the Court is whether or not there is evidence that the remaining defendants had a part in the preparation or distribution of the material. The record contains evidence indicating that the primary draftsman of the flyer was Frieze. There is also evidence to the effect that Sheeran reviewed the flyer with Frieze before it was published, and that he authorized its publication. The Sheeran motion for summary judgment in his favor is found to be without merit.

The position of the remaining defendants is that they did not participate in the drafting or distribution of the flyer, and that there is no evidence in the record upon which a trier of fact could find that they are in any way responsible or that they did anything with malice.

There is, however, evidence supplied in part by Frieze and in part by Byron himself which, if believed by the trier of fact, would indicate that defendant Byron did review the flyer before the election, and that he was the person on the slate who provided the money for its printing. This evidence, and other evidence not here summarized, creates issues of fact as to Byron's participation and as to his possible malice.

There is also evidence in the record that Mycock inspected a draft of the flyer and made a contribution to it.

The evidence as to the involvement of the remaining moving defendants fails to reveal any direct connection of those defendants to the preparation or distribution of the flyer. From the evidence in the record, it could be inferred that the remaining defendants knew that their names appeared on the letterhead of the Stewards Committee, and that such letterhead was being used in connection with campaign literature. These defendants failed to check what was going out under their names and failed to stop its distribution after they knew or could have known what was contained in the material.

Plaintiff asserts that a party is liable for a defamation published by a third party when the third party is an agent of the one charged, and the one charged has recklessly failed to provide such regulations as are reasonably necessary to prevent a risk of harm resulting from the activities of the agent. See *Restatement (Second) of Agency § 213(c), Comment g* (1958); *Hart v. Playboy Enterprises, Inc.*, 5 Med. L. Rptr. 1811 (D. Kans. 1979); *Weaver v. Pryor Jeffersonian*, Okl.Sup., 569 P.2d 967 (1977).

The record appears to contain evidence which would support a claim based on an agency theory as to



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Sheeran, Byron, and Mycock, against whom there is already a certain amount of more direct evidence. However, as to the remaining moving defendants, Miller, Thomas, and Wilks, there is an absence of evidence in the record to show that those preparing and distributing the flyer were acting with such authority as would impose possible liability on Miller, Thomas, or Wilks.

The motion for summary judgment in favor of defendants Sheeran, Byron, and Mycock is denied. The motion for summary judgment in favor of defendants Miller, Thomas, and Wilks is granted. IT IS SO ORDERED.

