

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
COLLIER COUNTY, FLORIDA**

WILLIAM RASMUSSEN,

Plaintiff,

vs.

CASE NO: 04-1962-CA

COLLIER COUNTY PUBLISHING COMPANY,
d/b/a NAPLES DAILY NEWS, GINA EDWARDS,
DENISE ZOLDAN AND JEFFREY LYTLE.

Defendants.

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ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came on to be heard on the Defendants' motion for summary judgment in this libel action filed against the Defendants because of twenty six articles that were published in the Naples Daily News between July 2002 and January 2004. The articles concerned various aspects of a criminal prosecution which arose from efforts to develop a golf stadium in Naples, Florida.

Mr. Rasmussen became active in the Senior PGA golf tournament in Naples in the early 1990's. In 1995 He went before the Collier County Commission seeking \$500,000. of tax money to help pay for the tournament, and the next year the County Commission approved more public funding. Also in 1996, Mr. Rasmussen, with the help of John Norris, then Chairman of the County Commission, obtained the rights to serve as the golf tournament operator. These rights were given to a non-profit corporation established by the defendant.

1.

On October 10, 1996, Mr. Rasmussen announced plans to create a golf stadium in Naples. The stadium, called "Stadium Naples", was to serve as the home of the golf tournament and would contain a 54 hole golf, residential, corporate complex on land north of Naples. In 1997 The Stadium Naples Limited Partnership was established. While promoting this project, Mr. Rasmussen also directed the 1998 golf tournament through the Challenge Foundation. The tournament was not a financial success and in 1998, the PGA Tour revoked the Challenge Foundation's promoting rights.

During the month of June, 2000, Mr. Norris was arrested on charges that he had accepted unlawful compensation or reward for official behavior. Later that year, former Commissioner, Tim Constantine was charged with racketeering and unlawful compensation, and Bob Hardy was charged with conspiracy to commit racketeering. In the fall of 2001, a special prosecutor filed corruption charges against seven additional defendants including Mr. Rasmussen. These charges were all brought in Collier County Circuit Court Case NR. 00-1326CF. Mr. Rasmussen was charged with participating in a conspiracy to deprive the citizens of Collier County of the honest services of government officials and to achieve his own financial gain. He was further accused of using political corruption, bribery, unlawful compensation, money laundering and illegal benefits to achieve the desired results.

On February 22, 2002, Mr. Rasmussen was charged with organized fraud and communications fraud in Collier County Circuit Court Case NR. 02-477CF. The information alleged that he unlawfully intended to defraud one or more persons by false or fraudulent pretenses, presentations, or promises or willful misrepresentations of a future

act, all relating to "Stadium Naples."

On August 27, 2002, The State of Florida and Mr. Rasmussen entered into a written plea agreement in cases 00-1326CFG and 02-427 CF. According to the agreement, Mr. Rasmussen, in 02-477CF, would, and did, plead guilty to Counts Three and Four as reduced to Making a False Statement to Obtain Property and counts One and Two would be nolle prossed. The State of Florida also agreed to dismiss the charges pending against him in case NR. 00-1326 with the understanding that he fulfill the terms of the agreement. If he did not live up to the conditions contained in the agreement, the State retained the right to proceed in that case.

On January 22, 2004, he demanded a retraction of certain statements made in reporting the above mentioned events. The demand identified statements in 33 articles published by the Naples Daily News. On April 20, 2004 Mr. Rasmussen filed a civil action seeking damages. The complaint included many of the statements identified in the January 22, 2004 letter as well as three others where retraction was belatedly demanded.

The statements complained of fall into three categories set forth in three individual paragraphs of the complaint. Paragraph 30 contains statements relating to the defendants' description of the disposition of the charges against Mr. Rasmussen. Paragraph 31 contains statements or opinions concerning Mr. Rasmussen's involvement in the golf tournament and/or his Stadium Naples projects. Paragraph 32 contains statements relating to Stadium Naples Limited partnership attorney, Leo Salvatori.

The defendants have filed a motion for a summary judgment pursuant to Fla. R. Civ. P. 1.510(c). They allege that the pleadings, depositions, answers to interrogatories, admissions

on file together with the affidavits show that there is no genuine issue of material fact and that they are entitled to a judgment as a matter of law. The court agrees.

If the record reflects the existence of any genuine issue of material fact or the possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, that doubt must be resolved against the moving party. Hervey v Alfonso,

650 So.2d 644(Fla. 2d DCA 1995). In this case there is not only no genuine issue of fact, but also no doubt that one may exist.

In order to prevail in this libel action, Mr. Rasmussen would have to establish that "the defamatory statement was (1) a statement of fact, (2) which was false, and (3) made with 'actual malice'" Zore v. Jordan, 765 So.2d 768,771 (Fla. 4th DCA 2000). He cannot do so.

In Paragraph 30 of the Plaintiff's complaint, he alleges that the statements falsely claim that he pled guilty or no contest to charges in the Stadium Naples corruption case by stating that he pled to "reduced or related charges." The Plaintiff claims that the charges he pled guilty to in Case NR. 02-477CF are not "related" to the case involving corruption, i.e. Case NR. 00-1326CF.

The court records in the Stadium Naples prosecutions establish that the statements are true because Mr. Rasmussen actually pled guilty to charges that were "related" to the charges brought against the other defendants. If they were not related, the special prosecutor would not have had authority to file case NR. 02-477CF. When Mr. Rasmussen pled guilty in case NR. 02-477CF, the plea was directly connected to case NR. 00-1326CF.

As a condition of the plea, the charges in the corruption case would have been reinstated if Mr. Rasmussen had not complied with the terms of the plea. Additionally, the plea agreement itself contained the caption of both cases. Both cases concerned criminal activity relating to the development of Stadium Naples. In case NR. 02-477CF the information filed against the Plaintiff states that he engaged in a criminal act relating to Stadium Naples. The information in the other case related to the "Stadium Naples Project."

The Daily News summary of the charges against all of the defendants merely puts the matter in the proper context and does not amount to a false statement of fact concerning the Plaintiff. The Daily News digested information from various sources, including complex legal documents, and put it in everyday language for the public. The reduced and related terminology was an adequate way of summarizing the disposition of charges against the numerous defendants. A journalist's report need not describe legal proceedings in technically precise language. Handelsman v. San Francisco Chronicle, (1970) 11 Cal. App.3d 381, 90 Cal. Reporter 188), and journalists should have certain leeway in their choice of language when covering the criminal justice system. See Rouch v. Enquirer & News of Battle Creek Michigan, 440 Mich., 238, 263-264, 487 N.W.2d 205, 216-217 (Mich.1990).

Additionally, since the reporting was based on official public documents or information received from government officials, the "fair report" privilege is applicable. Stewart v. Sun Sentinel Co., 695 S.2d 360 (Fla. 4th DCA 1997); Woodard v. Sunbeam Television Corp., 616 So.2d 501 (Fla. 3d DCA 1993). "This privilege includes the [publication] of the contents of an official document, as long as [the] account is reasonably accurate and fair." Stewart, 695 So.2d at 362.

Based upon the documents used as sources, e.g. the informations, the executive orders, the plea agreement, the reports that the Plaintiff pled to "related charges" are fair and accurate descriptions of these documents and statements from government officials and, therefore, not actionable.

The statement contained in the June 28, 2003 Daily News article that the corrupt enterprise was expanded to include business and all 10 of the original Stadium Naples Defendants also falls within the fair report privilege. The information which the article refers to identifies the Plaintiff and his former Stadium Naples partners, among others, under the heading "Associates in Fact Enterprise". The plaintiff is described in the article as an "entrepreneur and businessman" and a principal in Stadium Naples Development (I & 2), IntelliNct, and the Challenge Foundation". He is further identified in several paragraphs in the section entitled "Conspiratorial Acts" and in numerous paragraphs denoting the "Incidents of Racketeering." The statement was a fair and accurate report of the 2003 information.

In paragraph 31 of the Plaintiff's complaint, he complains of two editorials in the Daily News, one written two days after the Plaintiff entered into the plea agreement, and the other the day after he was sentenced and placed on probation for two years.

In the first editorial, the Daily News said:

Bill Rasmussen came to Naples with a winning smile and a reputation, as founder of ESPN, for a golden touch. He now affirms a niche in history as the man who left everything in his path in a shambles--county government, charities and investors.

Something is surely owed for his catalyst role even before Stadium Naples in the manipulation and misspending of at least \$200,000 in public funds; his development partnership with a commissioner who was supposed to be policing that industry; his wooing of others with golf and skybox freebies; his jilting of charities and vendors who eagerly helped him stage golf tourneys on TV; and his later lies to pitchmen who in turn lied to investors who lost at least \$50,000 in a second try at Stadium Naples.

In the second editorial, The Daily News said:

As we have said once before, the ESPN founder with impressive credentials and winning smile left everything in his path in a shambles--county government, charities and investors.

He took control of a legitimate Senior PGA tour event and nearly ran it into the ground for his own gain. The \$200,000 in public funds he helped secure for it was misspent--partly for prize money he said his company, a former tourney sponsor, would post. He jilted charities and vendors.

These opinions were either based upon facts disclosed in the editorials themselves or in the coverage of the Stadium Naples controversy that was widely reported and readily available to the reader. The court agrees with the defendants' contention that the statement that Mr. Rasmussen was "at the center of it all" and left county government in "shambles" was not actionable because the statements were based upon the following publicly disclosed facts:

1. Mr. Rasmussen developed the idea for a Stadium Naples.
2. Mr. Rasmussen approached Commissioner Norris and persuaded him to become involved in Stadium Naples.
3. Mr. Rasmussen's involvement with Norris and Norris's relationship with the Stadium Naples partners led to criminal investigations that subsequently engulfed others.
4. Mr. Rasmussen gave county officials tickets and other "freebies" to golf events that led to violations of ethics laws.

5. Mr. Rasmussen personally made requests for public funding from the county for the golf tournament, including at least \$196,000 that the clerk of the circuit court later determined was misspent.
6. Mr. Rasmussen worked with brokers who were later convicted of massive stock fraud and lying to investors.
7. Mr. Rasmussen was identified by law enforcement authorities as the "key figure" in the Stadium Naples deal.

The Defendants further contend that the statement that the Plaintiff "jilted" charities and vendors is based upon the undisputed facts that he told the charity Quest for Kids, through the Challenge Foundation, that they would receive \$770,500 from the 1998 tournament and they only received \$25,000 from PGA Charities, and that the Challenge Foundation incurred debts of over 1 million dollars.

The Defendants also contend that "lies to pitchmen" is based upon his guilty plea to making false statements to investors and providing false promotional material to A.S. Goldmen brokers pitching Millennium stock. They take the position that the statement that Mr. Rasmussen had a "catalyst role" in the manipulation and misspending of \$200,000 in public funds is based upon the facts that he personally requested the public funding and that he was investigated for submitting inflated invoices to the county for reimbursement. The statement that Mr. Rasmussen "took control of a legitimate Senior PGA Tour event and nearly ran it into the ground for his own gain" according to the Defendants is based upon the facts that the Challenge Foundation ran up debts of over a million dollars and failed to pay the PGA 859,000.

The defendant concludes that the above opinions are all based upon publicly disclosed facts that clearly fall within the category of pure opinion and are, therefore, not actionable. The court agrees.

8.

The question of whether a statement is one of fact or one of opinion is a question of law. Hay v. Independent Newspapers, Inc., 450 So.2d 293(Fla. 2d DCA 1984). When a comment or opinion is based on facts which are set forth in the article being questioned or which are otherwise known or available to the reader or listener as a member of the public, it is pure opinion. From v. Tallahassee Democrat, Inc., 400 So.2d 52 (Fla. 1st DCA 1981), review denied, 412 So.2d 465 (Fla 1982).In making this determination, the court must construe the statement in its totality, examining not only a particular phrase or sentence, but all of the words, and the circumstances surrounding the statement. Hay, 450 So.2d 293. Applying these principles to the editorials discussed herein and agreeing with the Defendants' contentions concerning the basis for the statements, the court finds that they were pure opinions and, therefore, not actionable.

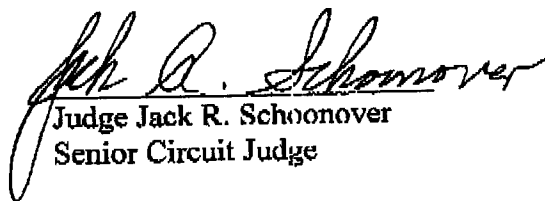
The remaining statements in paragraph 31 of the complaint are either substantially true or protected under the fair report privilege. Stewart, 695 So.2d at 362. The court rejects the Plaintiff's contention that he should not be held accountable for the actions of the Challenge Foundation because he had no ownership interest in the non-profit corporation. His role in the operation of the Foundation was clear from the beginning. The reference to Mr. Rasmussen rather than the Foundation was a colloquial way of describing information, and is a widely accepted practice and recognized and protected. See, Orr v. Argus Press Co., 586 F.2d 1108 (6th Cir. 1978) When viewing the statements as a whole, there is nothing false about the statements that imply that Mr. Rasmussen was responsible for the failure to pay charities and vendors.

In paragraph 32 of his Complaint the Plaintiff challenges four statements contained in four separate Daily News articles. These statements concern a Stadium Naples co-defendant, attorney Leo Salvatori. It is not necessary to consider the actionability of these statements. The Plaintiff has not argued against the Defendant's motion for summary judgment concerning those statements and at oral argument indicated he was not pursuing his claim in regard to these statements

In view of the court's rulings in this matter it is also not necessary to consider the Defendants' argument concerning lack of actual harm to Mr. Rasmussen.

Based upon the pleadings, depositions, admissions on file, and affidavits, and after considering the arguments of counsel, the court holds that the Defendants are entitled to a Final Summary Judgment on all of the claims set forth by the Plaintiff in his complaint.

DONE AND ORDERED at Naples, Florida, this 21st Day of November, 2005.


Judge Jack R. Schoonover
Senior Circuit Judge

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