

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 235-10-18 Cacv

Hill vs. Olson

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 4)
Filer: Kristina I. Michelsen
Filed Date: May 11, 2021

The motion is GRANTED IN PART and DENIED IN PART.

A Decision of December 16, 2019 on a Motion for Summary Judgment resolved many issues in this case. On January 11, 2021, the court held a pretrial conference on remaining claims. Mr. Hill is now representing himself, and Mr. Olson is represented by Attorney Kristina Michelson. The following were identified as the remaining claims in the case:

1. Plaintiff's claim for the value of the loss of use of his life tenancy.
2. Defendant's claim for defamation.
3. Defendant's claim for damages for failure to maintain the property.

The court established a pretrial schedule and issued a written order on January 12, 2021.

On May 11, 2021, Defendant's counsel filed a timely Motion for Summary Judgment on the first two of the above claims. Mr. Hill has subsequently filed many documents with the court. These documents do not comply with Rule 56 of the Vermont Rules of Civil Procedure and address a wide variety of topics. Nonetheless, the court has read them all. There is no substantive response with respect to either of the two claims at issue.

Value of life estate

Documentary evidence and the record support the following undisputed facts. Mr. Hill and his wife owned a house and 30 acres of land on Porter Brook Road in Hardwick. They sold it to the son of Mrs. Hill, Ronald Aldrich, in 2002 and reserved a life estate for themselves. They continued to live on the property. In March of 2008, they entered into a settlement with the United States of America, which had taken Ronald Aldrich's interest by forfeiture, and signed a stipulation that updated terms related to their life estate. One of those terms was that their life estate would expire if and when, prior to both being deceased, they permanently vacated the real

property. The Defendant in this case, Mr. Olson, subsequently bought the remainder interest in the property from the United States.

In 2017, the Hills bought another property on Dutton Road in Hardwick and moved to it. In 2018, Mrs. Hill died. In the Decision of December 16, 2019 in this case, Judge Bent ruled that the Hills had permanently vacated the Porter Brook Road property, and Mr. Hill no longer had a life estate. In that Decision, Judge Bent noted that Mr. Hill may be entitled by the terms of the stipulation with the United States government to have the life estate valued and receive compensation for it.

The possibility of Mr. Hill receiving compensation for the value of the life estate arises solely from the terms of the 2008 settlement with the United States government. It arises in paragraphs 20-21 of the Settlement (Exhibit A). Thus, any such obligation, if there is one, would be the obligation of the United States government. There are no facts nor any documentation establishing any obligation on the part of the Defendant in this case, who was the purchaser from the United States of the remainder interest in the property and not a party to the settlement or stipulation, to pay compensation for the value of the unused portion of the life estate.

Accordingly, Mr. Olson is entitled to summary judgment on Mr. Hill's claim against him for compensation of the value of the life estate.

Defamation

Defendant seeks a judgment that he is entitled to judgment for defamation. The only facts presented in support are in paragraphs 11-13 in the Defendant's Statement of Uncontested Material Fact and the documents referenced therein.

Paragraph 11 states: "Hill published false and defamatory statements about Olson in his book 'Where is the Justice.' On file with the Court." A copy of the book is part of the court's record in this case. However, Paragraph 11 does not present facts about a specific alleged defamatory statement but rather states a general conclusion that there are statements in the book that are false and defamatory as a matter of law.

In Defendant's Memorandum in Support, the following passage on page 436 of the book is cited as "defamatory and libelous statements":

"...Ronald indicated to me that Olson might be in the same business that he was in as Olson seem [sic] to have plenty of money and was making trips to Canada in a large mobile home with his family."

The Memorandum represents that "Ronald is William F. Hill's stepson who was convicted of conducting a massive drug dealing and smuggling ring. Ronald and his drug conviction problems are discussed extensively in the book prior to the comment about Sven Olson."

Paragraph 12 states as an asserted undisputed fact: "Ronald Aldrich never told Hill that he thought Hill was in the same business as he was. Exhibit G." The exhibit is an affidavit of Ronald Aldrich in which he states:

“11. I have no information from any source that would indicate that Sven Olson is in any way involved with illegal drugs.

12. I have never indicated or suggested to Bill Hill that Sven Olson was in any way involved in business with me or was in any way involved with illegal drugs.”

Mr. Hill has not responded with an opposing affidavit about whether or not Ronald Aldrich “indicated” that Mr. Olson “might” be involved in drugs.

In *Lent v. Huntoon*, 143 Vt. 539 (1983), the Vermont Supreme Court took the opportunity to do a comprehensive review of the law of defamation in Vermont. Defamation includes both libel (written word) and slander (spoken word). In this case, the alleged defamatory statement is written in Mr. Hill’s book, so the allegation is one of libel.

“The general elements of a private action for defamation (libel and/or slander) are:

- (1) A false and defamatory statement concerning another;
- (2) Some negligence, or greater fault, in publishing the statement;
- (3) Publication to at least one third person;
- (4) Lack of privilege in the publication;
- (5) Special damages, unless actionable per se; and
- (6) Some actual harm so as to warrant compensatory damages.”

Id. at 546-547.

The Court continued:

For reasons probably lost in history, a special rule of procedure developed for the trial of a defamation action. Once the plaintiff’s evidence was in, the court had to determine whether the written or spoken words were defamatory as a matter of law. If the court was in doubt because the connotation of the written or spoken words was ambiguous, then the court had to submit the question to the jury to decide. *Lancour v. Herald & Globe Association*, 111 Vt. 371, 379, 17 A.2d 253, 256 (1941) (*Lancour I*).

Id. at 547.

Thus, it is first incumbent on this court to determine whether the statement set forth above, upon which Mr. Olson’s claim is based, is defamatory as a matter of law, applying the elements established in *Lent v. Huntoon*.

The statement itself is not a direct statement from Mr. Hill that Mr. Olson was involved in the illegal drug business. It is a statement that Mr. Aldrich “*indicated* to me that Olson *might be*” involved in the illegal drug business. Mr. Aldrich states in his affidavit that he never “indicated” to Mr. Hill that Mr. Olson “was in any way involved with illegal drugs.” However, there are ways of indicating a possibility that something

might be the case that are subtle, such as through innuendo and body language accompanying vague or opaque or ambiguous comments. The word “indicated” is too generalized to convey meaning without additional facts as to the manner in which the message was “indicated.” Whether a meaning was “indicated” or not in a conversation depends on interpretation of the exact conversation in context.

There is a question in the first place about whether Mr. Aldrich “indicated” anything in conversation with Mr. Hill, and another question about whether any representation by Mr. Hill about what Mr. Aldrich indicated (if he did) is a defamatory statement on the part of Mr. Hill as to Mr. Olson.

Secondly, one of the elements needed to prove defamation is “some negligence, or greater fault, in publishing the statement.” *Id.* at 546. If Mr. Aldrich did indicate something of the kind, and even if it is potentially defamatory, there is a question about whether Mr. Hill was negligent in publishing it. This issue is not addressed in Defendant’s statement of facts or memorandum. Without more information about context, the court cannot infer negligence from the statement itself. “[A]llegedly libelous statements should be read in context.” *Davis v. American Legion, Department of Vermont, et al.*, 2014 VT 134 ¶ 23.

Because of the sparsity of facts and lack of clarity as to their meaning, “the court [is] in doubt because the connotation of the written . . . words [is] ambiguous.” *Lent v. Huntoon* at 547.

Having considered the issues related to the first two elements, for the reasons described above the court cannot conclude that the statement published in Mr. Hill’s book is defamatory as a matter of law. Rather, as set forth in *Lent v. Huntoon*, the determination of defamation must be submitted to the factfinder at trial. Although there is no jury demand in this case, the evidence may be presented to the court comprised of the presiding judge and assistant judges.

In sum, Defendant’s Motion for Summary Judgment is:

Granted as to Plaintiff’s claim for the value of his life interest;
Denied as to Defendants claim for defamation.

This leaves for trial the two claims of the Defendant: defamation, and damages for failure to maintain property. A pretrial status conference will be scheduled to determine the scheduling needs of a trial.

Electronically signed pursuant to V.R.E.F. 9(d) on July 8, 2021 at 2:20 PM.



Mary Miles Teachout
Superior Court Judge