

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION

STEPHEN B. RUSSELL,

Plaintiff,

CASE NO. 17-CA-000943

WATERMAN BROADCASTING
CORPORATION, KELLIE BURNS-GARVEY,
PETER BUSCH and DAVID HODGES,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, the Defendants, WATERMAN BROADCASTING CORPORATION (hereinafter referred to as "WATERMAN"), KELLIE BURNS-GARVEY (hereinafter referred to as "BURNS-GARVEY"), PETER BUSCH (hereinafter referred to as "BUSCH") and DAVID HODGES (hereinafter referred to as "HODGES"), and hereby files their Answer and Affirmative Defenses to the Complaint by stating as follows:

1. Paragraph 1 of the Complaint is denied by all of the Defendants.
2. All of the Defendants admit Stephen B. Russell is the State Attorney for the Twentieth Judicial Circuit and that he is a public official. All of the Defendants are without knowledge and therefore deny the remainder of Paragraph 2 of the Complaint.
3. All of the Defendants admit Paragraph 3 of the Complaint.
4. All of the Defendants admit Paragraph 4 of the Complaint.
5. All of the Defendants admit Paragraph 5 of the Complaint.
6. All of the Defendants admit Paragraph 6 of the Complaint.
7. All of the Defendants admit Paragraph 7 of the Complaint.
8. With regard to Paragraph 8 of the Complaint, all of the Defendants would state that Exhibit A speaks for itself.

9. With regard to Paragraph 9 of the Complaint, all of the Defendants would state that the report speaks for itself.

10. With regard to Paragraph 10 of the Complaint, all of the Defendants would state that the report speaks for itself and admit that the report references "county prosecutors". Defendants further admit that Plaintiff has quoted portions of the report.

11. With regard to Paragraph 11 of the Complaint, all of the Defendants would state that the report speaks for itself. Defendants further admit that Plaintiff has accurately quoted portions of the report.

12. The Defendants are without knowledge as to the allegations in Paragraph 12 of the Complaint and therefore deny Paragraph 12 of the Complaint.

13. The Defendants are without knowledge as to the allegations in Paragraph 13 of the Complaint and therefore deny Paragraph 13 of the Complaint.

14. With regard to Paragraph 14 of the Complaint, all of the Defendants admit that the Defendant Hodges contacted the Plaintiff on or about September 28, 2016 to schedule an interview.

15. With regard to Paragraph 15 of the Complaint, all of the Defendants admit that the Plaintiff and Defendant Hodges met on or about November 2, 2016.

16. All of the Defendants admit Paragraph 16 of the Complaint.

17. With regard to Paragraph 17 of the Complaint, all of the Defendants admit that Waterman made reference to the interview between the Plaintiff and the Defendant Hodges prior to the airing of the story.

18. All of the Defendants admit that on November 17, 2016, Waterman ran a broadcast to viewers but denies the remainder of Paragraph 18 of the Complaint.

19. All of the Defendants deny that the broadcast began as alleged by the Plaintiff, but admit that various elements as alleged by the Plaintiff were contained within the broadcast.

20. With regard to Paragraph 20, the Defendants admit that is what is scripted.

21. All of the Defendants admit Paragraph 21; however, the link in the web story is not immediately available, but when the broken link was brought to the attention of the Defendant Waterman it was immediately fixed.

22. All of the Defendants deny Paragraph 22 of the Complaint.

23. All of the Defendants admit they received a notice from counsel for the Plaintiff but deny that it complies with Florida Statute 770.01.

COUNT I
DEFAMATION AGAINST WATERMAN BROADCASTING CORP.

The Defendant Waterman hereby replies to the allegations in Count I. None of the other Defendants respond to the allegations in Count I as it does not seek relief against them.

24. Waterman re-alleges and re-incorporates its prior answers as though fully set forth herein.

25. Denied.

26. Waterman denies the allegations in Paragraph 26 because the Plaintiff does not identify which statements, broadcasts or publications it is referring to in Paragraph 26.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

COUNT II
DEFAMATION AGAINST PETER BUSCH

The Defendant Busch hereby replies to the allegations in Count II. None of the other Defendants respond to the allegations in Count II as it does not seek relief against them.

32. Busch re-alleges and re-incorporates its prior answers as though fully set forth herein.

33. Denied.

34. Busch denies the allegations in Paragraph 34 because the Plaintiff does not identify which statements, broadcasts or publications it is referring to in Paragraph 34.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

COUNT III
DEFAMATION AGAINST KELLIE BURNS-GARVEY

The Defendant Burns-Garvey hereby replies to the allegations in Count III. None of the other Defendants respond to the allegations in Count III as it does not seek relief against them.

40. Burns-Garvey re-alleges and re-incorporates its prior answers as though fully set forth herein.

41. Denied.

42. Burns-Garvey denies the allegations in Paragraph 42 because the Plaintiff does not identify which statements, broadcasts or publications it is referring to in Paragraph 42.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

COUNT IV
DEFAMATION AGAINST DAVID HODGES

The Defendant Hodges hereby replies to the allegations in Count IV. None of the other Defendants respond to the allegations in Count IV as it does not seek relief against them.

48. Hodges re-alleges and re-incorporates its prior answers as though fully set forth herein.

49. Denied.

50. Hodges denies the allegations in Paragraph 50 because the Plaintiff does not identify which statements, broadcasts or publications it is referring to in Paragraph 50.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. As for the First Affirmative Defense, all of the Defendants would state that none of the alleged defamatory statements were made with actual malice.

Second Affirmative Defense

2. As for the Second Affirmative Defense, all of the Defendants would state that Plaintiff has failed to state a cause of action because he has not pled any allegations of actual malice or ill will on behalf of the Defendants, and therefore, as a public figure has failed to state a cause of action.

Third Affirmative Defense

3. As for the Third Affirmative Defense, all of the Defendants would state that any and all statements made by the Defendants are protected by the First Amendment of the United States Constitution and also protected by the Florida Constitution.

Fourth Affirmative Defense

4. As for the Fourth Affirmative Defense, all of the Defendants would state that the Plaintiff has failed to comply with the condition precedent by failing to comply with the terms of Florida Statute 770.01.

Fifth Affirmative Defense

5. As for the Fifth Affirmative Defense, all of the Defendants would state that any and all alleged defamatory statements constituted the substantial truth such that the

“gist” of all statements were true and therefore protected by the Substantial Truth Doctrine.

Sixth Affirmative Defense

6. As for the Sixth Affirmative Defense, all of the Defendants would state that any and all alleged defamatory statements constitute opinion and are protected by the Opinion and Fair Comment Privilege.

Seventh Affirmative Defense

7. As for the Seventh Affirmative Defense, all of the Defendants would state that any and all alleged defamatory statements are protected by the Fair Reporting Privilege.

Eighth Affirmative Defense

8. As for the Eighth Affirmative Defense, all of the Defendants would state that any and all alleged defamatory statements are protected by the Neutral Reporting Privilege.

Ninth Affirmative Defense

9. As for the Ninth Affirmative Defense, all of the Defendants would state that the Complaint fails to state a cause of action against the individual Defendants, Burns-Garvey, Busch and Hodges in that the Plaintiff fails to plead which alleged defamatory statements each individual Defendant allegedly made.


Tenth Affirmative Defense

10. As for the Tenth Affirmative Defense, all of the Defendants would state that Plaintiff's lawsuit violates Florida Statute 768.295 and should therefore be dismissed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of May, 2017, I electronically filed the above and foregoing with the Clerk of Court using the E-filing Portal System which will send a copy of the notice of filing and a copy of the foregoing to the following by e-mail:

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