

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

RONALD P. COOLEY, individually and	:	April Term 2016	DOCKETED
Derivatively on behalf of the LOFTS AT 1234	:		
CONDOMINIUM ASSOCIATION,	:	No. 3513	NOV 14 2018
Plaintiff,	:		
v.	:	Commerce Program	R. POSTELL COMMERCE PROGRAM
LOFTS AT 1234 CONDOMINIUM	:		
ASSOCIATION, ET. AL.,	:	Control Nos. 18082273/18082410/	
Defendants.	:	18082335	

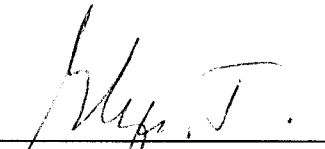
ORDER

AND NOW, this 14th day of November, 2018, upon consideration of Defendant Thomas Marrone's Motion for Summary Judgment, Defendant Echo Volla's Motion for Summary Judgment and Plaintiff Ronald P. Cooley's Motion for Summary Judgment, the respective responses in opposition and the attached Opinion, it hereby is **ORDERED** as follows:

1. Defendant Thomas Marrone's Motion for Summary Judgment (cn 18082410) is **Granted**.
2. Defendant Echo Volla's Motion for Summary Judgment (cn 18082335) is **Granted**.
3. Plaintiff Ronald P. Cooley's Motion for Summary Judgment (cn 18082273) is **Denied**.

Judgment is entered in favor of defendants Thomas Marrone and Echo Volla and against Plaintiff Ronald Cooley on the remaining claim of defamation.

BY THE COURT,


GLAZER, J.

Cooley Vs Lofts At 1234-WSDMG



16040351300356

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

RONALD P. COOLEY, individually and	:	April Term 2016
Derivatively on behalf of the LOFTS AT 1234	:	
CONDOMINIUM ASSOCIATION,	:	No. 3513
Plaintiff,	:	
v.	:	Commerce Program
LOFTS AT 1234 CONDOMINIUM	:	
ASSOCIATION, ET. AL.,	:	Control Nos. 18082273/18082410/ 18082335
Defendants.	:	

OPINION

Presently pending before the court are defendant Thomas Marrone’s motion for summary judgment, defendant Echo Volla’s motion for summary judgment and plaintiff Ronald P. Cooley’s motion for summary judgment to the remaining claim of defamation in the complaint. This action has a long, tortured and rancorous history which has been the subject of numerous motions, orders and opinions filed in this court. As such, in the interest of judicial economy, the factual background and procedural history of this matter set forth in the court’s orders and opinions dated January 16, 2018 and June 6, 2018 are adopted and incorporated hereto by reference.

Defendants Thomas Marrone (“Marrone”) and Echo Volla (“Volla”) are two former members of the Executive Board at the Lofts at 1234 Condominium Association. Plaintiff Ronald P. Cooley (“Cooley”) served on the Executive Board with Marrone and Volla and is now a current Executive Board member. Cooley’s claim for defamation arises from Marrone and Volla’s writings and Marrone’s oral statements to unit owners Clifford Stevens and Versuschka

Stevens during their tenure on the Executive Board of the Condominium Association. Cooley alleges that Marrone and Volla defamed him in the following writings¹:

1) Statements in the May 30, 2015 Loft 1234 Meeting Minutes² which state in part:

Bicycle Lane on Noble Street. The President [Marrone] reported that Mr. Cooley did not carry out the assignment he accepted, which was to create a petition and obtain signatures, and confer with the Bicycle Coalition for the purpose of establishing a bike lane on Noble Street between Broad and 1th (sic) Streets. ...

John Howell shall be asked to fill the vacancy on the Board created by Mr. Cooley's removal as a Board member, and to serve for the remainder of the Mr. Cooley's Term, which expires in September of 2017 in accordance with the ByLaws. If Mr. Howell agrees, the Board will be appoint [sic] him at a separate meeting.³

2) Statements in the Special Assessment FAQs that Cooley failed to attend Board meetings and failed to take appropriate Board action that would have prevented the alleged need for the Special Assessment and placed blame on the prior Boards of which Cooley was a member for the condition of the Condominium. Examples of the statements are as follows:

a. The Previous Board is responsible; and now the present Board is responsible.

b. The Board was required to make sure that the condominium Association had sufficient reserves, but did not do so. Had the previous Boards made appropriate assessments over the past 10 years, the present assessment would almost certainly not have been necessary, or at least would have been much smaller.

c. The Board gave Board member Ron Cooley proper notice of the meeting under the Bylaws, but he did not attend the meeting or vote on the matter. Nor did Mr.

¹ The defamatory statements attributed to Volla are the May 30, 2015 email/Meeting Minutes and the Special Assessment FAQ's and the July 31, 2015 email. Defendant Volla's motion for summary judgment ¶ 8; Plaintiff's response in opposition ¶ 8.

²Cooley also identifies a May 30, 2015 email as defamatory. See Exhibit "3" to Volla's motion for summary judgment. The court does not find this email capable of defamatory meaning. The email was authored by Marrone in his capacity as the president of the Lofts at 1234 Condominium Association and carbon copied to Volla and John Howell. The email states in pertinent part as follows: "Echo and I are pleased to announce that John Howell (unit 105) has agreed to become a member of the Executive Board. John replaces Ron Cooley. His term will expire in the summer/fall of 2017, along with ours." The May 30, 2015 Meeting Minutes were not attached to the email and there is no evidence that the email was published to anyone other than Volla and John Howell.

³ Loft 1234 Meeting Minutes 5.30.2015 Regular meeting pp. 1 and 7. Defendant Volla's motion for summary judgment Exhibit "1"- Exhibit "N". It is unclear if these minutes were published.

Cooley participate in the two previous Board Meetings, also despite proper notice under the Bylaws. Since rejoining the Board, Mr. Cooley has not attended a single meeting.

d. The Association does not have the necessary financial reserves because the Board that existed before January 28, 2015 never proposed or took any Board action to build and maintain an adequate reserve, or address the many open and obvious repair and maintenance items that persist to this day.

e. The previous Boards did not make legally required repairs and maintenance to obviously deteriorated common areas, did not levy necessary assessments, and did not build up and maintain a sufficient reserve.⁴

3) The September 27, 2016 email sent by Marrone in his capacity as President of the Lofts at 1234 Condominium Association to Cooley, Volla, John Howell, Steven Volla, Maria Teresa Terry Marmugi stating:

Ron, membership on the Board is an important, serious obligation that requires a considerable self-sacrifice of time and attention, It is not a sideline for you or anyone else to dabble in whenever there is a free moment here or there, and whenever one's schedule permits.

I have personally spent hundreds of hours on Association matters, at the expense of important personal, family and professional matters. Indeed, this meeting and the subject matter has interrupted all three of those for me already, and will continue to do so for some time to come. I am doing it for the Association.

Echo has done likewise. Steve and John are not even on the Board, and yet they have each also spent scores, if not hundreds, of hours of their time on Association matters. And now Terry Marmugi is doing the same.

If you are unable or unwilling to make the time that is necessary to meaningfully participate, then you are not well serving the Association Membership as a Board member.

If your schedule does not permit you to actively and meaningfully participate as a Member of the Board, then I suggest you reconsider what, exactly, you are doing on the Board in the first place.

Of course we all prefer that you make the time to do what is necessary to fulfill your duties under the Bylaws as a Board member: appear for meetings well prepared, and meaningfully participate in those meetings.

⁴ Volla's motion for summary judgment Exhibit "1" at Exhibit "L".

The meeting will go on as scheduled, with or without you.⁵

4) The October 1, 2016 email from Marrone in his capacity as President of Lofts at 1234 Condominium Association to Volla, Steven Volla, John Howell, Maria Teresa Terry Marmugi and Cooley with a bcc to the Association members. The subject of the email is “Confidential Litigation Report to Association Members- work product- attorney client privilege.” This email updates the Association members on litigation matters including the instant litigation. In this email, Marrone wrote the following:

“On Friday, Ron Cooley filed the attached complaint against Association, me, and Echo Volla...we will need to levy another assessment on the Association members for the cost of the litigation.”⁶

5) The July 31, 2015 email by Marrone to Robert Wise, the Condominium Association’s project manager, carbon copied to Echo Volla, and John Howell, and forwarded to John Benson, the Association’s lawyer in which Marrone wrote,

“Attached are Check Details the Board received from Alterra for the period January 1, 2013-February 4, 2015. The Board has no other check details or similar documents. Mr. Cooley was a member of the Board for most of this time and we assumed that he had direct personal knowledge of the Association’s expenditures. Apparently he was not an active Board member. You may permit Mr. Cooley to visit your offices, during normal business hours and in the course of your regular business, to inspect these Check Details. Mr. Cooley may not copy, photograph, abstract or make a summary of the documents. He may only inspect them....

“The Board does not know what Mr. Cooley is referring to regarding “legal opinion,” and the Board does not agree with his lay interpretation of the Board’s legal duties. Legal opinions are not required when an amendment is adopted on the basis of a vote of the Association, as with the Second and Third Amendments, which were approved by unit owner votes. Those Amendments were not corrective amendments and did not require a legal opinion to be valid. Please inform Mr. Cooley that the Board will not engage in any more unnecessary, costly debate with Mr. Cooley regarding the Board’s obligations.”...

⁵ Volla’s motion for summary judgment Exhibit “1”- Exhibit “O”.

⁶ Volla’s motion for summary judgment Exhibit “8”.

Please advise Mr. Cooley that his attempt to obtain materials he is not entitled to, and his attempt to engage in a legal debate, is costing the Association money in the form of legal fees. This is a great disservice to the members of the Association...”⁷

6) Oral statements by Marrone to Mr. and Mrs. Stevens.

Cooley also alleges that Marrone also defamed him orally to Mr. and Mrs. Stevens, unit owners at the Lofts at 1234 Condominium. Mr. and Mrs. Stevens testified that when the situation first arose regarding the condominium and the assessment, their opinion of Cooley was that he was “nuts”, annoying and had no regard for unit members time based on the length of emails.⁸ Mr. Stevens also testified that Marrone characterized Cooley as “someone who was after him and a nut” and that Marrone’s statements about Cooley along with Cooley’s emails did influence how the Stevens voted on matters such as the assessment discussed in the FAQ. The Stevens’ opinion was formed as a result of Cooleys’ emails and conversations with Marrone.⁹

The Executive Board

The Lofts at 1234 Condominium Bylaws permit a three member executive board to convene and hold annual meetings to be held on the third Tuesday of September. On September 24, 2013, Cooley and Volla were elected to a three year term on the Executive Board. At the time, Teri Gerbec was the other member of the Board and the president. On January 28, 2015, Gerbec resigned as the president and member of the executive board. On the same date after a special meeting of the executive board was held, Cooley and Volla appointed Marrone to fill Gerbec’s vacancy as the third member and president. On May 30, 2015, Cooley was removed as

⁷ Volla motion for summary judgment Exhibit “11”.

⁸ Marrone’s motion for summary judgment Exhibit “J” deposition of V. Stevens p. 14-23.

⁹ Volla’s motion for summary judgment Exhibit “7” deposition of C. Stevens p. 29.

a member of the Board. On May 16, 2016, approximately one year later, Cooley was once again recognized as a member of the Executive Board.

On October 7, 2016, Cooley and four other unit owners submitted a petition to Marrone requesting a special meeting of the unit owners to discuss the complaint filed by Cooley against Marrone and Volla and the allegations contained therein. These petitioners demanded that the following items be added to the meeting agenda for the meeting already scheduled by Marrone: a) forming a temporary Executive Board made up of three disinterested unit owners to replace Cooley, Volla and Marrone until a new Executive Board made up of three disinterested unit owners to replace Cooley, Volla and Marrone is selected, b) hiring an independent investigator to conduct an investigation into the allegations raised in the complaint filed by Cooley, c) removing Marrone as President of the Association until conclusion of the independent investigation, and d) filing an action against Marrone, Volla and the Association or joining and ratifying the lawsuit filed by Cooley. The special meeting was held on November 17, 2016 and the unit owners were provided with two ballots. One ballot posed as questions the concerns raised by Cooley, Dana and the three other unit owners, set forth above. The second ballot posed two questions: a) should the Executive Board of the Association begin an immediate, independent investigation of the allegations against Marrone and Volla outlined in the October 7 letter and b) should the Board commence suit against Marrone and Volla on behalf of the Association for self-dealing conduct, breaches of fiduciary duty, and violations of the Pennsylvania Uniform Condominium Act. After a vote, the ballot questions were rejected by the unit members.

Marrone, Volla and Cooley's term on the board ended in September 2017. On September 19, 2017, Cooley ran for reelection and was reelected to the Executive Board. Marrone and Volla

did not seek reelection. At the time of Cooley's re-election, only one unit of the condominium was sold after the defamatory statements were allegedly made.

Cooley is a self-employed legal consultant and photographer since 2008. Cooley alleges that he suffered economic loss based on a special assessment which should have been allocated solely to Marrone and Volla. Cooley has not alleged any income loss as a result of the alleged defamatory statements. Cooley alleges that the statements served to lower Cooley's esteem and reputation among the Association members and vendors who work with/for the Association. Cooley further contends that the statements have caused others not associate with him and to discount his authority as a Board member as well as his arguments in relation to the Board and Association activities.

DISCUSSION

In an action for defamation, a plaintiff has the burden of proving: (1) the defamatory character of the communication, (2) its publication by the defendant, (3) its application to the plaintiff, (4) the understanding by the recipient of its defamatory meaning, (5) the understanding by the recipient of it as intended to be applied to the plaintiff, (6) special harm resulting to the plaintiff from its publication, and (7) abuse of a conditionally privileged occasion.¹⁰

"Defamation is a communication which tends to harm an individual's reputation so as to lower him or her in the estimation of the community or deter third persons from associating or dealing with him or her."¹¹ Only statements of fact, not expressions of opinion, can support an action in defamation.¹² Further, whether a particular statement or writing constitutes fact or opinion is a

¹⁰ See, 42 Pa. C. S. A. § 8343 (a).

¹¹ *Moore v. Cobb-Nettleton*, 889 A.2d 1262, 1267 (Pa.Super. 2005) citing *Elia v. Erie Insurance Exchange*, 430 Pa.Super. 384, 634 A.2d 657, 660 (1993).

¹² *Id.*

question of law for the court to determine in the first instance. Additionally, it is within the trial court's province to determine whether the challenged statements are capable of defamatory meaning. A statement in the form of an opinion is actionable only if it may reasonably be understood to imply the existence of *undisclosed* defamatory facts justifying the opinion. A simple expression of opinion based on disclosed facts is not itself sufficient for defamation.¹³

In the case *sub judice*, Cooley's claim for defamation fails since he failed to produce any evidence that he suffered actual harm because of the publications. "Actual harm is injury to reputation, impairment of standing in the community, personal humiliation and mental anguish compensable for defamation."¹⁴ As such, Cooley must demonstrate that the writings and oral statements attributed to Marrone and Volla set forth above tended to harm his reputation and lowered him in the estimation of the community. It is not enough that Cooley is embarrassed or annoyed. Cooley must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society.¹⁵ This has not occurred.

Here, the evidence presented by Cooley shows that his reputation within the Condominium Association community was not harmed since he currently holds a position on the Executive Board of the Condominium Association.¹⁶ The deposition testimony of Mr. Clifford Robert Stevens and his wife Verurschka Stevens, which Cooley heavily relies upon to show that

¹³ *Braig v. Field Communications*, 310 Pa.Super. 569, 456 A.2d 1366 (1983).

¹⁴ *Joseph v. Scranton Times, LP*, 959 A.2d 322, 344 n. 23 (Pa. Super. 2008); *Pilchesky v. Gatelli*, 12 A.3d 430, 444 (Pa. Super. 2011).

¹⁵ *Id.*

¹⁶ Cooley dismisses the significance of this fact arguing that Marrone stopped the voting after each candidate received one vote. While the circumstances surrounding Cooley's "re-election" to the board are important, the fact that Cooley is on the Executive Board presently is significant to satisfying the requisite element of actual harm.

his reputation was harmed, does not support Cooley's conclusion.¹⁷ Stevens did testify that once the situation with the condominium association began and Cooley began sending emails, they thought that Cooley had a problem and was "nuts and annoying".¹⁸ Mr. Stevens also testified that Marrone characterized Cooley as "someone who was after him and a nut" and that Marrone's statements about Cooley along with Cooley's emails did influence how they voted on matters such as the assessment discussed in the FAQ. Additionally, notwithstanding their characterization of Cooley, the Stevens did not believe that those characterizations inhibited his performance as a board member.¹⁹ Stevens testified that Mr. Cooley is "someone that I trust in terms of his ability to stick to facts and research" and that Cooley is a "good guy, trying to do the best thing that he can."²⁰ Mrs. Stevens testified that Cooley is "someone trustworthy... decent, honest, good human being."²¹ Simply stating that Marrone's statements and the FAQ's damaged Cooley's reputation without any evidence that it actually did, is insufficient to constitute evidence of reputational damage.²² Since there is no evidence to demonstrate that Cooley

¹⁷ Cooley relies solely upon the testimony of Clifford and Versuschka Stevens to support his defamation claim. The Stevens testified that they never saw the 5/30/2015 meeting minutes, resolution or 7/31/15 email. Volla motion for summary judgment Exhibit "7" deposition of C. Stevens p.p. 47-49, 63-66.

¹⁸ Marrone's motion for summary judgment Exhibit "J" deposition of V. Stevens p. 14-23.

¹⁹ Volla motion for summary judgment Exhibit "7" p. 15-16, 18, 20, 36; Marrone motion for summary judgment Exhibit "J" p. 16, 19-20.

²⁰ Volla motion for summary judgment Exhibit "7" p. 14.

²¹ Marrone motion for summary judgment Exhibit "J" p. 9.

²² See *Walker v. Grand Cent. Sanitation, Inc.*, 634 A.2d 237, 240 (Pa. Super. Ct. 1993) ("Any defamation action begins with the court's legal determination of whether the spoken words are capable of impugning the reputation of the person who alleges the defamation.").

suffered the kind of harm that “grievously fractured his standing in the community”, Cooley’s defamation claim fails as a matter of law.

Furthermore, notwithstanding the lack of actual harm to Cooley, the statements attributed to Marrone and Volla are not capable of defamatory meaning. Any defamation action begins with the court's legal determination of whether the spoken words are capable of impugning the reputation of the person who alleges the defamation.²³ A publication is defamatory if it is intended to harass the reputation of another so as to lower him or her in the estimation of the community or if it tends to deter third persons from associating or dealing with him or her.²⁴ When considering defamatory meaning, the court must determine what effect the statement is fairly calculated to produce and the impression it would naturally engender in the minds of average persons among whom it is intended to circulate.²⁵ A statement which ascribes to another conduct, character, or a condition which would adversely affect her fitness for the proper conduct of her lawful business, trade or profession is defamatory.²⁶ It is well established, however, that a statement which is a mere expression of opinion is not.²⁷

Here, the statements identified by Cooley in the May 30, 2015 Meeting Minutes, the Special Assessment of FAQs, the September 27, 2016 email, the October 1, 2016 email and the July 31, 2015 email are statements of opinion based on disclosed facts set forth within the context of the

²³ *Id.* 634 A.2d 237, 240, 430 Pa.Super. 236, 243 (Pa.Super.,1993); *Sobel v. Wingard*, 366 Pa.Super. 482, 531 A.2d 520 (1987).

²⁴ *Id.* at 485, 531 A.2d at 522; *Corabi v. Curtis Publishing Co.*, 441 Pa. 432, 273 A.2d 899 (1971).

²⁵ *Walker v. Grand Cent. Sanitation, Inc.*, 634 A.2d 237, 240, 430 Pa.Super. 236, 243 (Pa.Super.,1993).

²⁶ *Geyer v. Steinbronn*, 351 Pa.Super. 536, 506 A.2d 901 (1986).

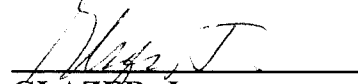
²⁷ *Baker v. Lafayette College*, 350 Pa.Super. 68, 504 A.2d 247 (1986).

emails and FAQs referenced above. A mere statement of opinion based on disclosed facts is not enough to establish a defamation action. The principle that a statement of opinion cannot support a claim for defamation has been firmly established in Pennsylvania.²⁸ At best, the statements may be annoying or embarrassing but they are not actionable as defamatory.²⁹

CONCLUSION

Based on the foregoing, defendants' respective motions for summary judgment are granted and plaintiff's motion for summary judgment is denied. Judgment is entered in favor of defendants Marrone and Volla and against Cooley on the claim for defamation.

BY THE COURT,



GLAZER, J.

²⁸ For example, in *Neish v. Beaver Newspapers, Inc.* 398 Pa.Super. 588, 581 A.2d 619, 622–24 (1990), the Court found that an editorial criticizing the performance of the solicitor of Beaver County and suggesting he be replaced was a statement of opinion. The Court further noted that while the statements “might be viewed as annoying and embarrassing, [they were] not tantamount to defamation.” *Id.*

²⁹ The court further notes that none of the statements concern Cooley's business or trade or profession. There is no evidence that said comments were made to Cooley's business associates in his profession of legal consultant and photographer. His position with the Condominium Association is a volunteer position.