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File # 150422

February 25, 2014

The Honorable Yolanda Ciccone, J.S.C.
Somerset County Superior Court
20 N. Bridge Street – 3rd Floor
Somerville, New Jersey 08876

RE: Gilliam v. Franklin Twp. Fire District No. 3 et al.
Docket Number: L-559-11

Dear Judge Ciccone:

As you know, I represent the defendants in this case. I recently filed a motion for summary judgment which is currently returnable before Your Honor on Friday, February 28, 2014. Please accept the following letter brief as a reply to plaintiff's opposition. I respectfully request oral argument.

In an effort to muddy the waters and defeat this motion, the plaintiff's opposition references voluminous testimony and tangential issues that are entirely irrelevant to this motion. As an initial example, he discusses his client's sexual orientation even though he admitted that it is irrelevant to this case. In fact, the only places sexual orientation is mentioned are the first sentence of his brief and in several inflammatory, irrelevant paragraphs in his Counterstatement of Material Facts. (*See* Plaintiff's Counterstatement of Material Facts, ¶ 29-32).[1] He never relies on these "facts" to support any of his legal arguments. It appears that counsel's reference to sexual orientation is nothing more than his attempt to portray my clients in the worst possible light by implying they were motivated by prejudice.

Additionally and significantly, the plaintiff asks this Court to consider the statements on the fire companies' websites, Daniel Krushinski's statements at public meetings, "threats of public exposure" and Mr. Gilliam's alleged residency violations. Because the plaintiff was a public official, in order to defeat this motion on all three Counts of his Complaint (defamation, false

[1] These paragraphs are not even statements of material fact. The plaintiff only offers up unsubstantiated hearsay (i.e., "…he made a comment to someone…) as the basis for these statements. Moreover, according to the plaintiff's own testimony, these alleged incidents happened in 2000 or 2003 and stopped prior to 2010. Finally, plaintiff testified that he was not emotionally impacted by these statements. (Exhibit U, 111:20-112:11, 331:8-334:21).

light and IIED),[2] the plaintiff needed to demonstrate, by clear and convincing evidence, how these incidents involved "actual malice." The plaintiff's opposition brief does even make an attempt to show that the defendants acted with actual malice regarding anything but the April 19, 2010 letter. In fact, he never addressed this issue during the discovery process. He never asked the defendants about these issues during their depositions and makes no claim that the defendants knew or should have known their claims were false in any of these instances.

Likewise, the plaintiff would have this Court focus on the contentious relationship between the plaintiff and the defendants prior to the alleged defamatory conduct. Whether the defendants were displeased with the plaintiff regarding the audits and the contract negotiations before April of 2010 is irrelevant. On this same note, the defendants' desire to have plaintiff resign is irrelevant.[3]

Finally, the fact that the defendants did not investigate or speak to the plaintiff regarding his MySpace page and ask him why he held himself out to be 14 years is irrelevant.[4]

In the end, this Court should focus only on the relevant, significant, undisputed facts: 1) the plaintiff was an elected public official; 2) while in office,[5] the plaintiff maintained a MySpace

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[2] Because the plaintiff is a public figure, his False Light and IIED claims are also subject to the "actual malice" standard. A claim of "false light" requires a showing of actual malice. *See* Durando v. Nutley Sun, 209 N.J. 235, 249 (2012)(To prove the tort of false light, a plaintiff must show (1) that the false light in which he was placed would be highly offensive to a reasonable person; and (2) that the defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter. The second prong of a false-light claim parallels the requirements of the actual malice standard.)(internal citations omitted).

Public figures and public officials may not recover for the tort of intentional infliction of emotional distress without showing that the publication contains a false statement of fact which was made with actual malice. DeAngelis v. Hill, 180 N.J. 1, 20 (2004); Walko v. Kean College of New Jersey, 235 N.J. Super. 139, 149 (Law Div. 1988) *citing* Hustler Magazine v. Falwell, 485 U.S. 46, 56-57 (1988).

The plaintiff's opposition brief does even make an attempt to show that the defendants acted with actual malice regarding these two causes of action. He never asked the defendants about these issues during their depositions and makes no claim that the defendants knew or should have known their claims were false in any of these instances. Based on the above, Counts II and III of the Complaint must be dismissed with prejudice.

[3] The existence of malice depends on publishing with knowledge that a statement is false, rather than with ill will. Spite, hostility, hatred, or the deliberate intent to harm demonstrate possible motives for making a statement, but not publication with a reckless disregard for its truth. Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 166-167 (1999)(citations omitted). Although the term "actual malice" has been used to express this standard, it has nothing to do with hostility or "ill will." Lawrence v. Bauer Publ'g & Printing Ltd., 89 N.J. 451, 462 *cert. den.*, 459 U.S. 999 (1982).

[4] The relevant test for actual malice is not whether a reasonably prudent man would have published, or would have investigated before publishing, but whether the defendant in fact entertained serious doubts as to the truth of his publication. Dairy Stores, Inc. v. Sentinel Pub. Co., 104 N.J. 125, 149-150 (1986). A failure to investigate all sources does not prove actual malice." Lynch, 735 A.2d at 1136.

page indicating he was 14 years old even though he was in his 20s; 3) the plaintiff's MySpace page contained the tagline "intimacy is that of legitimacy"; 4) the defendants were troubled by these undisputed facts; 5) the defendants raised their concerns to the Board, but only distributed a letter to *five* individuals; the Board of Fire Commissioners and its attorney.

RESPONSES TO PLAINTIFF'S COUNTERSTATEMENT OF MATERIAL FACTS

See attached.

LEGAL ARGUMENT

1. The Fire Companies Are Public Entities and Immune from Suit

The plaintiff voluntarily abandons his claims against Fire District #3 and the Township of Franklin. Defendants request, therefore, that the Court enter an Order dismissing the Complaint against these defendants with prejudice.

Summary judgment is appropriate as to the fire companies as well. Community Fire Co. #1 (Station 25) and East Franklin Fire Department (Station 27) are public entities.[6] The definition of "public entity" is broad and inclusive. S.E.W. Friel Company v. N.J. Turnpike Authority, 73 N.J. 107 (1977); Wade v. N.J. Turnpike Authority, 132 N.J. Super 92 (Law Div. 1975). This broad and inclusive definition ***includes volunteer fire departments.*** D'Eustachio v. Beverly, 177 N.J. Super. 566, 572 (Law Div. 1979) *citing* Schwartz v. Stockton, 32 N.J. 141, 150 (1960)(Fire protection, including the operation and maintenance of fire apparatus and the construction and management of fire houses and other fire-fighting facilities, is a governmental function as far as tort liability is concerned.).

Although volunteer fire companies may be considered "private entities" organized pursuant to state laws governing the formation of nonprofit corporations,[7] regarding tort liability, they are public entities and subject to the provisions of the Tort Claims Act. D'Eustachio v. Beverly, 177 N.J. Super. 566, 572 (Law Div. 1979);[8] Sprint Spectrum, L.P. v. Borough of Upper Saddle River

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[5] The plaintiff was first elected to the Board of Fire Commissioners in 2003 and was Chairman of the Board of Fire Commissioners in 2010. (Plaintiff's Counterstatement of Material Facts, ¶ 23-28).

[6] "Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State. N.J.S.A. 59:1-3.

[7] N.J.S.A. 15A:2-1(a).

[8] In D'Eustachio, the court held that two volunteer fire companies were public entities and therefore entitled to a notice of claim under the New Jersey Tort Claims Act because "virtually every statutory reference concerning volunteer companies refers to fire protection as a governmental function." D'Eustachio, 177 N.J. Super. at 572 *citing* N.J.S.A. 40A, 14-68, N.J.S.A. 34:15-43, N.J.S.A. 40A:14-33, N.J.S.A. 40A:14-34 and N.J.S.A. 40A:14-35).

Zoning Bd. of Adjustment, 352 N.J. Super. 575, 595, 598 (App. Div. 2002)[9] *and see* Eggert v. Tuckerton Volunteer Fire Co. No. 1, 938 F. Supp. 1230, 1241-1242 (D.N.J. 1996)(volunteer fire companies are public entities subject to the provisions of the Tort Claims Act; New Jersey law applies the notice requirements to volunteer fire departments).

From the beginning of this case, the plaintiff treated the fire companies as public entities. After all, he filed notices pursuant to the Tort Claims Act. (Exhibit A). The plaintiff was right to do so as the case law clearly shows that volunteer fire companies are public entities. Since each Count of the plaintiff's Complaint is based upon allegations that the individual defendants' actions were malicious and/or constituted willful misconduct, the public entity fire companies are immune from suit[10] and entitled to summary judgment.

2. The Defendants Did Not Act With Actual Malice and Are Entitled to the Qualified Privilege[11]

A. Defamation – Actual Malice

The plaintiff fails to address the "actual malice" factor as to every alleged defamatory incident except the April 19, 2010 letter. Even though defendants contend all of the remaining instances (statements made during public meetings[12] and on the websites) do not involve defamatory conduct, because he was an elected official, in order to defeat this motion, the plaintiff must establish the defendants acted with actual malice *by clear and convincing evidence* regarding every instance of alleged defamatory conduct. His failure to even argue actual malice in these instances must result in his claims being dismissed with prejudice. All that remains is the April 19, 2010 letter.

Furthermore, nothing shows any of the defendants acted with actual malice regarding the April 19, 2010 letter. Put in context, the defendants went out of their way handle the situation in-house and protect the plaintiff's reputation. The letter that was only sent to the Fire District's solicitor

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[9] There is no question that courts have recognized the quasi-public nature of volunteer fire departments. *See*, e.g., Eggert v. Tuckerton Vol. Fire Co. No. 1, 938 F. Supp. 1230, 1240 (D.N.J. 1996) (volunteer fire company considered state actor for purposes of § 1983); Schwartz v. Stockton, 32 N.J. 141, 150 (1960) (volunteer fire companies ***considered public entities for purpose of tort liability).***

[10] Although the Tort Claims Act specifically indicates that public entities may be vicariously liable for employees' acts or omissions (*See* N.J.S.A. 59:2-2(a)), a public entity is immune if such acts or omissions constitute actual malice or willful misconduct. N.J.S.A. 59:2-10 *and see* O'Connor v. Harms, 111 N.J. Super. 22, 27-28 (App. Div. 1970) *cert. den.* 57 N.J. 137 (1970).

[11] The actual malice standard required to allow a public figure to recover for defamation is essentially the same standard required to show abuse of the qualified privilege.

[12] Daniel Krushinski only read the first paragraph in public.

only supplied to Commissioners Douglas Krushinski, Al Pinnella, Vincent Inzano and Sherrod Middleton.

The plaintiff has been litigating this case as though the defendants actually accused him of committing illegal or immoral acts prior to the April 19, 2010 letter. None of the defendants ever accused the plaintiff of committing prior sexual assaults upon minors. The defendants' testimony indicating they were not aware of facts showing that plaintiff had committed any immoral or illegal sexual acts with minors is entirely consistent with this position.

Despite the above, the plaintiff attempts to contort the facts to make it seem as if the defendants had accused the plaintiff of prior sexual transgressions. Specifically, he claims the defendants meant the phrase "past acts" to mean past acts of alleged sexual misconduct. This is clearly not the case. The only defendant plaintiff asked about the "past acts" language was Herman Calvo. Mr. Calvo testified that this term referred to plaintiff potentially lying about his residency and his age. (Exhibit R, 51:19-52:3).

None of the defendants' testimony establishes actual malice. None of them testified that they thought the language in the April 19, 2010 was actually "false" or likely to be false. All of the signators found the plaintiff's behavior troubling based upon the fact that the plaintiff lied about his age and held himself out to be 14.

Daniel Krushinski was never asked whether he thought the statements contained in the letter were false. He testified found it "disturbing" Mr. Gilliam was a Commission or Captain if a Fire Company who was posing as a 14-year old boy. (Exhibit P, 43:22-44:25).

Herman Calvo was never asked whether he thought the statements contained in the letter were false. He testified that, before supplying the letter, they all read the letter, agreed with the contents and signed the letter. (Exhibit R, 34:22-35:9). "Illegal or immoral" pertains to Mr. Gilliam lying about his age. Mr. Calvo believed Mr. Gilliam was posing as a 14-year old to have contact with 14-16 year olds. He lied about his age on purpose. (Exhibit R, 41:9-42:1). He could not be sure why Mr. Gilliam was lying about his age. (Exhibit R, 50:8-24, 59:21-60:25, 68:1-6). He definitely had a problem with the plaintiff posing as a 14 year old and being dressed inappropriately. As a public official, he thought this was particularly offensive. (Exhibit R, 36:8-37:8). Mr. Calvo indicated that he had no idea why the plaintiff was posing as a 14 year old, but thought as a public official it was totally inappropriate to lie about his age. While he didn't necessarily believe that he was intending to have sex with minors, there were some suspicions given his requests that he meet individually with prospective junior firefighters. (Exhibit R, 38:9-23). Mr. Calvo specifically testified that, through the letter, he was not accusing the plaintiff of trying to solicit sex from minors. He indicated that he didn't intend to suggest anything like that, only that it was inappropriate. He did think that a reasonable person could believe that someone posing as a 14 year old was enough for him to resign. (Exhibit R, 40:1-41:16, 42:11-43:24, 50:8-24, 53:7-19, 66:21-68:6).

Richard Ries was never asked whether he thought the statements contained in the letter were false. He testified that the letter was meant to raise a red flag that there "may be a problem." (Exhibit S, 57:3-20).

Christopher Fischer was never asked whether he thought the statements contained in the letter were false. He testified that the plaintiff's MySpace page to showed that the plaintiff was seeking communication with underage people because the plaintiff was indicating he was a 14-year-old boy and he wanted intimacy. (Exhibit T, 38:2-39:19). When asked "you signed a letter that accuses him of seeking immoral liaisons with minors, right?", Mr. Fischer responded that he thinks that is a conclusion. He wasn't accusing the plaintiff of anything, just that the facts at his disposal lead him to this conclusion. The picture is disgusting and that he's a chairman of the board of fire commissioners using board's computer and searching for people while indicating that he was 14 years old. (Exhibit T, 40:6-41:21).

Finally, Douglas Krushinski testified that it was his impression that the signatories to the letter had a problem with Mr. Gilliam holding himself out as a 14-year old boy. (Exhibit Q, 25:5-15). He also acknowledged that it would not be good if the public found out about the plaintiff's MySpace page because the plaintiff was holding himself out to be 14 years old. (Exhibit Q, 45:21-46:25). Finally, he had concerns that Mr. Gilliam used the District's computers to print out pornographic material give what had happened with the Commissioner in District 1. (Exhibit Q, 54:20-55:24). He held on to the images until he no longer believed the plaintiff was capable of telling him the truth. (Exhibit Q, 56:18-57:9).

Even if the defendants' conclusions were incorrect or misguided, because they were based in fact, they cannot constitute actual malice. In Kotlikoff v. Community News, the Supreme Court of New Jersey addressed the constitutional protection accorded expression of opinion about a public figure. Kotlikoff, 89 N.J. 62, 64 (1982). Specifically, the Community News published a "letter to the editor" written by defendant Robert Leather criticizing the official conduct of plaintiff, Louis J. Kotlikoff, then the Mayor of Pennsauken. Id. at 65. In the letter, published under the heading "A Conspiracy?", Leather suggested that Mayor Kotlikoff and Tax Collector Harold Roesler, who had repeatedly refused to reveal the names of property owners delinquent in their payment of local property taxes, *might be "engaged in a huge coverup."* Id. (emphasis added). The letter concluded by stating that the circumstances surrounding Roesler's refusal to make public records available "add[ed] to the belief that there is a conspiracy…" Id.

Even though the letter accused the plaintiff of *possibly* participating in a "huge coverup" and a "conspiracy", the Court determined the letter could not reasonably be interpreted as charging the plaintiff with committing a criminal offense. Id. at 72. The Court held that "pejorative statements of opinion are entitled to constitutional protection no matter how extreme, vituperous, or vigorously expressed they may be. Id. at 71. Any statement that may refer to criminal conduct must be examined in context in order to determine whether the reader would be left with the impression that plaintiff was being accused of a crime." Id. at 71.

Significant was that the facts upon which defendant Leather based his opinion were fully disclosed in the letter. Kotlikoff, 89 N.J. at 72. (Where an opinion is accompanied by its underlying nondefamatory factual basis…, a defamation action premised upon that opinion will fail, no matter how unjustified, unreasonable or derogatory the opinion might be. This is so because readers can interpret the factual statements and decide for themselves whether the writer's opinion was justified. (internal citations omitted)).

What the Kotlikoff case makes clear is that my clients' letter contained non-defamatory, pure opinions criticizing a public official for his actions while in office. Such speech is the pinnacle of constitutionally protected speech and preclude claims for defamation.[13]

Even if this Court does find their speech was constitutionally protected, the plaintiff's Complaint must still be dismissed as there is no evidence of actual malice. While the facts of this case are similar to Kotlikoff in that the defendants indicated the plaintiff may engage in inappropriate behavior, by sending their letter to 5 specific, concerned individuals, the defendants in this case were substantially more discreet than the defendants in Kotlikoff who sent a letter to the editor which was published in a newspaper. At the end of the day, actual malice required a showing of the knowing publication of false information or a reckless disregard of the truth. The defendants did not doubt the truthfulness of their conclusions; i.e., that the plaintiff's MySpace page led them to the conclusion he may attempt to contact minors. As there was no evidence that the defendants doubted the truthfulness of their statements, actual malice cannot be established and summary judgment is appropriate.[14]

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[13] Whether a statement constitutes a protected "expression of opinion" is a matter of law for the court to decide. Id. at 67. Statements of opinion, like unverifiable statements of fact, generally cannot be proved true or false. Opinion statements reflect a state of mind. Although they do not enjoy "a wholesale defamation exemption," opinion statements do not trigger liability unless they imply false underlying objective facts. Restatement (Second) of Torts, § 566. Loose, figurative or hyperbolic language is not likely to imply specific facts, and thus is not likely to be deemed actionable. Ward v. Zelikovsky, 136 N.J. 516, 532 (1994).

Political discourse depends on the expression of opinion. In an election for public office, that discourse often entails a subjective appraisal of the qualifications of a candidate. Lynch v. N.J. Educ. Ass'n, 161 N.J. 152, 168 (1999). Emotion, partisanship, or self-interest, although they may impair the appraisal's value, do not justify its suppression. Id.

[14] When the plaintiff in a defamation case is a public figure, a court should grant summary judgment dismissing the complaint if a reasonable jury could not find that the plaintiff has established actual malice by clear and convincing evidence. DeAngelis v. Hill, 180 N.J. 1, 12 (2004)(Woodcliff Lake Police Accused of Perjury)

B. Qualified Privilege – Actual Malice

The defendants recognize that a qualified privilege is not an absolute privilege[15] and, therefore, the defendants' April 19, 2010 letter is subject to limited protection. In order to defeat this motion, however, the plaintiff must show, by clear and convincing evidence, that the privilege was abused.[16] Plaintiff has failed to do so and summary judgment is appropriate.[17]

The plaintiff does not argue that the April 19, 2010 letter was contrary to the purpose of the qualified privilege or that it was excessively published. The plaintiff only claims that the defendants either knew the statements in the letter were false or that they acted in reckless disregard of the truth. Nothing even begins to establish the defendants acted with reckless disregard for the truth.

"Reckless disregard presents a high bar." Prof'l Recovery Servs. v. GE Capital Corp., 642 F. Supp. 2d 391, 402 (D.N.J. 2009). To prove publication with reckless disregard for the truth, a plaintiff must show that the publisher made the statement with a "high degree of awareness of

[15] A defamatory statement is one that is false and 'injurious to the reputation of another' or exposes another person to 'hatred, contempt or ridicule' or subjects another person to 'a loss of good will and confidence' in which he or she is held by others." Romaine v. Kallinger, 109 N.J. 282, 289 (1988) (citation omitted). "In certain situations, however, the public interest presents the 'vital counter policy' that persons should be permitted to communicate without fear of a defamation action." Fees v. Trow, 105 N.J. 330, 336 (1987). The common law has accommodated these countervailing policies "by recognizing that some otherwise defamatory statements should be 'privileged,' i.e., that their publication does not impose liability upon the publisher." Dairy Stores, Inc. v. Sentinel Publishing Co., 104 N.J. 125, 136 (1986). Privileges may be 'absolute,' which means that the statements are completely immune, or 'qualified.'" Id. A "qualified privilege is designed to advance the important public interest in unrestrained speech while retaining a measure of protection for the plaintiff who is maliciously defamed." Id.

[16] The privilege is abused if (1) the publisher knows the statement is false or the publisher acts in reckless disregard of its truth or falsity; (2) the publication serves a purpose contrary to the interests of the qualified privilege; or (3) the statement is excessively published. Williams v. Bell Tel. Labs., Inc., 132 N.J. 109, 121 (1993). "'[T]he critical determination is whether, on balance, the public interest in obtaining information outweighs the individual's right to protect his or her reputation.'" Id.

[17] While the determination of whether there has been an abuse of a qualified privilege is generally a jury question, New Jersey Courts have repeatedly recognized that Courts will grant motions for summary judgment as to whether the qualified privilege was abused if a plaintiff fails to produce clear and convincing evidence by which a reasonable fact finder could conclude that the publishing defendants were primarily motivated by an improper motive or displayed reckless disregard for the truth or falsity of the statements when they signed the petition. Lawrence v. Bauer Publ'g & Printing Ltd., 89 N.J. 451 *cert. den.*, 459 U.S. 999 (1982); Govito v. West Jersey Health System, Inc., 332 N.J. Super. 293, 318 (App. Div. 2000) Public policy considerations favor the use of summary judgment motions to eliminate baseless defamation claims." Feggans v. Billington, 291 N.J. Super. 382, 395, 399-400 (App. Div. 1996) *citing* Dairy Stores, Inc. v. Sentinel Publishing Co., 104 N.J. 125, 157 (1986) (finding that the fear of a lawsuit can stifle commentary on matters of public concern); Costello v. Ocean County Observer, 136 N.J. 594, 605 (1994) (explaining that summary judgment constitutes an important tool for dispensing with non-meritorious claims of defamation.

[its] probable falsity," or with "serious doubts" as to the truth of the publication. Id. *quoting* Lynch v. New Jersey Educ. Ass'n, 161 N.J. 152, 735 A.2d 1129, 1135-1136 (N.J. 1999). To be actionable, "the recklessness in publishing material of obviously doubtful veracity must approach the level of publishing a 'knowing, calculated falsehood.' Id. A finding of reckless publication may result if the publisher either fabricates a story, or publishes a story or accusation that is wholly unbelievable, or relies on an informant of dubious veracity, or purposely avoids the truth." Id. *quoting* Gray v. Press Commc'ns, LLC, 342 N.J. Super. 1 (App. Div. 2002) (internal citations omitted).

The April 19, 2010 letter was not published with reckless disregard. Specifically, the letter was written in connection with a common interest, protecting the District, and was sent only to those persons with a corresponding interest and duty to protect the District: board members and the Association's attorney. Tai v. Crown View Manor I Condo. Ass'n, 2008 N.J. Super. Unpub. LEXIS 23 (App. Div., July 11, 2008)[18] *and see* Govito v. West Jersey Health System, Inc., 332 N.J. Super. 293, 318 (App. Div. 2000).

None of the defendants entertained serious doubts about the truthfulness of the letter. It is undisputed that the plaintiff admitted he owned the MySpace page holding him out to be 14 years old. He did when he was an elected official. Based upon these undisputed facts, the defendants wrote:

> We believe that [plaintiff] intends to engage in potentially illegal or immoral liaisons with individuals of this age group, assuming he has not already done so. [Plaintiff] is well into his twenties, and we find this prospect to be reprehensible, and completely unfitting behavior for an elected official.

Clearly, this conclusion was based on objective facts. The plaintiff admitted to these facts and they have never been refuted. As such, the plaintiff has failed to show the defendants acted with a "reckless disregard" for the truth and summary judgment is appropriate.

[18] Attached hereto as Exhibit 1, pursuant to R. 1:36-3.

3. Douglas Krushinski Did Not "Republish" the Letter Because He Was an Intended Recipient

This April 19, 2010 letter was addressed to Mr. Barnes and intended to be supplied to the Board of Fire Commissioners. Although Douglas Krushinski testified that the letter was placed in the Commissioners' private mailboxes, even if this is incorrect and Douglas Krushinski did hand the letter to the other Commissioners, he cannot be said to have "republished" the letter.[19]

The signatories to the April 19, 2010 meant to distribute the letter to all of the Commissioners, including Douglas Krushinski. Clearly, as an intended recipient, Mr. Krushinski cannot "republish" the letter to the rest of the intended recipients.

Following the plaintiff's logic, if Mr. Krushinski handed copies of the letters to one Commissioner, i.e., Sherrod Middleton who took a copy and passed the copies to Vincent Inzano, down the line to Al Pinnella, Mr. Attonas (the Board's attorney) and finally to Mr. Gilliam, each of the Commissioners could be said to have "republished" the letter. Another absurd but probable scenario arising from plaintiff's logic is a situation where one of the non-defendant Commissioners such as Mr. Inzano received the copies of the letter in his mailbox and distributed them to all of the other Commissioners. Plaintiff's reasoning would make Mr. Inzano a potential defendant in this case. Clearly, distributing the letter to the intended recipients is not "republishing" the letter.

4. Punitive Damages

The plaintiff did not oppose our motion for summary judgment regarding punitive damages. All claims seeking punitive damages, therefore, must be dismissed with prejudice.

Respectfully submitted,

Jay A. Gebauer
cc: David Zatuchni, Esquire

[19] The case law cited by plaintiff did not involve "republication" by an intended recipient. Costello involved a newspaper article "republishing" allegations contained in an unfiled complaint that a police lieutenant fondled a woman while she was handcuffed during a strip-search. Costello v. Ocean County Observer, 136 N.J. 594, 600 (1994). The Cipriani case dealt with the issue of the single publication rule versus verbal repetition of a written statement alleged to be slanderous. Cipriani Builders, Inc. v. Madden, 389 N.J. Super. 154, 174-175 (App. Div. 2006).