

Item 3 **2012-00130439-CU-MC**

The National Grange vs. The California State Grange

Nature of Proceeding:

Filed By:

Motion for Summary Judgment and/or Adjudication

Riordan, Thomas L.

Plaintiffs/Cross-Defendants The National Grange of the Order of Patrons of Husbandry and Edward L. Luttrell's (collectively "Luttrell") Motion for Summary Judgment, or in the Alternative for Summary Adjudication of Issues as to the First Amended Cross-Complaint of Defendant and Cross-complainant Robert McFarland is GRANTED.

The Court rules on Luttrell's Evidentiary Objections as follows: objections to McFarland Dec. nos. 1-3, 5, 8-13, 15-17; Reeves Dec., nos. 1-4; Griffith Dec., nos. 1-4 and to Luvaas Dec., nos. 3-6 are SUSTAINED, the remainder are OVERRULED.

Crossdefendants

must submit a separate, formal Order on evidentiary objections in compliance with California Rules of Court, Rule 3.1354(c) for the Court's signature at the time the proposed order on the motion is submitted.

McFarland's Evidentiary Objections are OVERRULED. Cross-complainant must submit a separate, formal Order on evidentiary objections in compliance with California Rules of Court, Rule 3.1354(c) for the Court's signature at the time the proposed order on the motion is submitted.

First Amended Cross-Complaint ("FACC") for damages filed May 13, 2013 by

Crosscomplainant

Robert McFarland sets forth six causes of action: the 1st for defamation, the 2nd for public disclosure of private facts, the 3rd for intrusion, the 4th for intentional interference with contractual relations, the 5th for intentional interference with prospective business relations and the 6th for infliction of emotional distress. Each cause of action is alleged against both Cross-defendants, who move for summary adjudication as to each cause of action.

Summary adjudication of the 1st for defamation is GRANTED.

The tort of defamation "involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." (5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 529, p. 782, citing Civ. Code, §§ 45-46 and cases.) *Taus v. Loftus* (2007) 40 Cal. 4th 683, 720.

The FACC alleges that on February 7, 2012, Luttrell acting in his position as National Master and on behalf of the National Grange sent McFarland a disparaging and false personal employment evaluation containing various false allegations against McFarland. The evaluation contained numerous falsities including but not limited to accusations that McFarland was a "bully" in the workplace and lacked the "integrity" required of a State Grange President. (FACC, para. 15, Exh. A)

Moving parties assert that the letter itself does not contain the allegedly false statements. Rather, the text provides: "Integrity is a requirement of successful Grange leadership. I have had a number of informal complaints and reports about your actions which primarily include bullying behavior and insincere statements." In writing this Luttrell does not adopt or endorse the statements of others, but counsels McFarland "that Grange leadership requires that we work with those who disagree with us." (p. 2)

In opposition, McFarland asserts that the letter has a tendency to injure him in his occupation and is therefore per se defamatory. Civil Code, sec. 45. He points to the February letter as directly questioning McFarland's character because it refers to his late arrival to the national Convention, his late booking of an airplane ticket, and his lack of participation at the Convention. However, nowhere does he present evidence that these facts were untrue. Luttrell's conclusion that these acts show a lack of understanding of or commitment to the duties of a State Grange Master and that the behavior is unacceptable, are insufficient to constitute defamation.

Similarly Luttrell's letter's references to unspecified informal complaints by others of McFarland's "bullying" or "insincere statements" are not provably false assertions by Luttrell.

The statement that "Grange leadership requires that we work with those who disagree with us.", is neither a provably false fact, nor does it necessarily imply that McFarland would not work with those who disagreed with him.

Public Figure

Moving parties assert that McFarland is a limited purpose public figure. When public officials are sued for libel they must prove by clear and convincing evidence that the defamatory statement is "made with 'actual malice' - that is, with knowledge that it was false or with reckless disregard of whether it was false or not." (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 280.)

Even if the plaintiff is not a celebrity or public figure for all purposes, he may be deemed a public figure regarding a particular controversy. In *Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 351, the United States Supreme Court extended the reach of *Sullivan*

to "public figures." The California Supreme Court has defined a limited purpose public figure as "an individual who 'voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. Unlike the "all purpose" public figure, the "limited purpose" public figure loses certain protection for his reputation only to the extent that the allegedly defamatory communication relates to his role in a public controversy. *Reader's Digest Assn. v. Superior Court* (1984) 37 Cal. 3d 244, 253-254.

Here, where McFarland was elected as Master of the California Grange, the highest state office, the Court finds as a matter of law that McFarland has voluntarily injected himself into a particular public controversy and thereby becomes a public figure for a limited range of issues between the National Grange and the California Grange.

Malice

Assuming that Luttrell's statements were defamatory and actionable, he may not be held to have libeled McFarland unless a jury finds by clear and convincing evidence that he wrote his letter either with knowledge that it contained a false statement of fact or with reckless disregard for whether his assertions were true or false. *Rudnick v. McMillan* (1994) 25 Cal. App. 4th 1183, 1190-1191.

The Luttrell declaration provides evidence that he did not knowingly make any false statements about McFarland, but was simply exhorting McFarland to find ways in the future to uphold the ideals and integrity of the Grange, even where disagreements arose.

McFarland's own discovery responses fail to set forth any facts supporting his

allegation that Luttrell published false statements with actual malice. (UMF 2) Even if the statements in the Feb. 7 letter were found to be false, the opposing party McFarland has provided no evidence that Luttrell knew them to be false or was indifferent to their falsity when made.

Although McFarland asserts that malice exists because Luttrell disliked him, both the majority and minority reports reviewed prior to the Feb 7 letter indicated problems in the leadership and functioning of the California Grange.

Privileged communication

Civil Code § 47(c)(1) provides that a privileged publication is one made in a communication, without malice, to a person interested therein, by one who is also interested.

Here, the Feb. 7, 2012 letter was written by the Master of the National Grange to the Master of the California Grange, and was copied to the California Grange executive committee and two National Grange figures concerned with the governance of the California Grange.

The recipients were each "interested" parties as the required relationship between the parties to the communication is a contractual, business or similar relationship, such as "between partners, corporate officers and members of incorporated associations," or between "union members [and] union officers" and the "request" referred to must have been in the course of a business or professional relationship. (4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, §§ 306-309, pp. 2577-2580.) *Rancho La Costa, Inc. v. Superior Court* (1980) 106 Cal. App. 3d 646, 665. All recipients held important positions in the Grange; they each had an "interest" in the organizational relationship. The Court finds no meaningful distinction, as urged by McFarland, between his performance as Master of the California Grange and the National Grange and "corporate governance".

Although McFarland purports to dispute material facts in support, the Court finds that the material facts are essentially undisputed.

Summary adjudication of the 2nd for public disclosure of private facts is GRANTED.

The elements of public disclosure of private facts are: "(1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern." *Shulman v. Group W Productions, Inc.* (1998) 18 Cal. 4th 200, 214.

None of the facts disclosure in Luttrell's Feb. 7, 2012 letter were "private" facts in which McFarland had a reasonable expectation of privacy as Master of the California Grange.

Neither was the letter a confidential employment personnel record, as McFarland was not employed by the Grange and Luttrell was not his supervisor. The Feb. 7 letter concerned issues regarding the governance of the Grange and the performance of McFarland's public duties as Master of the California Grange, not his private off-duty activities.

None of the statements in the letter would be offensive and objectionable to the reasonable person.

McFarland has mischaracterized the contents of the Feb. 7 letter, which fail to contain any "private" facts in which McFarland had a reasonable expectation of privacy as Master of the California Grange.

The Court finds that the material facts are essentially undisputed.

rd

Summary adjudication of the 3rd for intrusion is GRANTED.

The tort of intrusion encompasses unconsented-to physical intrusion into the home, hospital room or other place the privacy of which is legally recognized, as well as unwarranted sensory intrusions such as eavesdropping, wiretapping, and visual or photographic spying. (See Rest.2d Torts, § 652B, com. b., pp. 378-379, and illustrations.) It is in the intrusion cases that invasion of privacy is most clearly seen as an affront to individual dignity. A privacy violation based on the common law tort of intrusion has two elements. First, the defendant must intentionally intrude into a place, conversation, or matter as to which the plaintiff has a reasonable expectation of privacy. Second, the intrusion must occur in a manner highly offensive to a reasonable person. *Hernandez v. Hillside, Inc.* (2009) 47 Cal. 4th 272, 286, citing *Shulman v. Group W Productions, Inc.*, *supra*, 18 Cal. 4th 200, 230-231.

Neither of the elements can be shown on the facts of this case. No allegations of intentional intrusion into a place, conversation, or matter as to which the plaintiff has a reasonable expectation of privacy are made.

McFarland consented to the investigation which resulted in Luttrell's letter. None of the information contained in the letter is alleged to have been obtained unlawfully. Nor are any private facts disclosed.

As all of the issues addressed pertained to McFarland's public conduct as Master, and was only published to a small group of interested persons, the intrusion cannot have occurred in a manner highly offensive to a reasonable person. McFarland's subjective belief that the results of the investigation into the operations of the California Grange, and the evaluation of his conduct as its Master, would remain private and confidential is insufficient to establish the tort of intrusion.

The Court finds that the material facts are essentially undisputed.

Summary adjudication of the 4th for intentional interference with contractual relations is GRANTED.

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage."

Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal. 4th 26, 55.

As explained in *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal. 4th 503, 514 "One contracting party owes no general tort duty to another not to interfere with performance of the contract; its duty is simply to perform the contract according to its terms. The tort duty not to interfere with the contract falls only on strangers--interlopers who have no legitimate interest in the scope or course of the contract's performance."

Here, moving parties assert that as members of the Grange they are not third party strangers to McFarland's contract with the California Grange. All parties were subject to the Bylaws of the National Grange and the Order as a whole. Luttrell was required by the organization's rules to monitor McFarland's conduct as Master of the state Grange.

McFarland sets forth no evidence that the Feb. 7 letter actually disrupted or interfered

with his role as master, to which he was reelected by California Grange membership. Additionally, moving parties assert that McFarland cannot show any damages from Luttrell's actions.

Attorney's fees are not damages under the American Rule, and McFarland has failed to provide evidence of actual damages from severe emotional distress occasioned by Luttrell's extreme and outrageous conduct.

The Court finds that the material facts are essentially undisputed.

Summary adjudication of the 5th for intentional interference with prospective business relations is GRANTED.

These elements for intentional interference with prospective business relations are: (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal. 4th 1134, 1153. A plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful "by some measure beyond the fact of the interference itself." *Della Penna v. Toyota Motor Sales, U.S.A.* (1995) 11 Cal. 4th 376, 392-393.

Luttrell has the duty under the rules of the Order to ensure that McFarland properly carried out his obligations as Master of the California Grange, and therefore could not be liable for this tort by charging McFarland with bylaws violations.

As summary adjudication of the defamation claim has been granted, the Court cannot find interference by an independently wrongful act.

Again, attorney's fees are not damages under the American Rule, and McFarland has failed to provide evidence of actual damages from severe emotional distress occasioned by Luttrell's extreme and outrageous conduct.

The Court finds that the material facts are essentially undisputed.

Summary adjudication of the 6th for negligent or intentional infliction of emotional distress is GRANTED.

A cause of action for intentional infliction of emotional distress exists when there is (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. *Hughes v. Pair* (2009) 46 Cal. 4th 1035, 1050.

No "outrageous" conduct, so "extreme as to exceed all bounds of that usually tolerated in a civilized community." and "intended to inflict injury or engaged in with the realization that injury will result" can be shown here. *Hughes v. Pair, supra*, 46 Cal. 4th 1035, 1050-1051.

Luttrell's administrative actions as Master of the National Grange investigating reports of rule violations regarding McFarland as Master of the California Grange do not meet the threshold of "extreme and outrageous" conduct.

The Court finds that the material facts are essentially undisputed.

Continuance for Discovery

McFarland's attorney Bandon Reeves declares that he did not have sufficient opportunity to conduct discovery as to the issue of malice in the deposition of Luttrell taken on Dec. 10, 2014, as the witness's answers were evasive and non-responsive and his counsel objected.

The Court does not find that the evidence submitted is sufficient to establish that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented. Counsel failed to promptly and diligently move to compel further responses at deposition and/or request that the hearing on this motion be continued prior to filing his opposition. The Court therefore declines to deny the motion or order a continuance. Code Civ. Proc. § 437c (h)

As summary adjudication as to each cause of action has been granted, the motion for summary judgment as to the SACC of McFarland is also GRANTED.

The prevailing parties are directed to prepare a formal order complying with C.C.P. §437c(g) and C.R.C. Rule 3.1312.

Item 4 **2012-001318**