

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET
DOCKET NO. BCD-CV-19-03

DR. KATHLEEN T. PRUNIER,)
)
Plaintiff)
)
v.)
)
MARK GOOD, EARL D. BRECHLIN,)
THE MOUNT DESERT ISLANDER,)
BOB BYRON, JENNIFER SARGENT,)
STONY CREEK BROADCASTING, LLC &)
STAR 97.7 AND STU MARCKOON, and)
Does 8-50,)
)
Defendants)

ORDER DENYING DEFENDANTS'
MOTIONS TO DISMISS

Plaintiff Dr. Kathleen Prunier filed a Complaint alleging that Defendants Mark Good (“Good”), Earl Brechlin (“Brechlin”), the Mount Desert Islander (“MDI”), Bob Byron, Jennifer Sargent, Stony Creek Broadcasting, LLC, (SCB”) & Star 97.7, and Stu Marckoon (“Marckoon”) defamed Plaintiff. Defendants Good, Brechlin, and MDI; Sargent; and SCB & Star 97.7 and Stu Marckoon (“Marckoon”) have all filed Motions to Dismiss. The Court heard oral argument on the motions on April 5, 2019 in Portland, Maine. Defendants Good, Brechlin, and MDI were represented by Christopher Uphouse, Esq.; Ms. Sargent was represented by Daniel Pileggi, Esq.; and SCB & Star 97.7 and Marckoon were represented by Sigmund Schutz, Esq.¹ Plaintiff was self-represented. For the reasons discussed below, the Court denies the Motions to Dismiss.

¹ While Bob Byron did not file a motion to dismiss, his attorney, Frederick Costlow, Esq., was present for oral argument.

FACTS

On October 6, 2016, a grand jury indicted Plaintiff with one count of theft by deception (17-A M.R.S. § 354) (Class B).² (Good et al.'s Mot. Dismiss Ex. A.) On or about October 19, 2016, Defendants Good, Brechlin, MDI and Robert Byron contributed to, edited contents of and published an article titled "Two charged in elder theft," which referred to Plaintiff, Plaintiff's business and location. (Pl.'s Compl. ¶¶ 11-12.) The article included the following statements: "been indicted by a grand jury for allegedly bilking an elderly Trenton man with dementia," "took advantage of the victim by befriending him and convincing him to sell her a 6-acre property," and "he was absolutely flat broke . . . [.] It was just a sad situation." *Id.* ¶ 13. On or about October 19, 2016, Defendant Sargent republished MDI's article on her Facebook page and added above the article "THIS IS WHY I TELL EVERYONE to never use the Veterinarian in Town Hill. She murders animals and now she robs the elderly." *Id.* ¶ 18. On or about October 20, 2016, Defendants SCB & Star 97.7 and Marckoon broadcasted a news clip titled "Elder Theft" and published the same information on their web page. *Id.* ¶ 25. The broadcast referred to Plaintiff and her business by name. *Id.* ¶ 26. In the broadcast, Defendants made the following statements: that Plaintiff was "accused of taking advantage of an elderly Trenton resident" and "[t]he indictment charges that Prunier purchased storefront property worth more than \$100-thousand dollars." *Id.* ¶ 27.

² The Court takes judicial notice of the indictment, which stated:

On or about July 12, 2014, in the County of Hancock, State of Maine, Defendant Kathleen T. Prunier did commit theft by obtaining or exercising control over the property of Richard Royal, such property consisting of real estate with a value in excess of \$10,000, with the intent to deprive Richard Royal thereof, and as a result of deception, in that the Defendant did intentionally create or reinforce the impression that the assessed value of the real estate was less than \$10,000, which impression was false and which Defendant did not believe to be true, all in violation of 17-A M.R.S. § 354(1)(B)(1).

STANDARD OF REVIEW

When a court examines a motion to dismiss, only the facts alleged in the complaint are considered and the complaint is “‘examine[d] [] in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.’” *Argereow v. Weisberg*, 2018 ME 140, ¶ 12, 195 A.3d 1210 (quoting *Moody v. State Liquor & Lottery Comm’n*, 2004 ME 20, ¶ 7, 843 A.2d 43). This process “tests the legal sufficiency of the allegations in a complaint, not the sufficiency of the evidence the plaintiffs are able to present.” *Barnes v. McGough*, 623 A.2d 144, 145 (Me. 1993) (citation omitted). A complaint should only be dismissed when it “appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that [she] might prove in support of [her] claim.” *Argereow*, 2018 ME 140, ¶ 12, 843 A.2d 43 (quotation marks omitted).

For a complaint alleging defamation to survive a motion to dismiss, the complaint needs to allege the following: “a false and defamatory statement concerning another; an unprivileged publication to a third party; fault amounting at least to negligence on the part of the publisher; and actionability irrespective of special harm or the existence of special harm caused by the publication.” *Warren v. Preti, Flaherty, Beliveau & Pachios, Llc, Marcus, Cregg & Mistretta, P.A., & Ace Hardware Corp.*, BCD-CV-11-28, 2011 Me. Bus. & Consumer LEXIS 31, at *5-6 (Oct. 25, 2011) (denying a motion to dismiss a defamation count as the plaintiff had alleged elements of a defamation claim and the alleged judicial privilege by one of the defendants was a question of fact); *see also Liberty v. Bennett*, No. CV-09-459, 2010 Me. Super. LEXIS 2 (Jan. 19, 2010) (denying motion to dismiss the defamation count as the plaintiff sufficiently alleged elements of defamation and the court “construed the facts

liberally in favor of the Plaintiff, as required at this stage of the proceedings”). Additionally, the material words essential to the allegedly defamatory statements must be pled with sufficient precision to put the defendant on notice. *Picard v. Brennan*, 307 A.2d 833, 835 (Me. 1973). Nevertheless, as the cases demonstrate, given the standard of review at this stage of the proceeding, and the relatively liberal approach otherwise embodied in notice pleading, it can be difficult for a defendant to prevail on a motion to dismiss in a defamation action in which the allegedly defamatory statements are pled with precision.

ANALYSIS

Good, Brechlin, and MDI’s Motion to Dismiss

Plaintiff’s Complaint states that the Defendants have made false statements which are “libelous on its face” which mischaracterized Plaintiff’s relationship with the victim, the value of the land purchased by Plaintiff, and the “personality, belief and values of the [P]laintiff” and the statements were published to various third parties and is still available in its digital format. (Pl.’s Compl. ¶¶ 13-15.) Plaintiff asserts that the publication is not privileged as it was published with malice and ill-will. *Id.* ¶ 17. Plaintiff alleges various damages, such as loss of her business, reputation, shame, scorn, humiliation mortification [sic], injury to her feelings, and loss of a contract for a book publication. *Id.* ¶ 16.

Defendants do not argue that Plaintiff has failed to plead the offending statements with precision, which she has obviously done. Defendants argue that the truthful reporting of available records is privileged under the First Amendment, the statements are substantially true, other statements are mere opinion, and that Plaintiff has failed to plead sufficient facts establishing negligence. While the media has a right to accurately report on criminal proceedings, the statements regarding an elderly person with dementia are

nowhere to be found in the four corners of the indictment. Viewed in the light most favorable to Plaintiff's cause of action, the statements can be viewed as defamatory. At least some of the statements appear to be provable as objectively true or false, and thus can be viewed as statements of fact and not mere opinion. *See Caron v. Bangor Pub. Co.*, 470 A.2d 782, 785 (Me. 1984). Maine law does recognize the "substantial truth" doctrine at the summary judgment stage. *See McCullough v. Visiting Nursing Serv. of So. Maine*, 1997 ME 55, ¶ 10, 691 A.2d 1201. However, at the motion to dismiss stage, Defendants cannot prevail on their argument that the statements are substantially true. The Complaint adequately alleges the statements are false, and the Court must accept those allegations. The question of privilege is one of fact, and thus also not amenable to decision in Defendants' favor at this stage of the proceeding.

Finally, even though Plaintiff does not succinctly use the word negligent in the Complaint, Plaintiff does allege malice and ill-will. Accordingly, Plaintiff has alleged "fault amounting at least to negligence on the part of the publisher." Indeed, when the Complaint is viewed as a whole and construed in Plaintiff's favor, the Court finds that Plaintiff has sufficiently pled the required elements for defamation. Thus, Defendants' motion to dismiss is denied.

Jennifer Sargent's Motion to Dismiss

Plaintiff has claimed that Ms. Sargent's Facebook statement and re-publishing of MDI's article was entirely false, is libelous on its face, and was published to third parties which was seen, read and shared, "at least to othersocial [sic] media users." *Id.* ¶¶ 20-22.

Plaintiff's Complaint states that the publication was not privileged as it was published by Sargent with malice and ill-will and a desire to injure Plaintiff. *Id.* ¶ 24. Plaintiff alleges Ms. Sargent has caused Plaintiff to suffer loss of reputation, shame, mortification, humiliation,

misunderstanding, loss of business and income, and injury to her feelings. *Id.* ¶ 23.

Defendant does not argue that Plaintiff has failed to sufficiently plead the defamatory statements. Defendant argues that the MDI article is privileged and not actionable, accurately reported the indictment, the contract between Plaintiff and the victim, and the value of the property. Likewise, Defendant avers that the statements are substantially true or are an expression of opinion. However, for the reasons expressed above, the Court accepts the factual allegations in the Complaint as establishing the falsity of the statements, Plaintiff has sufficiently alleged the elements of defamation against Sargent, and Sargent's arguments cannot prevail at the motion to dismiss stage of the proceeding. Accordingly, Sargent's motion to dismiss is denied.

SCB & Star 97.7 and Marckoon's Motion to Dismiss

Plaintiff's complaint asserts that Defendants' broadcasted statements of Plaintiff being "accused of taking advantage of an elderly Trenton resident" and "[t]he indictment charges that Prunier purchased storefront property worth more than \$100-thousand dollars" are false, defamatory and slanderous. *Id.* ¶ 27. Further, that the broadcast and written publication on Defendants' web page are slanderous and libelous on their face and were published to third parties when the segment was broadcasted and when readers visited the web page. *Id.* ¶¶ 28-29. Plaintiff asserts that the publication was not privileged as Defendants' broadcasted and published the statements with indifference, unethical and malicious ill will towards Plaintiff and through Defendants' failure to fact check and contact Plaintiff for additional information. *Id.* 31. Plaintiff claims Defendants' actions have caused Plaintiff to suffer reputational loss, loss to her business, loss of a book publication, shame, mortification, embarrassment, humiliation, and injury to her feelings. *Id.* 30.

Defendants do not argue that Plaintiff has failed to plead the material words with sufficient precision. Defendants instead argue the statements are substantially true, that there is no reputational difference between reporting the value of the property allegedly wrongfully obtained as \$100,000 versus \$10,000, and Defendants have a First Amendment privilege to truthfully report. The Court finds that there is a significant difference to reputation between reporting that a person has taken advantage of an elderly person to obtain a \$100,000 property versus a \$10,000 property. Further, for the reasons expressed above, the Court accepts the factual allegations in the Complaint as establishing the falsity of the statements, Plaintiff has sufficiently alleged the elements of defamation against Defendants, and Defendants' arguments cannot prevail at the motion to dismiss stage of the proceeding. Accordingly, Defendants' motion to dismiss is denied.

CONCLUSION

The clerk will make the following entries as the Decision and Order of the Court:

1. Defendants Good, Brechlin's and MDI's Motion to Dismiss is **DENIED**.
2. Defendant Sargent's Motion to Dismiss is **DENIED**.
3. Defendants SCB & Star 97.7 and Marckoon's Motion to Dismiss is **DENIED**.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order by reference on the docket for this case.

So Ordered.

Dated: April 26, 2019

_____/s_____
Michael A. Duddy
Judge, Business and Consumer Docket