



NYU | LAW

MOOT COURT BOARD

Dale Root,
Appellant,

-against-

Tim Holpart,
Appellee.

Record

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF OLD YORK

_____	:	
Tim Holpart,	:	
	:	
Plaintiff,	:	Docket No. 19-CR-0957 (JMM)
	:	
-against-	:	AMENDED COMPLAINT
	:	
Dale Root,	:	JURY TRIAL REQUESTED
	:	
Defendant.	:	
_____	:	

Plaintiff, Tim Holpart, as and for his cause of action against Defendant, Dale Root, alleges and states as follows:

PARTIES

1. Plaintiff, Tim Holpart, is now and was at all times relevant hereto a resident of the state of Old York.
2. Defendant, Dale Root, is now and was at all times relevant hereto a resident of the state of Old Jersey.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, diversity jurisdiction, as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.
4. Venue is proper in the Central District of Old York pursuant to 28 U.S.C. § 1391(b) because the events which are the basis of this lawsuit either occurred in, or are otherwise connected with, this district.

FACTUAL ALLEGATIONS

5. Plaintiff is a well-known salesman and owner of the successful lumber company, The Holpart Wood Company.

6. The Holpart Wood Company, founded in 1999, was a small business in the early 2000s and, through Plaintiff's hard work, eventually grew into one of the most trusted lumber companies in the state of Old York. The Holpart Wood Company is known for its high-quality, durable materials and its dedicated, meticulous owner, Tim Holpart.

7. Upon information and belief, Defendant, Dale Root, has been employed as a construction worker for a large construction company for at least the past twenty years.

8. Plaintiff and Defendant met at an annual building convention in February 2010.

9. Beginning in approximately January 2012, Defendant started working on a construction project located on a property adjacent to The Holpart Wood Company.

10. Over the course of the year-long construction project, Plaintiff and Defendant struck up a close friendship. They remained good friends over the next six years.

11. Their friendship began to deteriorate after Defendant accused Plaintiff of destroying his tools and supplies by placing them in a woodchipper on June 11, 2018.

12. Plaintiff admitted that he had pranked Defendant in the past, but he had never done anything to cause harm to Defendant's property or jeopardize Defendant's employment.

13. Defendant did not lose his job but was still furious that he had to pay out of pocket for the tools, and his supervisor gave him a strike on his permanent employment file.

14. On or about June 24, 2018, Defendant confronted Plaintiff and warned that Plaintiff had until the end of the week to "fess up or else he would realize what it is like when someone else goes too far and jeopardizes your finances." Plaintiff again tried to calm Defendant but to no avail.

15. On or about July 1, 2018, Plaintiff saw numerous posts on various social media websites written by Defendant. These posts included some on Defendant's profile which could be seen by his friends and anyone who clicked on Defendant's name. Furthermore, he posted on multiple construction and lumber buyer-seller group pages.

16. These posts included the following statements: "Tim Holpart is a fraud," "Holpart is a thief," "Tim brags about overcharging his customers," "avoid Holpart Wood Company unless you want to be scammed," and "if you need a professional con man, go see Tim Holpart." *See* Ex. A.

17. Plaintiff called, texted, and emailed Defendant requesting that he immediately delete the posts. Defendant never replied to Plaintiff.

18. As of August 4, 2018, Defendant has not deleted or removed the posts.

19. Defendant has never purchased Plaintiff's lumber, and Defendant's employer buys materials from a different wood company in Old York.

20. Numerous customers told Plaintiff that they will not be making future orders with Plaintiff due to Defendant's statements.

21. Neither Plaintiff nor Plaintiff's business have received negative press apart from Defendant's online statements. Further, Plaintiff is not aware of any other extraneous event that could have directly or indirectly caused the loss of sales.

22. Plaintiff has had a minimum of \$100,000.00 in profits each of the last five years (2013 to 2018). There are no pending deals or orders in place that would cause profits to significantly deviate from the current pace over the final months of the year.

23. Since Defendant posted the defamatory statements, Plaintiff has seen a severe drop in sales amounting to roughly \$30,000.00 less than projections estimated for the quarter.

24. Based on recent projections, Plaintiff alleges Defendant's actions will have directly caused at a minimum a loss of profits amounting to \$500,000.00 over the next five years.

25. Plaintiff continues to lose profits and faces irreparable harm to his reputation that he has acquired over the span of twenty years.

FIRST CAUSE OF ACTION

Violation of Old York Civil Code § 65

26. Plaintiff incorporates by reference all allegations contained in paragraphs one (1) through twenty-five (25) as if set forth verbatim herein.

27. Under Old York law, libel involves:

- (1) a publication to a third party;
- (2) of a statement of fact concerning the plaintiff;
- (3) that is false;
- (4) unprivileged;
- (5) has a natural tendency to injure or which causes special or actual damage; and
- (6) the defendant's fault in publishing the statement amounted to at least negligence.

SECOND CAUSE OF ACTION

(Tortious Interference with Business Relations)

[This cause of action has been omitted from the Record.]

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests the following relief from the Court:

- Monetary damages of \$500,000.00.
- Reasonable attorneys' fees and costs.
- Any other relief as the Court deems just and proper.

/s/

Susan Smith, Esq.
Attorney for Plaintiff
135 Crown Avenue
Old York City, Old York 15008

Dated: August 4, 2018

Evidentiary Exhibits

EXHIBIT A – Defendant’s Posts¹

Statement 1: Tim Holpart is a fraud

Statement 2: Holpart is a thief

Statement 3: Tim brags about overcharging his customers

Statement 4: avoid Holpart Wood Company unless you want to be scammed

Statement 5: if you need a professional con man, go see Tim Holpart

¹ These statements were copied from Defendant’s profile on the popular social media website, Fish-book.

Evidentiary Exhibits

EXHIBIT B – The Holpart Wood Company’s Earnings and Projections

2016: Profits Sheet

Quarter 1	\$ 24,532.00
Quarter 2	\$ 28,891.00
Quarter 3	\$ 23,394.00
Quarter 4	\$ 24,337.00

2017: Profits Sheet

Quarter 1	\$ 30,012.00
Quarter 2	\$ 23,398.00
Quarter 3	\$ 22,944.00
Quarter 4	\$ 25,701.00

2018: Profits Sheet

Quarter 1	\$ 24,076.00
Quarter 2	\$ 19,733.00
Quarter 3	\$ 13,429.00
Quarter 4	\$ 12,510.00

2019: Profits Sheet **(projections at time of filing)**

Quarter 1	\$ 9,631.00
Quarter 2	\$ 8,405.00
Quarter 3	\$ 8,510.00
Quarter 4	\$ 8,460.00

Evidentiary Exhibits

EXHIBIT C – Email from Client – Government Entity

DATE: 07/28/2018
TO: tim.holpart@holpartwoodco.com
FROM: rstintson@agrdept.gov
SUBJECT: Update on Future Orders

Dear Mr. Holpart,

We regret to inform you that we can no longer continue doing business with you after our contract expires on December 31, 2018. Despite our ongoing talks about extending the contract, circumstances have changed. We have received numerous calls and complaints concerning our business relationship with you. As you are well aware of, we must listen to the public and take into account their perception of our operations. There are multiple owners of lumber companies without problematic rumors circling them that would like our business. Unfortunately, we must go in a different direction.

We appreciate all of the time and effort you have put into our orders over the past nine and a half years.

Best,
Ronald Stinson
Old York Account Manager
Department of Agriculture

Old York State Libel Statute: Old York Civil Code § 65

Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which tends to injure him in his occupation.

A successful action for libel or slander must be: (1) A publication to a third party (2) of a statement of fact concerning the plaintiff (3) that is false, (4) unprivileged, (5) has a natural tendency to injure or which causes special or actual damage, and (6) the defendant's fault in publishing the statement amounted to at least negligence.

Note: The state of Old York does not have a criminal-libel statute or a statutory equivalent with criminal repercussions covering the conduct at issue.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF OLD YORK

Tim Holpart,	:	
	:	
Plaintiff,	:	Docket No. 19-CR-0957 (JMM)
	:	
-against-	:	OPINION AND ORDER GRANTING
	:	PLAINTIFF’S MOTION FOR
Dale Root,	:	SUMMARY JUDGMENT ON THE
Defendant.	:	ISSUE OF LIABILITY
	:	

Matthews, J.:

Plaintiff, Tim Holpart, brings this action against Dale Root (“Defendant”), alleging violation of Old York Civil Code § 65, libel. (Omitted second cause of action).

BACKGROUND

Plaintiff Tim Holpart filed his original complaint (Docket No. 1) on August 4, 2018, alleging that Defendant posted libelous and defamatory statements about him via the Internet on multiple websites. *See generally* Complaint (“Compl.”), Docket No. 1. Plaintiff’s initial complaint also named multiple websites as defendants in the action. *Id.* After this Court issued an Order to Show Cause as to why the defendant websites were not entitled to immunity under section 230 of the Communications Decency Act of 1996, Plaintiff filed an amended complaint (Docket No. 4) naming Dale Root (“Defendant”) as the only defendant in the action. Amended Complaint (“Am. Compl.”), Docket No. 4. The Amended Complaint asserts that, around July 1, 2018, Defendant made numerous posts on multiple social media websites and blogs stating Plaintiff was a fraud, thief, and con man. *See* Am. Compl. ¶¶ 15–16. Plaintiff now brings this action against Defendant.

The Amended Complaint alleges that Defendant committed libel in violation of Old York Civil Code § 65. Plaintiff, a resident of Old York, asserts that Defendant, a resident of Old Jersey, caused him actual damages in the amount of \$500,000.00.

STANDARD

Summary judgment is appropriate when the movant shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250–52 (1986). “An issue of fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. A fact is material if it might

affect the outcome of the suit under the governing law.” *Fincher v. Depository Trust & Clearing Corp.*, 604 F.3d 712, 720 (2d Cir. 2010) (quoting *Roe v. City of Waterbury*, 542 F.3d 31, 35 (2d Cir. 2008)).

The moving party bears the burden of establishing the absence of any genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If the moving party carries its burden as to its claims, the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). “The mere existence of a scintilla of evidence in support of the [nonmoving party]’s position will be insufficient; there must be evidence on which the jury could reasonably find for [that party].” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

Under Old York Civil Code § 65, a plaintiff must prove six elements: (1) A publication to a third party (2) of a statement of fact concerning the plaintiff (3) that is false, (4) unprivileged, (5) has a natural tendency to injure or which causes special or actual damage, and (6) the defendant’s fault in publishing the statement amounted to at least negligence.

DISCUSSION

Plaintiff’s libel claims are premised upon the following written statements: (i) “Tim Holpart is a fraud”; (ii) “Holpart is a thief”; (iii) “Tim brags about overcharging his customers”; (iv) “avoid Holpart Wood Company unless you want to be scammed”; and (v) “if you need a professional con man, go see Tim Holpart.” Am. Compl. ¶ 16.

Defendant does not dispute that he posted the five statements at issue under his accounts as opposed to another individual posting under a fake account with his name or hacking into his account to post the statements. Each post constitutes a publication to a third party, since the statement can be seen by anyone visiting that public social media webpage. Therefore, the first element is satisfied. *See* Old York Civ. Code § 65. The second element is satisfied because Defendant has not been able to show that he was entitled to any privilege, absolute or qualified, when he posted these statements.

Defendant disputed Plaintiff’s argument that these statements were “of fact” and not opinion. Defendant claimed that all of the statements were true or, alternatively, exaggerations based on his impression of Plaintiff. This Court does not find Defendant’s argument persuasive. Defendant did not use language to indicate he was expressing an opinion, such as “I believe” or “I think,” which has been necessary in Old York case law to establish opinion. A reasonable person reading these posts

would not think that Defendant was merely asserting a statement of opinion. Instead, the specific nature of the claims would lead a reasonable person to the conclusion that Defendant had purchased or known someone who had purchased damaged goods from Plaintiff. As a result, the reader of these statements would believe they were statements of verifiable fact.

Defendant's main contention is that the statements were not false, but rather he inferred that these were common problems with lumber which might be the reason why his employer does not purchase from the Holpart Wood Company. However, Defendant's employer testified that he purchases from a different wood company because the prices are lower, and he has a longstanding business relationship with the owner of that company. Frank Dep. 1:28. Further, Defendant admitted that he had no proof of wrongdoing on the part of Plaintiff. Therefore, there is no evidence to support Defendant's argument that the statements were not false.

Defendant's own admission revealed that his fault amounted to greater than negligence. Plaintiff's witness stated that a week before Plaintiff discovered the statements online, she heard Defendant tell Plaintiff that he should "fess up or else he would realize what it is like when someone else goes too far and jeopardizes your finances." Jackie Dep. 2:15. Defendant conceded that he told Plaintiff that statement before posting the statements on the social media website. Even if Plaintiff was classified as a limited public figure, this statement is sufficient to show actual malice. Plaintiff has shown that Defendant's statements meet all six elements of Old York Civil Code § 65. There is no genuine dispute as to any material fact regarding liability. Fed. R. Civ. P. 56(a).

Although it is not at issue at this stage in the proceedings, Plaintiff has established actual damages through multiple pieces of evidence. *See* Am. Compl., Exs. A–C. Plaintiff submitted earnings sheets and projections as well as correspondence with clients. *Id.* at Exs. B–C. The requisite causation was shown through multiple repeat buyers' emails describing their reason for canceling orders. *See id.* at Ex. C. Defendant has not pointed to a single extraneous event or provided a different explanation for the drop in Plaintiff's sales.

DAMAGES

Plaintiff's Motion for Summary Judgment on the Issue of Liability does not request the Court award him damages at this point in the proceedings. Under Old York case law, after liability is established in a libel action, the determination of the amount of damages are necessarily within the jury's discretion. Accordingly, a jury trial or bench trial is required for the issue of damages. The parties are ordered to confer and report to the Court within five days whether the issue of damages will be conducted as a jury trial, bench trial, or whether a settlement has been reached.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion for Summary Judgment on the Issue of Liability is GRANTED. A jury trial to determine damages is set for November 16, 2018.

IT IS SO ORDERED.

/s/_____
Honorable Josh M. Matthews
District Court Judge

Dated: September 5, 2018

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF OLD YORK

Tim Holpart,	:	
	:	
Plaintiff,	:	Docket No. 19-CR-0957 (JMM)
	:	
-against-	:	OPINION AND ORDER GRANTING
	:	PLAINTIFF'S MOTION FOR
Dale Root,	:	PERMANENT INJUNCTION
Defendant.	:	
	:	

Matthews, J.:

Before the Court is Plaintiff's Motion for Permanent Injunction. Plaintiff's motion is GRANTED as set forth in detail below.

Throughout the course of the proceedings, Plaintiff did not file for a preliminary injunction or any other form of injunctive relief. Plaintiff moved for the permanent injunction due to the fact that Defendant is judgment-proof, and he will not be able to pay \$250,000 in damages awarded to Plaintiff by the jury.

According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

eBay, Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006).

First, Plaintiff has to show that he "has suffered an irreparable injury." *Id.* The damage caused by the false statements cannot adequately repair Plaintiff's reputation in the community at this point. Notably, Plaintiff presented evidence that repeat customers stopped buying lumber from him due to the statements. Therefore, Plaintiff has satisfied his burden of establishing irreparable injury.

Second, Plaintiff must show "that remedies available at law, such as monetary damages, are inadequate to compensate for that injury." *Id.* Here, Plaintiff has offered evidence in the form of business earnings sheets and projections as well as correspondence with former clients. *See* Am. Compl., Exs. A–C. This evidence led a jury

to award Plaintiff significant monetary damages. However, Defendant subsequently demonstrated that he is unemployed and has no valuable assets. While monetary damages might be able to adequately compensate for the harm caused by Defendant, Defendant's judgment-proof status prevents monetary damages from being awarded to Plaintiff. Further, Defendant's admission that he will continue defaming Plaintiff confirms that monetary damages will not adequately compensate Plaintiff's *future* injuries.

Third, the Court must "consider[] the balance of hardships between the plaintiff and defendant, [and find] a remedy in equity is warranted." *eBay*, 547 U.S. at 391. The Court recognizes the importance of one's First Amendment rights and the dangers posed by a permanent injunction. However, it is well-recognized that defamatory and libelous speech is not afforded the same protection as most forms of speech. *See, e.g., Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–72 (1942) ("[T]he right of free speech is not absolute There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include . . . the libelous."). A narrowly tailored injunction might slightly curtail Defendant's rights. On the other hand, Plaintiff might continue to suffer harm if Defendant engages in this behavior. Further, Plaintiff would be left without a remedy since it would be irrational to bring a lawsuit for damages against someone that is judgment-proof. Additionally, Defendant stressed the "collateral bar" rule is applied by all federal courts in the Fourteenth Circuit as well as state courts in Old York and Old Jersey. *See Sindi v. El-Moslimany*, 896 F.3d 1, 32 (1st Cir. 2018) ("Th[e collateral bar] rule requires that an injunction be followed upon pain of contempt until modified or vacated, and the unconstitutionality of the injunction typically does not justify a refusal to obey it."). However, the Court finds this rule will effectively deter harmful speech.

Finally, the Court must determine "that the public interest would not be diserved by a permanent injunction." *eBay*, 547 U.S. at 391. The Court acknowledges that Defendant's concern about a losing party's judgment-proof status factoring into and increasing the likelihood that a court will issue an equitable remedy is valid. Nevertheless, the injured party should not be left without any remedy based on the losing party's financial status. The Court is persuaded by Plaintiff's argument that the public interest would be better served through the issuance of a permanent injunction. First, the injunction would prevent the spread of false information. Second, the injunction would deter illegal conduct and prevent individuals turning to self-help measures like those Defendant engaged in. Since Plaintiff has satisfied all four *eBay* factors, a permanent injunction is warranted to prevent further injury. *See id.*

Accordingly, the Court ORDERS that Defendant DALE ROOT is hereby enjoined from stating or repeating—orally, in writing, through direct electronic communications, or by directing others to websites or blogs reprinting DALE ROOT's comments—the statements:

1. Tim Holpart is a fraud
2. Holpart is a thief
3. Tim brags about overcharging his customers
4. avoid Holpart Wood Company unless you want to be scammed
5. if you need a professional con man, go see Tim Holpart

It is so ORDERED.

/s/
Honorable Josh M. Matthews
District Court Judge

Dated: December 16, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF OLD YORK

_____	:	
Tim Holpart,	:	
	:	
Plaintiff,	:	Docket No. 19-CR-0957 (JM)
	:	
-against-	:	NOTICE OF APPEAL
	:	
Dale Root,	:	
	:	
Defendant.	:	
_____	:	

NOTICE IS GIVEN that Dale Root, Defendant, appeals to the Court of Appeals for the Fourteenth Circuit the granting of Plaintiff's Motion for Permanent Injunction by the District Court for the Central District of Old York rendered on December 16, 2018, and entered on December 19, 2018.

/s/ _____
John Mooreland
Attorney for Defendant
99 Oakwood Street
Old York City, Old York 15007

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Susan Smith, attorney for Plaintiff, at 135 Crown Avenue, Old York City, OY 15008 by electronic service on January 4, 2019.

/s/ _____
John Mooreland
Attorney for Defendant

UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

DALE ROOT,	:	
	:	
Appellant,	:	
	:	Docket No. 19-CR-0957 (JM)
-against-	:	
	:	
TIM HOLPART,	:	ORDER SETTING
	:	BRIEFING SCHEDULE
Appellee.	:	

The parties are directed to file briefs addressing: whether a permanent injunction enjoining a defendant from speaking or writing specific statements found to be libelous or defamatory is a constitutionally permissible remedy.

Appellant's brief is to be filed with the Clerk and served upon opposing counsel on or before noon, April 22, 2019. Appellee is to file its response on or before noon, May 22, 2019.

/s/
Oscar Malone, Clerk

Dated: February 22, 2019

End of Record