

**STATE OF VERMONT**

**SUPERIOR COURT**  
Caledonia Unit

**CIVIL DIVISION**  
Docket No. 235-10-18 Cacv

**WILLIAM HILL**  
Plaintiff

v.

**SVEN OLSON and**  
**909 PORTER BROOK ROAD REALTY TRUST**  
Defendants

**DECISION**

The case came before the court for a bench trial on July 26, 2022 on the two remaining claims in the case following summary judgment decisions of December 16, 2019 and July 9, 2021. The two remaining claims are Defendant Sven Olson's counterclaim for defamation, and Defendant 909 Porter Brook Road Realty Trust's counterclaim for failure to maintain property. Plaintiff William Hill was present in court and appeared pro se. Guardian ad litem Ernest T. Balivet was also present and seated with him. Defendant Sven Olson was present and both Defendants were represented by Attorney Kristina Michelsen.

**Facts**

The undersigned find the following facts based on the evidence admitted.

In 2012, Mr. Hill and his wife were residing on their property in Hardwick consisting of 30 acres and a residence and other agricultural buildings such as greenhouses. They had lived there for many years. In 2002 they had sold a remainder interest to Mrs. Hill's son Ron and had reserved a life estate. The U.S. Government acquired Ron's remainder interest through forfeiture in 2007, and in 2008, the Hills and the U. S. Government signed and recorded an agreement modifying the terms of their respective interests. In 2012, Mr. Olson, acting through the 909 Porter Brook Road Realty Trust (hereinafter "Trust"), bought the remainder interest from the government in an internet auction. The original asking price was \$70,000 but his successful bid was for \$129,000. He saw the property for the first time in the fall of 2012 when he came for a visit and met the Hills. At that time Mr. Olson observed some deferred maintenance.

From then until 2017, when the Hills vacated the property, the Hills and Mr. Olson were friendly. Mr. Olson came to the property from his home in Massachusetts periodically and got to know members of the Hill family. He opened a restaurant in the Hardwick community. The Hills and Mr. Olson shared meals and birthdays and Mr. Olson took the Hill grandchildren on outings to Canada. Mr. Hill mentioned that he was working on maintenance. His wife had previously been actively involved in maintaining the property. She was diagnosed with cancer in 2013 and died in 2018.

For a time after 2012, Mrs. Hill's son Ron was serving time in prison for drug dealing and smuggling. When he was released from prison, Mr. Olson was the person who picked him up from prison and drove the 3 ½ hours to bring him home to the Hill residence. Ron and his family lived with the Hills at the property for a time while he was on probation. He had some meetings with Mr. Olson during that time. Then Ron left the property and did not return.

In July of 2017, the Hills moved into town and gave up their interest in the property (see Decision of December 16, 2019). Mr. Olson assumed possession. In September, he arranged for contractor Paxton Coffin to come to the property to discuss maintenance needs. This was the first time Mr. Coffin had ever been to the property. He identified a number of recommended repairs and undertook some renovations at Mr. Olson's request.

In 2017, Mr. Hill published a book entitled *Where is the Justice?* It contains autobiographic material about problems Mr. Hill had had with the government and banks. Mr. Olson read the book as originally published. There was no mention of Mr. Olson in it.

At some point, Mr. Hill and Mr. Olson had a falling out. Mr. Hill added more material to the book and published it again. This time, it included a reference to Mr. Olson that forms the basis for the defamation claim and is described more specifically below. The second version, that includes the statement concerning Mr. Olson, was admitted into evidence as Exhibit 8. The book is advertised and sold on Amazon, and is also sold at a local bookstore in the Hardwick area. It is unknown exactly when the second version came out. The first page says "Copyright © 2017 William F. Hill, All rights reserved, First Edition." All references below are to the Exhibit 8, the second version of the book.

In the book, Mr. Hill makes clear his opposition to drug dealing. He includes a copy of a 2005 letter he wrote to the federal court in which he stated: "I believe that illegal drugs are a much bigger threat to this country than terrorism. Look at the precautions that they have taken to burb [sic] terrorism. They could do the same thing with illegal drugs if they wanted to." Exhibit 8, page 434. He writes credibly that he and his wife did not know that Ron's money came from drug dealing until they learned of it from the newspaper after which their property was searched by federal officials. It is clear in the book that he considers drug dealing a pernicious threat to society.

The statement at issue is on page 436, and follows a passage in which Mr. Hill describes the period that Ron lived with them on the property after prison and had several meetings with Mr. Olson. Mr. Hill writes that it was his understanding "that Olson was going to transfer the property back to Ronald by giving him a thirty year paid up lease."

The next sentence is the pertinent one: "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." There was evidence that the review of the book that appears on the Amazon website includes some statement in reference to this passage and includes Mr. Olson's name. The Amazon review is not in evidence and there was no oral testimony in which it was quoted. Any statement in the review is unknown by the undersigned.

Mr. Hill testified at trial that he did not intend to say that Mr. Olson *was* a drug dealer, but that he wrote what Ron said to him, and that that was what Ron said. There was no evidence to the contrary. Mr. Hill acknowledges that he did not ask Ron what he meant. The statement does not actually specify drug dealing and Mr. Hill testified that he believed Ron also had other business interest, but in context, the only business of Ron's described in the book is drug dealing. Mr. Olson denies drug dealing and there is no evidence that he has ever done any drug dealing.

Mr. Olson claims that he has spent \$50,000-100,000 on repairs and renovations since he took over the property, but provided no specific details about what work was performed or why it was needed or amounts paid. Defendants' Exhibit 1 is an August 2021 email from Mr. Paxton that describes his opinion of the condition of the Hill property when he saw it in September of 2017 and his estimated costs of renovation. The total would be at least \$140,000 and probably more. Mr. Paxton acknowledged in testimony that many items of the suggested work would be to redo things that resulted from shoddy original construction, rather than deferred maintenance of the improvements as built. His description of recommended work suggests that the result would be a renovation upgrade as opposed to simple maintenance. For example, he recommended completely replacing a wooden fence that surrounds the property at a cost of \$20,000 rather than repairing it, but the evidence did not sufficiently support that repair would not be sufficient maintenance. He also had no knowledge about the condition of the property at any time prior to September of 2017.

Mr. Olson testified, and the court finds, that revenues from his Hardwick restaurant have decreased over the last few years. He acknowledges that substantial reductions in revenue were likely caused by the Covid pandemic resulting in reduction of restaurant patronage, and that he cannot link any portion of the reduction to harm to reputation. However, he is embarrassed by having been characterized in the book as a drug dealer and by the reference in the Amazon review, and worries about his reputation and standing in the community. Susan Holmes runs a local Bed and Breakfast and has known Mr. Olson as a friend since 2012 when he began regular stays at her B & B after buying the remainder interest in the Hill property. A friend of hers recently asked her why she associates with Mr. Olson, 'a drug dealer.' The friend had heard this label for Mr. Olson at the local bookstore.

In the July 9, 2021 Decision denying summary judgment on the defamation claim, the court ruled that the statement at issue could not be determined to be defamatory as a matter of law, that context and connotations were important, and that it would be the role of the factfinder to make the factual determinations as to whether the statement was defamatory, and if so whether Mr. Hill was negligent in publishing it. The undersigned two judges, sitting as factfinders, find that the statement is defamatory, and that Mr. Hill was negligent in publishing it, for the following reasons.

While it is true that it is not a flat-out assertion that Mr. Olson is a drug dealer, the context of the statement includes (a) the disapproval of drug dealing expressed in other portions of the book, (b) a depiction of Ron as having made significant money as a drug dealer, (c) a description of a relationship between Ron and Mr. Olson in which they likely engaged in extensive conversation. It is unlikely to have been mentioned by Mr. Hill unless he was

reasonably confident that Ron knew Mr. Olson well enough and knew drug dealing well enough to be able to make a reasonable inference on the subject. Thus, while the statement only implies the suggested possibility of Mr. Olson as a drug dealer rather than an affirmative assertion, it may be interpreted by some readers as a conclusion adopted by Mr. Hill, the writer, as a statement of his own conveyed by innuendo.

An additional important factor is the seriousness of the implied fact. If the statement had been negative but about something that was not unusual or illegal, such as 'Ron indicated that Mr. X talks so much it is hard to get a word in edgewise,' it is not likely to be considered defamatory. However, in context the statement can be interpreted by many as the equivalent of an assertion of fact that Mr. Olson is both guilty of a serious crime and engaged in an activity that is highly destructive to peoples' lives. The undersigned find the statement defamatory.

The undersigned factfinders also find that Mr. Hill was negligent in publishing it. He did not follow up with any further questioning of Ron or other investigation to determine what business he was referring to and whether there was any basis in fact for a suggested conclusion that Mr. Olson was a drug dealer beyond having money and traveling frequently to Canada in a mobile home. It is a serious accusation to make even as a suggested possibility. On the spectrum of statements, it is closer to a statement that a person might be a child molester than a statement that a person cheats at solitaire. As Mr. Olson testified, rumors are vicious, and the more scandalous the statement, the more power it has to suggest to the reader/listener that the person is someone to be shunned as morally depraved. Thus, the obligation on the part of the writer to investigate or verify such an assertion about a person is great under circumstances such as these, and the failure to do so is a reasonable basis for a finding of negligence.

For these reasons, the undersigned find that the statement was defamatory, and that Mr. Hill was negligent in failing to investigate it before including it in a published book.

The undersigned factfinders also find that Mr. Olson has suffered some harm as demonstrated by a member of the local community having believed the suggestion that he is a drug dealer and questioning whether her friend should be friendly with him. As a result it is reasonable that he would suffer embarrassment.

In determining the extent of harm, the undersigned have considered several factors. First, the evidence is of only one incident of a person in the community believing that Mr. Olson actually was a drug dealer. There was no evidence of a more widespread effect on reputation in the community. Second, while the statement suggests and implies that Mr. Olson may be a drug dealer, it is also obvious to the careful reader that it is not an affirmative accusation, but that Mr. Hill as writer is recounting what Ron said, and what Ron said indicates a surmise to that effect on his part. Thus, while some readers may run with the suggestion, others will take it as speculation on the part of Ron, reported by Mr. Hill (which is what Mr. Hill claims it is), and not an accusation by Mr. Hill. This is a mitigating factor. Finally, while there is evidence that Mr. Olson's name was mentioned in the Amazon book review, there was no evidence as to what the Amazon book review actually said. As a result, the court does not have a basis for concluding that any such statement was harmful to reputation.

Thus, while the undersigned find that there was defamation and harm to Mr. Olson, the proven harm was slight. Damages should, however, be in an amount sufficient to deter Mr. Hill from including the statement in its present form in any future versions of the book. The court finds that \$500 is reasonable compensation for the harm.

As to the claim for failure to maintain the property, there is insufficient credible evidence for the undersigned to determine as a matter of fact what the condition of the property was at any time prior to 2017. Thus, the factfinders are unable to find that the Hills failed to maintain the property between 2008 or 2012 and 2017. The Trust has not proved failure to maintain by a preponderance of the evidence.

### Conclusions of Law

#### *Defamation*

The Vermont Supreme Court set forth a comprehensive review of the law of defamation in Vermont in *Lent v. Huntoon*, 143 Vt. 539 (1983).

"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 546-47.

The undersigned factfinders have found as facts that the statement was defamatory and that it was negligent on the part of Mr. Hill to publish it without verification or further investigation. The court concludes that these findings are consistent with the law of defamation in Vermont as set forth in *Lent v. Huntoon* and *Davis v. American Legion, Department of Vermont, et al.*, 2014 VT 134 ¶23.

It is undisputed that the statement was published in a book designed to be sold to and read by persons who buy books. There is no form of privilege that would justify the statement. Compare *Cornelius v. The Chronicle, Inc.*, 2019 VT 4 (media has constitutional right to report on matters of public interest such as investigation of law enforcement officers and crime in the community).

The statement is "actionable per se" in that it was a written published statement resulting in some degree of "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." *Lent* at 545-546, *Ryan v. Herald Association, Inc.*, 152 Vt. 275, 283 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974)). Thus, Mr. Olson is entitled to general damages. Special damages have not and need not be proved. *Lent* at 545-546. The factfinders have determined, based on consideration of several factors described above, that the harm was slight and that \$500 is a reasonable sum for general damages.

### *Failure to Maintain Property*

When the Hills sold the remainder interest in their property to Ron in 2002, reserving a life estate, they did not know that his money came from drug dealing. The U.S. Government took his remainder interest through forfeiture in 2007 in connection with criminal prosecution of Ron. In 2008, the Hills signed an agreement with the Government in which the terms of their life interest in the property were modified. It was recorded in the land records. The document is in evidence as Exhibit 9.

In paragraph 19, the Hills agreed to "exercise ordinary care to maintain the Real Property and make such repairs as necessary to preserve the Real Property in the condition it is in at the time of signing this settlement agreement." In paragraph 36, the Government had the right to sell its interest with the transferee being "subject to all of the Government's obligations *and rights* delineated herein." (Emphasis added.)

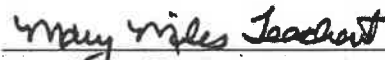
The Trust became the transferee when it acquired the property from the Government in 2012. The Trust relies on these provisions as the basis for its claim against Mr. Hill for failure to maintain the property to the date the Hills' interest in the property ended in 2017.

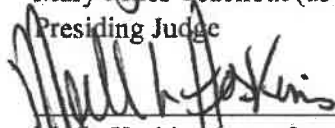
There are two possible time periods from which to measure whether there was a failure to maintain and make repairs to preserve the condition of the property. One is from 2008, when the agreement was signed by the Hills and the Government and the Hills undertook the contractual obligation. The second is from 2012, when the Trust acquired ownership. The Trust did not specify which it was seeking. At trial, it became known that it requested discovery about maintenance beginning in 2012. This makes sense, as any failure to maintain from 2008 to 2012 would have been to the economic detriment of the Government and not the Trust. Thus it appears that the Trust's claim was for failure to maintain the condition of the property from 2012 to 2017.

While the Trust introduced evidence of costs of renovating the property as of 2017, it introduced no credible evidence of the condition of the property in either 2008 or 2012, meaning that there was no baseline from which to measure whether or not there was a failure to maintain and make repairs during the relevant period, no matter which date is the baseline. The Trust introduced evidence of costs of improving the property from its 2017 condition, some of which would be improvements to the quality of original construction and not just a failure to maintain. There was no specific evidence about the condition in 2012, or costs to restore the property to the condition at that time except that there was already some unspecified deferred maintenance in 2012. There was also no evidence of any reduction in property value from 2012 to 2017 due to failure to maintain.

Thus, the finding by the factfinders that there was a failure of proof of the claim is supported by the record. Mr. Hill is entitled to judgment on this counterclaim.

Dated this \_\_\_\_ of August, 2022.

  
Mary Miles Teachout (as to facts and law)  
Presiding Judge

  
Merle Haskins (as to facts only)  
Assistant Judge