IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

RICHARD G. PHILLIPS and RICHARD G. PHILLIPS ASSOCIATES, P.C.	: JULY TERM, 2000
Plaintiffs,	: No. 1550
v.	: (Commerce Program)
ALAN H. "BUD" SELIG, *et al*.	: Control Nos. 011140, 011190, 011148
Defendants.	:

O R D E R

AND NOW, this 12th day of October 2006, upon consideration of defendants' separate Motions for Summary Judgment, the responses in opposition, the respective memoranda, all matters of record and after oral argument and in accord with the Opinion being filed contemporaneously, it is **ORDERED** that the Motions are **granted, in part**, as follows:

1. Plaintiffs' claims for defamation (Count III), invasion of privacy/false light (Count IV), commercial disparagement (Count V) and injurious falsehood (Count VII) are **dismissed**.

2. Plaintiffs' claims for interference with existing and prospective contractual relations (Counts I and II) and conspiracy (Count VIII) are held under advisement pending further oral argument.

3. Oral argument on the remaining claims is scheduled for Thursday, October 26, 2006 at 10:00 a.m. in Courtroom 513, City Hall.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.

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O P I N I O N

ALBERT W. SHEPPARD, J. …….……. October 12, 2006

Currently before the court are defendants' separate Motions for Summary Judgment. For the reasons discussed, the Motions are granted, in part.

I. Background

A. Procedural History

Plaintiff, Richard G. Phillips ("Phillips"), and his law firm, Richard G. Phillips Associates, P.C. (the "Phillips Firm"), commenced this action against numerous defendants on July 14, 2000. Plaintiffs contend that certain of the defendants interfered with plaintiffs' relationship with their client, a labor union, and defamed them by making statements which implied that they were incompetent, dishonest and unethical.

These defendants include: Joseph Brinkman and John Hirshbeck ("Umpire Defendants"), Ronald Shapiro, Esquire and Shapiro & Olander ("Shapiro Defendants") and the Office of the Commissioner of Baseball, the American League of Professional Baseball Clubs, the National

League of Professional Baseball Clubs, Allan H. "Bud" Selig (the Commissioner of Baseball), Robert Manfred (Executive Vice President of Labor and Human Resources for Major League Baseball), Richard "Sandy" Alderson (then-Executive Vice President of Baseball Operations for MLB) and Francis X. Coonelly (general labor counsel for MLB) ("MLB Defendants").[1]

Plaintiffs have asserted claims for interference with existing contractual relations (Count I) and interference with prospective contractual relations (Count II) against all defendants. Plaintiffs have also asserted claims for defamation[2] (Count III), invasion of privacy/false light (Count IV), commercial disparagement (Count V) and injurious falsehood (Count VII) against the Umpire Defendants and Shapiro Defendants. There is also a conspiracy claim against the MLB Defendants and the Shapiro Defendants (Count VIII).[3] Defendants have moved for summary judgment as to each of these claims.

B. Factual Overview

Since 1979, plaintiffs have served as counsel to the Major League Umpires Association ("MLUA"), the former union for MLB umpires. Plaintiffs executed a retainer agreement with the MLUA which was set to expire in April 2003 (the "Retainer Agreement"). Phillips was widely known as the spokesperson for the MLUA, although the MLUA was in fact led by a president and board of directors whom were elected by the membership. Under the Retainer Agreement, plaintiffs were the exclusive counsel for the MLUA and were responsible for, *inter alia*, the negotiation of the umpires' collective bargaining agreement ("CBA") with the American and

1 On April 28, 2006, plaintiffs' counsel stipulated on the record that defendants David Phillips and Timothy Welke were to be dismissed from this case. Defendant Shapiro Negotiations Institute was dismissed from this case by stipulation on October 27, 2005. Following this court' ruling on preliminary objections on September 19, 2001, no claims remained against Defendant World Umpires Association ("WUA").

2 In considering plaintiffs' defamation claim at the preliminary objection stage, the court dismissed some of plaintiff's allegations on the ground that they were too vague to support such a claim. These paragraphs included ¶¶ 42, 48-52, 68 and 101. *See* September 19, 2001 Opinion at 12.

3 On September 19, 2001, this court dismissed the following claims: fraudulent conveyance (Count VI); quantum

National Leagues (the "Leagues") in return for an annual retainer fee ($55,000.00 per year for four years), an annual administration fee ($25,000.00 per year for four years) and 2.5% of the total value of the umpires' compensation under the CBA. The CBA, which was set to expire at the end of 1999, contained a "no strike" clause which prohibited the umpires from engaging in a "strike or other work stoppage during the period of the [CBA]." CBA at §§ I, XIX, Ex. 16.

Beginning in 1998 and into 1999, tensions began to rise between the umpires and MLB in connection with several issues, such as the definition of the strike zone, performance evaluations of umpires, the use of MLB umpires in a game being played in Cuba and a proposal to move certain of MLB's operations - - including supervision of the umpires - - from the Leagues, to the Office of the Commissioner. In the midst of these developments, the MLUA held its annual meeting in Phoenix, Arizona, where these issues, as well as the renewal of the Phillips Firm's contract with the MLUA, was discussed. At that meeting, defendants Hirschbeck and Brinkman led an effort to have the Phillips Firm replaced with the Shapiro defendants as counsel for the MLUA. Their efforts were unsuccessful and the members of the MLUA voted 49-14 to renew its contract with the Philips Firm in the form of the Retainer Agreement.

Tension continued to mount among the umpires. As a result, a special meeting of the umpires was scheduled for July 14, 1999. Aware of the "no strike" provision in the CBA, Phillips and the president of the MLUA suggested an alternative to a strike: a mass resignation with a demand for severance pay. Following discussion and debate, the umpires at the meeting agreed on the mass resignation plan and submitted written notices of their intent to resign effective September 5, 1999. At the same time, the umpires executed professional services agreements with Professional Umpire Services, Inc., an entity that plaintiffs had incorporated days earlier as a mechanism through which the MLB could hire the umpires back after their mass

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meruit/unjust enrichment (Count IX) and breach of contract (Count X). *See* September 19, 2001 Opinion.

resignation. However, some umpires (including the Umpire Defendants) did not support this strategy - - or Phillips - - and refused to submit resignations or sign the professional services agreement.

Immediately following the meeting, Phillips held a press conference announcing the mass resignation strategy. The next day, July 15, 1999, the Phillips Firm faxed the resignation letters to the presidents of the Leagues; approximately 57 of the total active staff of 68 umpires resigned. News of the mass resignation was widely publicized throughout the media. Many sports commentators and other members of the media questioned and even criticized the strategy; some even levied attacks upon Phillips personally. Other vocal opponents of the strategy included defendants Hirschbeck and Brinkman. Many of the umpires began to have second thoughts about the resignations, and beginning on July 18, 1999, some of the umpires rescinded their resignations. It appeared at this point that the mass resignation strategy was in danger of failing.

On July 22, 1999, MLB officials held a meeting in Milwaukee to discuss the umpire situation. At the meeting, it was decided that all of the rescissions received up to that point would be accepted. It was also decided that the MLB would begin the process of replacing the umpires who had not yet rescinded their resignations. During the course of the day, MLB Commissioner Selig spoke with Hirshbeck on two or three occasions, during which Hirschbeck expressed his “unhappiness” - - along with that of several other umpires - - with the mass resignation strategy. Selig talked also to Shapiro (a personal friend) briefly about the situation. Shapiro offered Selig his assistance. By the end of that day, the National League had made eight offers of employment to minor league umpires and the American League had made twelve offers, all of which were accepted. By July 27, 1999, all of the umpires had rescinded their resignations. Eventually, the MLB defendants rehired all but 22 umpires, who were replaced.

The avalanche of media attention was supplanted by a wave of litigation. On July 23, 1999, the Phillips Firm filed a lawsuit against the Leagues in the United States District Court for the Eastern District of Pennsylvania, seeking a temporary restraining order to prevent the Leagues from accepting the umpires' resignations, which was ultimately unsuccessful. In August 1999, the Phillips Firm filed a demand for arbitration on behalf of the MLUA pursuant to the CBA, challenging the propriety of MLB's acceptance of the resignations of the 22 umpires who had been left unemployed. They asserted that the Leagues violated the CBA by conspiring with an insurgent union movement and the Umpire Defendants to encourage the umpires to terminate their relationship with the Phillips Firm. Following the seventeen day arbitration hearing - - at which Phillips appeared as a witness - - the arbitrator found no evidence of a conspiracy and concluded that there was no wrongdoing on the part of MLB or the Leagues. The arbitrator's decision, in pertinent part, was later affirmed on appeal by both the United States District Court for the Eastern District of Pennsylvania and the Third Circuit Court of Appeals.

Meanwhile, defendants Hirschbeck and Brinkman, along with thirteen other umpires, had created an organizing committee - - the Major League Umpires Independent Organizing Committee ("IOC") to, *inter alia*, challenge the MLUA. Shapiro served as an advisor to the group. In October 1999, the IOC filed a petition with the National Labor Relations Board ("NLRB") to decertify the MLUA, the effect of which would essentially create a new organization capable of contracting with a different law firm, but which otherwise would leave the union intact. In November 1999, the IOC held an informational meeting in Baltimore, Maryland to discuss the decertification petition and other issues. Shapiro and other members of the Shapiro firm participated in the meeting. Following the meeting, a decertification election was held by mail ballot. The election was supervised by the NLRB. On November 30, 1999, the

ballots were counted by the NLRB. The majority of the 93 eligible voters selected the IOC; the vote was 57-35 (with one ballot voided).

In December 1999, the Phillips Firm, on behalf of the MLUA, filed a petition with the NLRB to overturn the decertification election, claiming that, *inter alia*, the Leagues had violated the National Labor Relations Act ("NLRA") by negotiating with a union other than the MLUA and by offering benefits in order to encourage the umpires to disavow the MLUA. In its post-hearing brief to the Hearing Examiner, the MLUA alleged that the Leagues had wrongfully refused to deal with Phillips and the MLUA and had acted to coerce the umpires to remove the Phillips Firm as the representative for the union. The NLRB rejected the MLUA's claims and concluded that the Leagues' conduct was reasonable under the CBA and the election had not been improperly influenced.[4]

On February 24, 2000, the umpires voted to decertify the MLUA and to certify defendant WUA as their new union. Plaintiffs allege that the vote resulted from the defendants' negative statements about them. Defendant Shapiro now serves as the collective bargaining representative to the WUA. The MLUA is without any members; however, the Phillips Firm has served as counsel to the MLUA in several lawsuits and in connection with other filings over the past few years. Def. Jt. Stmt of Facts at 28-29. Plaintiffs filed this action on January 2, 2001.

4 In reaching its decision, the NLRB did not consider the "pre-petition conduct" of the parties, including that which that took place in June 1999. ***See*** 330 N.L.R.B. 670 at 676-7.

II. Discussion

A. Standard For Summary Judgment

"Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Pa.R.C.P. 1035.2; Horne v. Haladay, 1999 Pa. Super. 64, 728 A.2d 954 (1999). This burden rests with the moving party and the court is required to examine the entire record in a light most favorable to the non-moving party. First Wisconsin Trust Co. v. Strausser, 439 Pa. Super. 192, 198, 653 A.2d 688, 691 (1995). Applying this standard, this court finds that plaintiffs have failed to produce evidence of facts essential to certain of the causes of action pled and that summary judgment is appropriate as to those Counts.

B. The Alleged Statements of Shapiro, Brinkman and Hirshbeck Do Not Support Claims For Defamation, Invasion of Privacy/False Light, Commercial Disparagement or Injurious Falsehood

Counts III, IV, V and VII purport to state claims against the Umpire Defendants and the Shapiro Defendants for defamation, invasion of privacy/false light, commercial disparagement and injurious falsehood, respectively.[5] While each of the torts are separate and distinct causes of action, each centers around the same premise: that a disparaging statement was made by defendant(s) concerning plaintiff(s). Plaintiffs themselves concede that no overtly defamatory statements were made, instead they claim such statements were conveyed through innuendo.

5 Phillips brought the defamation, invasion of privacy/false light and injurious falsehood claims, personally. The commercial disparagement claim was brought by the Phillips Firm. However, for purposes of this analysis, the claims will be considered together.

Specifically, the statements at issue include comments by the Shapiro Defendants that Phillips' resignation plan was "one of the worst in labor history" and that the plan "didn't make sense to [Shapiro] or any other labor attorney [Shapiro] has spoken with…" as well as other statements which plaintiffs contend "suggests an inference to the reader either that Phillips and his firm are incompetent attorneys or that he and his firm are dishonest." Pl. Mem at 97-8. Along similar lines, Brinkman is accused of stating: "I just don't think [MLB] wants to work with Richie [Phillips]" and "I really don't think we can [negotiate a new CBA] with Richie because there is a total distrust of him among the people in baseball." Pl. Mem. at 106. Plaintiffs did not cite to any specific statements by Hirshbeck in their brief in opposition to defendants' Motions for Summary Judgment.

Specifically, in an action for defamation, the plaintiff has the burden of proving: 1) a false and defamatory statement concerning another, 2) an unprivileged publication to a third party, 3) fault amounting at least to negligence on the part of the publisher, and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Restatement (Second) Torts, § 558 (1977).

Whether a challenged statement is capable of defamatory meaning is a question of law for the court to determine in the first instance. Bell v. Mayview State Hospital, 2004 Pa. Super. 242, 853 A.2d 1058, 1061-2 (2004). It is recognized that certain communications, though undoubtedly offensive, do not rise to the level of defamation. *See* Kryeski v. Schott Glass Technologies, Inc., 426 Pa. Super. 105, 116, 626 A.2d 595, 600-1 (1993). Honest utterances reflecting personal belief and opinion are not actionable. Bell, 853 A.2d at 1062; Beverly Enterprises v. Trump, 182 F.3d 183 (3d Cir. 1999). Where a challenged statement is an expression of opinion, it is actionable only if the plaintiff can demonstrate that the communicated opinion "may reasonably be

understood to imply the existence of undisclosed defamatory facts justifying the opinion." Baker v. Lafayette College, 516 Pa. 291, 532 A.2d 399, 402 (1987); Restatement (Second) of Torts § 566 cmt. c. It is for the court to determine whether a statement is one of opinion or fact. *See* Malia v. Monchak, 116 Pa. Cmwlth. 484, 496 543 A.2d 184, 190 (1988).

Here, this court finds that plaintiffs have failed to identify a single statement by any of the defendants that meets the test of defamation under Pennsylvania law, as each of the proffered statements constitute expressions of opinion based on public facts. This court has already ruled that the Shaprio Defendants' alleged statements characterizing the resignation strategy as "doomed" and "flawed" are opinions and therefore not actionable. *See* September 19, 2002 Opinion at 13, n.15. The remaining allegations proffered in support of plaintiffs' defamation claim are no different. The undisputed facts demonstrate that the mass resignation strategy and Phillips' role in it was the subject of intensive media coverage. It is also apparent that many people - - not just defendants - - publicly expressed unfavorable opinions of both the strategy and of Phillips during this time period. Against that backdrop, plaintiffs cannot sustain a defamation claim based on the alleged statements. While defendants' statements - - and those made by many others not party to this lawsuit - - were likely annoying, embarrassing and insulting to plaintiffs, Phillips in particular - - they cannot be considered the basis for a defamation claim under Pennsylvania law.

The remainder of plaintiffs' claims based on these alleged statements fail for the same reason. Counts V and VII purport to state claims for commercial disparagement and injurious falsehood, respectively. As commercial disparagement is a type of injurious falsehood, the court finds these counts to be duplicative, as both causes of action require that the publication be more than merely false. Under the tort of injurious falsehood, the publication of a disparaging

statement concerning the business of another is actionable where plaintiff can demonstrate that: 1) the defendant published a disparaging statement concerning the business of the plaintiff, 2) the statement was false, 3) the defendant intended that the publication cause pecuniary loss or reasonably should have recognized that publication would result in pecuniary loss, 4) the publication caused actual pecuniary loss, and 5) the publisher knew the statement was false or acted in reckless disregard of its truth or falsity. Pro Golf Mfg. v. Tribune Review Newspaper Co., 570 Pa. 242, 246, 809 A.2d 243, 246 (2002) (*citing* Restatement (Second) Torts § 623(A) (1977)); Restatement (Second) of Torts §§ 623A. As previously stated, all of the statements at issue were opinions and therefore are not actionable.

Finally, this court turns to plaintiffs' claim for invasion of privacy/false light. Such a claim is intended to protect a plaintiff's interest in keeping private matters from public view. To state a cause of action in Pennsylvania, a plaintiff must demonstrate an intentional intrusion on the seclusion of his private concerns which was substantial and highly offensive to a reasonable person. Pro Golf Mfg., Inc., 570 Pa. at 242. McGuire v. Shubert, 1998 Pa. Super. LEXIS 4647, 722 *A*.2d 1087 (1998). Here, plaintiffs have failed to demonstrate that defendants, or any of them, disclosed matters of "private concern". The mass resignation strategy and surrounding circumstances were very public events involving an admittedly public figure.[6] The subject matter of the alleged statements received considerable coverage in the national media; there was nothing "private" about it. Moreover, the statements at issue clearly relate to Phillips in his professional capacity, not to matters of "private concern." As such, the claim for invasion of privacy/false light is not viable here.

III. Conclusion

Based on the foregoing, summary judgment is granted in favor of the Umpire Defendants

and the Shapiro Defendants relative to plaintiffs' claims for defamation (Count III), invasion of privacy/ false light (Count IV), commercial disparagement (Count V) and injurious falsehood (Count VII). These counts are dismissed. The court will enter a contemporaneous Order consistent with this Opinion

Defendants' Motions regarding plaintiffs' claims for interference with existing and prospective contractual relations (Counts I and II) and conspiracy (Count VIII) are held under advisement pending further oral argument. The parties agree that the elements of a cause of action for intentional interference with contractual relations, whether existing or prospective, are: 1) the existence of a contractual or prospective contractual relation between the complainant and a third party, 2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring, 3) the absence of privilege or justification on the part of the defendant; and 4) the occasioning of actual legal damage as a result of the defendant's conduct. Al Hamilton Contracting Co. v. Cowder, 434 Pa. Super. 491, 497, 644 A.2d 188, 191 (1994).

Specifically, this court would like to hear further argument from the parties concerning the second and third elements, as well as with respect to the issue of causation. The parties should also be prepared to discuss what effect, if any, the NLRB's conclusions have on the remaining claims.

6 *See* Shapiro Def. Mem at 10, n. 8.

Oral argument on these remaining claims is scheduled for Thursday, October 26, 2006 at 10:00 a.m. in Courtroom 513, City Hall.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.