

FILED

Victor E. Cretella III, Esq.

V.

David L. Kuzminski

2008 MAR 24 A 11: 00

Case Number: 3:08-cv-01109
CLERK US DISTRICT COURT
FREDERICK, VIRGINIA

To:

Victor E. Cretella III, Esq.
113 East Church Street
P.O. Box 151
Frederick, MD 21705-0151

Plaintiff

Pretrial Motion to Dismiss Complaint

In posting the information mentioned in paragraphs 7 and 8 of the complaint, the Defendant reacted to what appeared to be strong arm tactics employed by the Plaintiff in an attempt to silence factual criticism of PublishAmerica by a writer, Christine Norris. Ms. Norris was informed by Mr. Cretella she'd be sued unless she agreed to pay an unspecified sum to Cretella's client, PublishAmerica, and accept a gag on any further speech by her. The Defendant had already been attacked by PublishAmerica on several occasions (Exhibit 1 and 2 pp. 11-13) and saw this as another attempt to attack him through another individual (Exhibit 3) with whom he associated and an attempt to intimidate and stifle lawful criticism of the Plaintiff's client within an open forum dedicated to helping writers. Because the Plaintiff had reason to know the background and poor reputation of his client within the publishing industry based upon previous incidents where he defended PublishAmerica in arbitration, it was clear that the Plaintiff's strong arm tactics were unethical for a lawyer whose duty includes not using the law to harm innocent individuals. Based upon that, the Defendant resorted to the only legal courses of action available at that time which meant contacting the Maryland State Bar Association Ethics Committee and the Plaintiff's employer. The Defendant reported only factual information, not with the intent of malice, but with the intent of letting the Plaintiff's peers and management decide whether his actions were ethical and proper and what action if any was warranted.

Because other individuals were already aware of the undeserved legal attack on Ms. Norris, the Defendant urged them to add their voices by filing their own complaints as stated in paragraph 9. Said statements used by the Defendant in urging action were rhetorical hyperbole thus making them pure opinion in nature just as were the statements made to another writer by a PublishAmerica employee and defended by Mr. Cretella (Exhibit 4, pp. 26-29) in an arbitration hearing with that writer who was referred to as a blackmailer for wanting a copy of her royalty statement.

The individuals listed in paragraph 10 were already aware of the circumstances. Encouraging them to report what they knew of Mr. Cretella's behavior is a lawful action.

Likewise, reporting an employee's actions, as stated in paragraph 11, to his employer and to a lawfully established committee whose purpose is to regulate ethical behavior among its members are also lawful actions. Furthermore, considering such factual reports to be libel would be against public interest as it would remove valuable regulatory channels for the public when it believes an attorney in whom great trust is granted fails to honor that trust.

Again, in paragraph 12 the statements were rhetorical in nature as no malice was intended. Only a desire to see justice performed on behalf of a weaker individual was involved.

Paragraph 13 can be shown as categorically false because the Plaintiff's employers discharged him based upon the information provided. Said employers, being lawyers themselves, would clearly know the difference between libel and factual information and thus would act only upon facts, said facts not being included by the Plaintiff in his complaint.

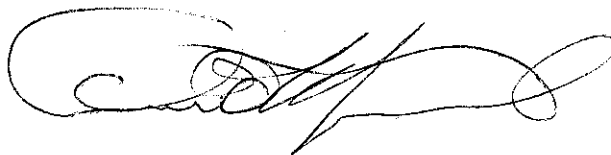
Paragraph 14 is categorically false. The Defendant has tracked the operations of PublishAmerica and the Plaintiff for years through many complaints received from writers. Plaintiff presumes that the Defendant acted out of malice, but the action of reporting the Plaintiff shows that there was no malice.

Paragraph 15 states more misinformation as the Plaintiff and his client, now his employer, were already despised by hundreds, if not thousands, of writers for the harm they inflicted and continue to inflict upon numerous writers. Any injury the Plaintiff suffered is a direct result of his actions in representing a predatory company and cooperating with them to use the law in a manner adverse to its intent. Additionally, the Plaintiff fails to mention he was discharged by his former employer, Gordon and Simmons, LLC as a result of the email from the Defendant but claims the Defendant is responsible for personal injury. Consequently, if he was discharged as a result of the Defendant's report, then it stands to reason that there was substance in the report concerning his behavior and he has no case and by extension no libel or slander occurred. Thus the Plaintiff's future employment opportunities were narrowly constricted by the Plaintiff who impaired his own honesty and integrity along with his standing in the community.

Lastly, not in conjunction with any paragraph of the Plaintiff's complaint, the Defendant points out that the complaint filed by the Plaintiff was not filed until ten months after the alleged incidents, but coincidentally only three weeks after the Defendant was a witness in yet another arbitration hearing, this time between Tom Modern and PublishAmerica, represented by Mr. Cretella. When the Plaintiff in the arbitration, Mr. Modern, asked to call Mr. Kuzminski to testify as an expert witness (Exhibit 5), Mr. Cretella objected only to be overruled by the arbiter. Mr. Cretella failed to rattle Mr. Kuzminski in his testimony

and the subsequent appearance of his complaint charging libel, personal injury, and slander can lead one to believe that the Plaintiff's complaint is nothing less than an attempt to discredit and destroy a witness he knows will be asked to testify by other writers should more arbitrations take place, which, based upon the number of complaints concerning PublishAmerica that Mr. Kuzminski knows of, is very likely. Furthermore, the Defendant has proof, (Exhibit 6, p. 2) that the Plaintiff and PublishAmerica continue to monitor the Defendant's lawful activities to give writers advice and warnings of the pitfalls to avoid within the publishing industry by demanding to know if the Defendant gave them any documentation and by frequent monitoring of sites known to be frequented by the Defendant and other critics of his client in order to stifle dissent on their own forum to the detriment of PublishAmerica's own writers.

In summary, the Plaintiff's complaint is based upon claiming libel for being reported to authorities to whom he is accountable and for being discharged for actions that he initiated. Consequently, the Plaintiff is unlikely to prevail in this suit and it should be dismissed.

A handwritten signature in black ink, appearing to read 'David L. Kuzminski', with a large, decorative flourish extending to the right.

David L. Kuzminski
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Petersburg, VA 23805

Defendant