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IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT
IN AND FOR OKEECHOBEE COUNTY
FLORIDA

Case No. 2022CA000246

Senior Judge: Robert L. Pegg

PRESIDENT DONALD J. TRUMP,

Plaintiff
vs.

MEMBERS OF THE PULITZER PRIZE BOARD, an unincorporated association, ELIZABETH ALEXANDER, ANNE APPLEBAUM, NANCY BARNES, LEE C. BOLLINGER, KATHERIN BOO, NEIL BROWN, NICOLE CARROLL, STEVE COLL, GAIL COLLINS, JOHN DANISZEWSKI, GABRIEL ESCOBAR, CARLOS LOZADA, KELLY LYTLE HERNANDEZ, KEVIN MERIDA, MARJORIE MILLER, VIET THANH NGUYEN, EMILY RAMSHAW, DAVID REMNICK, and TOMMIE SHELBY,

Defendants.
_____/

ORDER DENYING DEFENDANT NEIL BROWN'S
MOTION TO DISMISS AMENDED COMPLAINT

THIS CAUSE came before the Court on Defendant Neil Brown's Motion to Dismiss Plaintiff President Donald J. Trump's ("President Trump") Amended Complaint ("Motion to Dismiss") filed by Defendant Neil Brown and joined by the 19 Defendants in this case who are not residents of the State of Florida (collectively, "Defendants"). President Trump opposed the Motion to Dismiss and a hearing was held on May 17, 2024. Being fully apprised of the pleadings, the arguments of counsel, and otherwise fully apprised of the premises, the Court finds as follows:

Background

Defendants made up the membership and key administrative staff of the Pulitzer Prize board in July 2022. All defendants, other than defendant Brown, reside outside of Florida. The Pulitzer Prize board is not a legal entity, but rather an unincorporated association responsible for the annual conferral of Pulitzer Prizes.

The Amended Complaint alleges it was the purpose and aim of Defendants' conspiracy—under the auspices of their collective association with the distinguished Pulitzer Prizes—to publish a defamatory statement in July 2022 affirming the veracity of articles published in 2017 by *The New York Times* (the "*Times*") and *The Washington Post* (the "*Post*"), which had reported extensively on the allegations that President Trump or persons connected to him had colluded with the Russian Government to win the 2016 presidential election (the "Russia Collusion Hoax"). The *Times* and the *Post* were jointly awarded the 2018 Pulitzer Prize in National Reporting in April 2018 for their reporting in 2017.

It is further alleged that Special Counsel Robert Mueller was appointed in 2017 to investigate the allegations against President Trump. His twenty-two-month investigation culminated with the publication of the "Mueller Report" in April 2019, which found no evidence of conspiracy or coordination between President Trump or the Trump campaign and Russia. Plaintiff alleges the Mueller Report firmly debunked the Russia Collusion Hoax and demonstrated the reporting of the *Times* and the *Post* was incorrect and unworthy of the 2018 Pulitzer Prizes.

The Amended Complaint also alleges that other government organizations investigated the matter following the conferral of the 2018 Pulitzer Prizes, including the office of United States Attorney General, the House Permanent Select Committee on

Intelligence in the U.S. House of Representatives, and the Select Committee on Intelligence of the United States Senate. These offices conducted their own public investigations and similarly found no evidence of collusion between President Trump, the Trump Campaign, and any Russian efforts to interfere in the 2016 presidential election.

The publication of the respective outcomes of these government investigations allegedly led to numerous inquiries and requests that the Pulitzer Prizes awarded to the *Times* and the *Post* in 2018 be rescinded. President Trump allegedly sent multiple demands himself, or through counsel. For years, these requests are alleged to have been uniformly rejected or ignored by the Defendants and/or their predecessors on the Pulitzer Prize board. President Trump's last letter, dated July 5, 2022, elicited a response.

The statement at issue in this case was published by Defendants in July 2022 on Pulitzer.org, a website maintained by Defendants. President Trump alleges that at the time of publication Defendants knew that the "Awarded Articles," and their intended purpose—the advancement of the broader Russia Collusion Hoax, which had dominated media coverage in 2017—were false and had been discredited by the published results of multiple federal government investigations.

Published to Pulitzer.org (the "Website") on July 18, 2022, Defendants' statement (the "Defendants' Statement") reads:

> **A Statement from the Pulitzer Prize Board**
>
> The Pulitzer Prize Board has an established, formal process by which complaints against winning entries are carefully reviewed. In the last three years, the Pulitzer Board has received inquiries, including from former President Donald Trump, about submissions from The New York Times and The Washington Post on Russian interference in the U.S. election and its connections to the Trump campaign—submissions that jointly won the 2018 National Reporting prize.

> These inquiries prompted the Pulitzer Board to commission two independent reviews of the work submitted by those organizations to our National Reporting competition. Both reviews were conducted by individuals with no connection to the institutions whose work was under examination, nor any connection to each other. The separate reviews converged in their conclusions: that no passages or headlines, contentions or assertions in any of the winning submissions were discredited by facts that emerged subsequent to the conferral of the prizes.
>
> The 2018 Pulitzer Prizes in National Reporting stand.

The final line of the Defendants' Statement includes a hyperlink to http://www.pulitzer.org/winners/staffs-new-york-times-and-washington-post in the original publication).

I. Applicable Standard

"The purpose of a motion to dismiss is 'to test the legal sufficiency of the complaint, not to determine factual issues.'" *Rolle v. Cold Stone Creamery, Inc.*, 212 So. 3d 1073, 1076 (Fla. 3d DCA 2017) (quoting *The Fla. Bar v. Greene*, 926 So. 2d 1195, 1199 (Fla. 2006)). When ruling on a motion to dismiss, the trial court "must limit itself to the four corners of the complaint, including any attached or incorporated exhibits, assuming the allegations in the complaint to be true and construing all reasonable inferences therefrom in favor of the non-moving party." *Cousins v. Post-Newsweek Stations Florida, Inc.*, 275 So. 3d 674, 678 (Fla. 3d DCA 2019).

In Florida, a defamation claim is comprised of five elements: (1) publication, (2) of a false statement, (3) with knowledge or reckless disregard as to the falsity (for public figures), (4) which causes actual damages, and (5) is "defamatory." *See Kieffer v. Atheists of Fla., Inc.*, 269 So. 3d 656, 659 (Fla. 2d DCA 2019) (quoting *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008)); see also *McQueen v. Baskin*, 377 So. 3d 170, 176 (Fla. 2d DCA 2023). The Fourth District has explained that a "communication is 'defamatory' if it tends to harm the reputation of another as to lower

him or her in estimation of community or deter third persons from associating or dealing with the defamed party." *Mile Marker, Inc. v. Petersen Publ'g, L.L.C.*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002); *McQueen,* 377 So. 3d at 176.

II. Findings of Fact and Conclusions of Law

1. Count I (Defamation by Implication) and Count III (Defamation *Per Se*) Are Properly Pled

A. The Alleged Defamatory Statement is Actionable

Defendants argue that the Defendants' Statement is "non-actionable pure opinion" to the extent that it "could reasonably read to convey and endorse the alleged implication that Trump colluded with Russia." Motion, pp. 12, 13. While true that a pure opinion statement cannot form the basis for a defamation action, a statement that implies or includes undisclosed defamatory facts as the basis for the opinion is actionable. *Stembridge v. Mintz*, 652 So. 2d 444, 446-47 (Fla. 4th DCA 1995). A statement that is ostensibly in the form of an opinion but "'implies the allegation of undisclosed defamatory facts as the basis for the opinion,' is actionable." *Id.* (quoting the Restatement (Second) of Torts § 566 (1977)); *Eastern Air Lines, Inc. v. Gellert*, 438 So. 2d 923 (Fla. 3d DCA 1983); *From v. Tallahassee Democrat, Inc.,* 400 So. 2d 52, 57 (Fla. 1st DCA 1981).

It is this Court's function to determine from the context "whether an expression of opinion is capable of bearing a defamatory meaning because it may reasonably be understood to imply the assertion of undisclosed facts that justify the expressed opinion about the plaintiff or his conduct . . . ." Restatement (Second) of Torts § 566, cmt. c (1977). This is done by looking to the totality of the statement, the context in which it was published, and the words used to determine whether the statement is pure or

mixed opinion. *Hoch v. Rissman, Weisberg, Barrett,* 742 So. 2d 451, 460 (Fla. 5th DCA 1999). If a defendant's statement, in totality, would "likely be reasonably understood by ordinary persons as a statement of an undisclosed existing defamatory fact, then it [is] the jury's function to determine whether a defamatory meaning was attributed to it by recipients of the communication." *Eastern Air Lines, Inc.*, 438 So. 2d at 927 (citations omitted); *see also LRX, Inc. v. Horizon Associates Joint Venture ex rel. Horizon-ANF, Inc.*, 842 So. 2d 881, 885 (Fla. 4th DCA 2003); *Zambrano v. Devanesan*, 484 So. 2d 603 (Fla. 4th DCA 1986); *Madsen v. Buie*, 454 So. 2d 727 (Fla. 1st DCA 1984); *Hay v. Independent Newspapers, Inc.*, 450 So. 2d 293 (Fla. 2d DCA 1984); *Smith v. Taylor County Publishing Co.*, 443 So. 2d 1042 (Fla. 1st DCA 1983); *Coleman v. Collins*, 384 So. 2d 229 (Fla. 5th DCA 1980); *Palm Beach Newspapers, Inc. v. Early*, 334 So. 2d 50 (Fla. 4th DCA 1976); *see*, *generally*, *Florida Medical Center, Inc. v. New York Post Co.*, 568 So. 2d 454 (Fla. 4th DCA 1990), *review denied*, 581 So. 2d 1309 (Fla.1991).

The United States Supreme Court has recognized that "[e]ven if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications." *Milkovich v. Lorain Journal Co.,* 497 U.S. 1, 18–19, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990). This application of actionable "mixed opinion" statements has been regularly used by Florida courts. *See, e.g. LRX, Inc.,* 842 So. 2d at 885; *Anson v. Paxson Communications Corp.,* 736 So. 2d 1209 (Fla. 4th DCA 1999); *Zambrano*, 484 So. 2d 603.

The distinction between unactionable pure opinion and actionable statements of mixed opinion was discussed by the Fourth District in *Zambrano*, where the court said:

> Pure opinion is based upon facts that the communicator sets forth in a publication, or that are otherwise known or available to the reader or the listener as a member of the public. Mixed opinion is based upon facts regarding a person or his conduct that are neither stated in the publication nor assumed to exist by a party exposed to the communication. Rather, the communicator implies that a concealed or undisclosed set of defamatory facts would confirm his opinion. Pure opinion is protected under the First Amendment, but mixed opinions are not.

Zambrano, 484 So.2d at 606 (citing *Hay,* 450 So.2d 293).

The *Zambrano* court also found an "important factor in the process of analyzing a comment is determining whether the speaker accurately presented the underlying facts of the situation before making the allegedly defamatory remarks." *Id.* If the defendant "neglects to provide the audience with an adequate factual foundation prior to engaging in the offending discourse, liability may arise." *Id.* at 606-07 (collecting cases).

This Court is bound by the Fourth District's opinion in *Zambrano*, and as a result finds the alleged defamatory statement to be actionable. Defendants cannot claim the statement is pure opinion when they withheld information from their audience that would have provided an adequate factual foundation for a common reader to decide whether to agree or disagree with Defendants' decision to let 2018 Pulitzer Prizes in National Reporting stand, and whether the awarded reporting had in fact been discredited by facts that emerged from the Mueller Report or the other government investigations that had been made public since the conferral of those prizes.

Numerous examples of Defendants' withholding valuable information from their readers exist:

First, Defendants failed to explain the "established, formal process" by which complaints against winning entries are "carefully reviewed."

Next, Defendants failed to disclose the identities, qualifications, or processes used by the two independent reviewers commissioned by the Defendants and/or their predecessors on the Pulitzer Prize board to investigate the underlying reporting.

Third, despite touting the anonymous reviewers' independence from the *New York Times, The Washington Post*, and "each other," Defendants failed to state whether either or both of the reviewers were independent from the Defendants or had an previous association with the Pulitzer Prizes. As the credibility and significance of the Pulitzer Prizes was the fundamental issue raised by the complaints against the 2018 awards, this information was also critically important for common readers.

Fourth, the Defendants' Statement states the "separate reviews converged" on a very specific outcome: that "no passages, headlines, contentions or assertions in any of the winning submissions were discredited by facts that emerged subsequent to the conferral of the prizes," but the actual "converging" conclusions of the reviews are unknown to their readers.

Fifth, implicit in the Defendants' Statement is that these reviews were conducted simultaneously as the result of a single "commission" by Defendants, and that neither reviewer was aware of the work of the other reviewer. As alleged, the reviews were conducted sequentially over the course of several years. Readers should know whether the reviews were conducted independently, not merely that the anonymous reviewers were independent of one another.

Sixth, readers are not given any indication of what information the reviewers relied upon to verify the Awarded Articles or the larger Russia Collusion Hoax the articles advanced. Only the Awarded Articles are provided via hyperlink to the reader,

not outside sources that would permit the reader to replicate the supposedly dispositive independent reviews.

Seventh, the Defendants' Statement does not address if or how the "independent reviewers" were able to verify the anonymous sources that appear throughout the Awarded Articles and were critical to advancing the larger Russia Collusion Hoax narrative. Instead, the reader is left to wonder if that was even attempted.

In sum, if the Defendants' Statement had included the foregoing facts, an ordinary reader might have been able to evaluate whether they agreed with Defendants' decision not to revoke the prizes, and whether the underlying reporting had actually survived the factual disclosures of several subsequent government investigations unscathed. Instead, the alleged defamatory statement implies no fewer than *seven* undisclosed sets of foundational facts, making the Defendants' Statement actionable mixed opinion. See *Zambrano*, 484 So.2d at 606.

Moreover, the statement at issue does not contain any cautionary language or attribution to an identifiable source, factors that militate toward actionability. See *Smith*, 443 So. 2d at 1047; *Zambrano*, 484 So. 2d at 606-07. Readers cannot meaningfully evaluate Defendants' decision to accredit the 2018 Pulitzer Prize in National Reporting when an adequate factual foundation for this decision has been withheld. Defendants' argument that the Defendants' Statement is "pure opinion" fails, and this Court finds the Defendants' Statement to be actionable.

B. The Alleged Defamatory Statement Concerns Plaintiff

Defendants have argued that the Defendants' Statement's reference to the "Trump campaign" is insufficient as a matter of law to be a publication "of and concerning" President Trump himself, and is not actionable. Motion at pp. 8—9. This argument fails.

Defamation cases can lie even when the plaintiff is not named, and here the "Trump campaign" obviously bears President Trump's name. Courts provide many examples of defamatory statements that "concern" a plaintiff while not expressly referring to him individually. One example is *In re Perry*, 423 B.R. 215 (Bankr. S.D. Tex. 2010), where a bankruptcy court, applying a similar standard to Florida's, found that defamatory statements alleging illegal activity by a political candidate's business partner were also statements "concerning" the candidate himself. *Id.* at 270. The court found the statement related to the candidate's fitness to hold office and did not include any clarifying or qualifying language that would separate the candidate himself from the alleged impropriety of his business associate. *Id.* As the factfinder in that case, the court determined that a person of ordinary intelligence would have imputed the allegations to the candidate and found the statements to be defamatory. *Id.* at 271.

The *In re Perry* analysis is sound. As applied here, the connection between a candidate and his campaign is indisputably closer in the minds of ordinary readers than that of a candidate and a business partner. In the instant case, a reasonable reader of the Defendants' Statement could certainly conclude that by ratifying the veracity of articles from 2017 that indicated President Trump's 2016 presidential campaign had connections with alleged Russian interference in the presidential election, Defendants were asserting that *President Trump* had himself colluded with the Russians using his

campaign staff, his transition team, and his administration as proxies. If that implication proves false, as President Trump contends, it is defamatory *per se*. Defendants' argument that the Amended Complaint fails because the Defendants' Statement is not "of and concerning" President Trump fails.

C. The Amended Complaint Properly Pleads Damages

President Trump's claims are pled as defamation by implication (Count I), conspiracy to defame by implication (Count II)), defamation *per se* (Count III), and conspiracy to defame *per se* (Count IV). In all four counts, President Trump alleges the Defendants' Statement communicates "criminal, wrongful, and un-American conduct unbecoming of Plaintiff's previous position as the duly elected President of the United States, his profession as a businessman, and being the leading candidate for president in the 2024 presidential election." Am. Compl. ¶¶ 175; 178; 201; 203. These claims, whether by directly defamatory or by implication, all allege defamation *per se* based on Defendants' association of President Trump with illegal and hostile Russian attempts to influence the 2016 presidential election.

This Court will follow the decision of the Second District Court of Appeal in *Perry v. Cosgrove*, 464 So. 2d 664 (Fla. 2d DCA 1985). The letter at issue in *Perry* read, in relevant part, "Rather than embarrass [sic] Mr. Perry any further on the matter, we decided not to issue a statement." *Id.* at 665–66. The defendants in *Perry* argued the operative complaint did not sufficiently allege defamation *per se* claim because it required information and innuendo outside the four-corners of the statement to determine the statement's falsity. *Id.* at 666. The Second District explained that a statement alleged to be defamatory *per se* has to be read "as the common mind would naturally understand it." *Id*. The Second District determined that a common mind would

naturally understand the defendants' statement to mean that the plaintiff "had conducted himself in a shameful manner, or in a manner inconsistent with the proper exercise of his profession" and was actionable as defamation *per se*. *Id.* The same analysis applies here, and the same conclusion is reached.

In this case, President Trump has pled that the Defendants' Statement left readers with the false, defamatory message that the Awarded Articles, which advanced the Russia Collusion Hoax, "had been objectively, thoroughly, and independently reviewed for veracity *twice,* and that the separate conclusions of these had each accredited the accuracy of the award recipients' reporting." *See* Am. Compl. at ¶ 146 (emphasis in original). In other words, President Trump has alleged the Defendants' Statement conveyed the false, defamatory message that he had colluded with Russia to win the 2016 election. At this stage of the litigation, President Trump has sufficiently pled defamation *per se*.

It has been well established that a plaintiff bringing a defamation *per se* claim does not need to plead special damages. *Campbell v. Jacksonville Kennel Club*, 66 So. 2d 495 (Fla. 1953). But, even if special damages were required to be pled, the Amended Complaint more than satisfies Florida's minimal pleading requirements. *See* Am. Compl. at ¶¶ 148—50; 167, 174—75; 187—88; and 201.

2. Count II (Civil Conspiracy to Commit Defamation by Implication) and Count IV (Civil Conspiracy to Commit Defamation *Per Se*) Are Properly Pled

Defendants argue that President Trump's claims for conspiracy (Counts II and IV) must fail because the underlying defamation claims fail. As explained above, Defendants have failed to defeat the defamation claims at this stage of the litigation.

Separately, Defendants seek shelter from the intra-corporate conspiracy doctrine, but that doctrine does not apply for the reasons stated in this Court's Order Denying Motion to Dismiss the Amended Complaint for Lack of Personal Jurisdiction Or, In the Alternative, Joining Defendant Neil Brown's Motion to Dismiss.

III. Conclusion

On the basis of the briefing on Defendant Neil Brown's Motion to Dismiss the Amended Complaint, the foregoing findings of fact and conclusions of law, and the Court otherwise being fully advised in the premises, it is

ORDERED as follows:

1. The Defendant Neil Brown's Motion to Dismiss the Amended Complaint is **DENIED**.

2. All defendants are directed to file an answer to the Amended Complaint within thirty (30) days from the date of this Order.

DONE AND ORDERED in Chambers in Okeechobee County, Florida, on this 20th day of July 2024.

ROBERT L. PEGG
Senior Circuit Judge

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