DOCKET NO.: CV 18-6014395-S	:	SUPERIOR COURT
THOMAS F. CRONIN, ET AL.	:	J. D. OF TOLLAND
V.	:	AT ROCKVILLE
PAUL J. PELLETIER	:	JULY 26, 2018

MEMORANDUM OF DECISION

The defendant, Paul J. Pelletier, has filed a "special motion to dismiss" pursuant to the procedure set forth in our recently-enacted Anti-SLAPP statute, General Statutes § 52-196a. On July 23, 2018, the court conducted the expedited hearing required by § 52-196a(e)(1) and makes the following rulings.

The plaintiffs, Thomas F. Cronin and Gino R. Loricco, allege in their complaint that the defendant sent a letter, dated June 18, 2017, to the EASTCONN Board of Directors; with copies sent to the Connecticut Commissioner of Education, Dianna Wentzell and Governor Malloy. At the time, Thomas Cronin was a candidate for the position of Executive Director of EASTCONN and was then EASTCONN's Director of Education. Gino Loricco was the principal of Quinnebaug Middle College High School. The letter contained several assertions that disparaged Cronin directly and Loricco by implication.

The court judicially notes that EASTCONN is a "regional educational service center" created under General Statutes § 10-66a and approved by the State Board of Education. As such, EASTCONN "is a body corporate and politic . . . acting on behalf of the state of Connecticut . . .," General Statutes §10-66c(a). Both public and private schools within EASTCONN's region can participate in educational programs and receive services provided by EASTCONN. The State Board of Education regulates and exercises oversight of EASTCONN's activities, General Statutes § 10-66a to § 10-66t.

MEMORANDUM OF DECISION SENT 7/26/18 TO:
ATTY MARIE ELIZABETH GALLO-HALL
ATTY GEORGE E BOURGUIGNON JR
REPORTER OF JUDICIAL DECISIONS

SUPERIOR COURT TOLLAND JUDICIAL DISTRICT
2018 JUL 26 PM 2:55

Pelletier's letter describes Cronin as a schemer; as lacking integrity and good character; as being childish and disrespectful; as displaying incompetence; as engaging in cronyism; and as mismanaging funds. Pelletier further predicts that hiring Cronin as Executive Director would bring embarrassment, disgrace, and failure to EASTCONN. Pelletier also recommends that certain past conduct by Cronin warrants further investigation and scrutiny.

Loricco, although unnamed, appears to have been collateral damage in Pelletier's effort to discourage the Board from hiring Cronin. The letter refers to Cronin's refusal to recognize and rectify the egregious incompetence of the principal of Quinnebaug Middle College High School, that is, Loricco. Pelletier claims in the letter that only his own intervention rescued the high school from its abysmal state of disarray and disruption.

The plaintiffs sue Pelletier for libel per se.

Counsel for the parties concur that recourse to this special motion to dismiss under § 52-196a appears to be the first filed in Connecticut. Section 52-196a permits a defendant to short-circuit a lawsuit brought against it if "based on the [defendant's] exercise of its right to free speech, right to petition the government, or right of association" under the state or federal constitutions "in connection with a matter of public concern," § 52-196a(b).

The statute, in pertinent part, defines a matter of public concern to "mean an issue related to . . . community well-being, . . . the government, . . . [or] a public official . . .," §52-196a(a)(1). "'Right of free speech' means communicating, or conduct furthering communication, in a public forum on a matter of public concern," §52-196a(a)(2). "'Right to petition the government' means . . . communication in connection with an issue under consideration or review by a[n] . . . administrative . . . or other governmental body . . .," § 52-196(a)(3).

The defendant's letter to EASTCONN's Board of Directors, the State Commissioner of Education, and the governor clearly falls within the statutory definition of an exercise of the defendant's right to petition the government. The petitioner voiced strong opposition to Cronin's possible appointment as EASTCONN's Executive Director.

The plaintiff's sole cause of action is libel per se and is based on the defendant's explicit and, in the case of Loricco, implied incompetence and character flaws of the plaintiffs. Loricco, as principal of a public high school, was a public official under the principles of the law of defamation, *Kelley* v. *Bonney,* 221 Conn. 549, 581 (1992). The court also concludes that Cronin was a public official for purposes of this special motion to dismiss.

Classifying EASTCONN, and, consequently, the status of its Executive Director of Education, as a particular legal entity is truly a Byzantine challenge. It is a public corporation, § 10-66c. For some purposes, it is a state agency, see § 10-66c(i). It is a body politic, § 10-66c(a). A "body politic" has been defined as a social compact whereby citizens agree to be governed by laws designed for the common good, Ballentine's Law Dictionary (3d Ed. 1969). A "body politic" denotes a group "invested with power to discharge some function of government," *Dugas* v. *Beauregard,* 155 Conn. 573, 577-578 (1967). It is not listed as a quasi-public agency under the general definitional provision, General Statutes § 1-120(1). The best the court can discern is that regional educational service center corporations are public instrumentalities.

It should be noted that whether an individual is considered to be a public official varies from context to context. For instance, judges are deemed to be public officials for pension issues, General Statutes § 1-110(1); but are deemed not to be public officials for application of the statutory code of ethics for public officials, General Statutes § 1-79(11). Judges are public

officials for exclusion from coverage under our Workers' Compensation Act, *Kinney* v. *State,* 213 Conn. 54, 62-63 (1989).

Guided by the analysis employed in *Kelley* v. *Bonney,* supra, the court determines that for purposes of § 52-196a(a)(1), Cronin must be categorized as a public official. If "robust and wide open debate concerning the conduct of [educators] . . . is a matter of great public importance," sufficient to classify teachers as public officials for defamation purposes, then a high-ranking employee in a regional educational service center, "acting on behalf of the state of Connecticut" under § 10-66c(a), must endure the same level of public scrutiny and criticism.

Therefore, the allegations of the plaintiffs' complaint implicate the defendant's right to petition the government in connection with a matter of public concern. The defendant is entitled to seek a special motion to dismiss under § 52-196a and have the court rule "as soon as practicable," § 52-196a(e)(4).

The court's decision must be grounded in "the pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based," § 52-196a(e)(2). The court construes the phrase "affidavits of the parties" to mean affidavits *submitted* by the parties, as opposed to restricting the affidavits to those for which a party was the affiant.

Subsection 52-196a(e)(3) dictates that the court "shall grant a special motion to dismiss" if the defendant establishes, by a preponderance of the evidence, that the complaint is based on his exercise of his right to petition the government. For the reasons stated earlier, the court finds that the defendant has met this preliminary burden. The defendant is, therefore, entitled to have the case dismissed "unless the [plaintiffs] . . . [set] forth *with particularity* the circumstances

giving rise to the complaint . . . *and* demonstrate to the court that there is probable cause, considering all valid defenses, that the [plaintiffs] will prevail on the merits of the complaint . . .," (emphases added).

The issues remaining for the court to resolve, then, are whether the plaintiffs' pleadings allege, "with particularity," valid libel per se causes of action for public officials *and,* if so, whether probable cause exists that they will prevail on the merits of such a claim. To reiterate, the court holds that the plaintiffs must demonstrate *both* that their pleadings are adequate *and* the existence of probable cause that they will prevail.

The court recognizes that in a typical civil case, a deficient pleading can be raised by a motion to strike or a request to revise, neither of which procedural devices result in a dismissal of the case. However, § 52-196a(e)(3) appears to produce such an outcome because the court "shall grant a special motion to dismiss" in such a situation. See, *Barry* v. *State Bar of California,* 2 Cal. 5th 318, 324-325; 386 P. 3d 788, 792 (2017); anti-SLAPP statute requires special dismissal if plaintiff's claim will fail for even non-substantive reasons, such as expiration of a statute of limitations or lack of subject matter jurisdiction. The court also observes that discovery is severely limited by the filing of a special motion to dismiss, § 52-196a(d), which hampers a plaintiff from demonstrating probable cause. However, the harshness of these results is a consequence of legislative judgment in enacting § 52-196a rather than the product of abstruse rules of practice.

In order to state a proper cause of action for libel per se, a public official must prove, by clear and convincing evidence, that the derogatory statements were, not only false, but also published with actual malice, *New York Times* v. *Sullivan,* 376 U.S. 254, 279-280 (1964); *Kelley*

v. *Bonney,* supra, 580; *Abdelsayed* v. *Narumanchi,* 39 Conn. App. 778, 781 (1995). The phrase "actual malice" is a term of art that goes beyond bad intent or spitefulness. Actual malice requires proof that the defamer uttered the falsehood "with *knowledge* that it was false or with *reckless disregard* of whether it was false or not," *Kelley* v. *Bonney,* supra (emphasis added). If in the speaker's mind, the derogatory comments were true, despite readily available evidence to the contrary, the offended party cannot prevail. The public official plaintiff must plead the correct elements of libel per se against the calumniator, including actual knowledge that the disparaging remarks were false or a total lack of concern as to whether the insults happened to be true or false.

In the present case, the plaintiffs' complaint lack any allegation, in "*particular,*" that the defendant *knew* that his pejorative remarks were untrue when he mailed them or did so without regard to truth or falsity. The complaint does contain allegations that the defendant acted maliciously by transmitting the foul comments because of vindictiveness or intense dislike of Cronin, but that use of the word "malice" fails to comport with the definition of the term of art, "actual malice" described above, i.e., *actual* knowledge of falsity or reckless indifference regarding falsity. The malicious *intent* to cause consternation, hurt feelings, and tarnish the plaintiffs' reputation and chances for success are insufficient in the absence of an allegation that the defendant did not believe in his assessments of Cronin and, by implication, Loricco or had fabricated his claims without regard to the accuracy of those assessments and representations.

As this court construes §52-196a(e)(3), that pleading omission obligates the court to grant the special motion to dismiss. However, the court will also address the probable cause issue which produces a similar result.

Probable cause is "a bona fide belief in the existence of facts essential under the law for the action and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it," *J. K. Scanlon* v. *Construction Group, Inc.,* 80 Conn. App. 345, 350 (2003). The concept of probable cause embraces a "flexible common sense standard" that demands neither that a belief be "correct [n]or more likely true than false," Id.

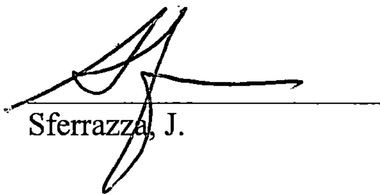
The affidavits submitted by the plaintiffs focus on showing that, contrary to the defendant's vituperation, the plaintiffs are and were dedicated, able, and exemplary supervisors in the education of children. Much of the submission involves laudatory evaluations, high recommendations, and favorable testimonials. This evidence supports their claims to being capable and superior promoters of the public welfare in the field of education.

But, "constitutional protection does not turn upon the truth, popularity, or social utility of the ideas and beliefs which are offered," *New York Times Co.* v. *Sullivan*, supra, 271. Instead, the test is whether the plaintiffs offer sufficient evidence to cause a person of reasonable prudence and understanding to entertain the belief that the plaintiffs will be able to prove, by clear and convincing evidence, that the defendant lied about his true opinions of the plaintiffs or had no real opinions about them at all.

The plaintiffs may possess plausible evidence that the defendant's bitterness toward Cronin clouded his judgment and tainted his characterizations, suspicions, and predictions about Cronin's competency and morality and motivated him to communicate his feeling publicly. But such evidence cannot stand in lieu of proof that the defendant consciously lied in his descriptions of the plaintiffs or recorded those ideas in reckless disregard.

As mandated by § 52-196a(e)(3), the court grants the special motion to dismiss. Under

§ 52-196a(f)(1), the defendant is entitled to reasonable attorney's fees and costs. The court will address those issues, if necessary, once the court's decision regarding dismissal becomes final.



Sferrazza, J.