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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO(S). 15-2186-CV

RONALD F. AVERY) IN THE DISTRICT COURT
)
VS.) OF GUADALUPE COUNTY, TEXAS
)
DYLAN BADDOUR, HEARST)
COMMUNICATIONS, INC.) 2ND 25TH JUDICIAL DISTRICT

DEFENDANT'S MOTION TO DISMISS

On the 10th day of March, 2016, the following proceedings
came on to be heard in the above-entitled and numbered cause
before the Honorable W. C. Kirkendall, Judge presiding, held in
Seguin, Guadalupe, County, Texas:

Proceedings reported by Computerized Stenograph Machine.

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DEFENDANT'S MOTION TO DISMISS

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1 THE COURT: Avery versus Baddour and Hearst
2 Communications, 15-2186-CV.

3 MR. DONNELLAN: Good morning, your Honor.

4 THE COURT: All right, whose motion is it?

5 MR. DONNELLAN: It's on behalf of the
6 Defendants.

7 THE COURT: All right, would you keep your voice
8 up, please?

9 MR. DONNELLAN: Yes, certainly. The motion is
10 brought on behalf of the Defendants, Hearst Communications,
11 Inc., which is the publisher of The Houston Chronicle, also
12 Mr. Baddour, who is a reporter for the Houston Chronicle. The
13 motion is made under the Texas Citizens Participation Act, or
14 the TCPA, also known as Texas Anti-SLAPP Law.

15 The Petition here alleges a single claim for
16 defamation, which is based on an article of in The Houston
17 Chronicle that appeared both in print and on-line. It dealt
18 with a group known as the Texians who believe that the Republic
19 of Texas should be separated from the United States.

20 The article -- the article cited several legal
21 experts which discussed in relation to those efforts, what a
22 difficult process that would be, and noted how the group had --
23 was trying through legalistic and non-violent means to bring
24 about that result. The headlines of the article were,
25 "Secessionists Hopeful Despite Odds," for the print version.

1 The on-line version, "Ever Hopeful and Determined, Texas
2 Secessionists Face Long, Long Odds."

3 The Plaintiff here, Mr. Avery, claims he was
4 defamed by the article because it falsely associated him with
5 the Texians; and because the headline referenced a
6 secessionist, that it falsely labeled him as a secessionist as
7 well. Notably, Mr. Avery was not named anywhere in the text or
8 the body of the article at all. He was named in two photo
9 captions. One in the print version, and -- and one in the
10 on-line version.

11 THE COURT: Is there a copy anywhere in the
12 file?

13 MR. DONNELLAN: A copy of the article, yes, your
14 Honor. It's Exhibit B -- A and B to the Bishop declaration.
15 Exhibit A is the print version, and Exhibit B is the on-line
16 version. B is easier to read because it's larger type.

17 THE COURT: Is that a comment on my age,
18 Counsel?

19 MR. DONNELLAN: No. I find it hard to read
20 myself.

21 THE COURT: All right, thank you.

22 MR. DONNELLAN: You can borrow my reading
23 glasses, if you would like.

24 THE COURT: Go ahead.

25 MR. DONNELLAN: So in any event, the -- we're

1 here under the SLAPP statute. The SLAPP law in Texas was
2 enacted in 2011, and it's -- like many states, there's about 20
3 states that have anti-SLAPP laws, which essentially set up a
4 procedure whereby the Defendant, when -- when there's an issue
5 concerning a claim challenging the free speech, or a petition
6 on the matter of public concern, can make a motion; and once
7 they establish that it is involving a matter of public concern,
8 the burden then shifts to the Defendant to bring forward
9 evidence and establish at a preliminary matter that there is
10 support for the claims with evidence. So here, the article on
11 its face deals with matters of public concern, matters of
12 government. And the burden then shifted to the Plaintiff in
13 this particular case, and his opposition provides support for
14 each of the elements of his defamation claim, which we don't
15 believe that he has done.

16 Our motion raised two particular grounds that we
17 focused on. One was the fact that -- and both of which can be
18 decided as a matter of law by the Court. One, which is that
19 the article and the statements are not defamatory at all. That
20 there's nothing defamatory about being called a Texian, or
21 engaging in -- in lawful processes and in political dissent.
22 In fact, we cite articles in there that over 20 percent of
23 Americans believe that their state should secede from the
24 United States. And there's a long history and a long --

25 THE COURT: That number is going up, too.

1 MR. DONNELLAN: -- a long tradition --
2 absolutely. So that's -- that's the first -- first of our
3 arguments. And it is one that can be decided as a matter of
4 law, and we believe has very firm ground in the law here.

5 The second one which I would like to focus on a
6 little bit more because Texas has such a significant body of
7 law in this area is that the article is substantially true. In
8 dealing with matters of truth or falsity, let's even assume for
9 the sake of argument it -- it was defamatory, if the Plaintiff
10 can -- cannot meet his burden of proving falsity, then the
11 claim can't go forward. And the burden here is to prove
12 material falsity. Minor inaccuracies, technical inaccuracies
13 are insufficient as a matter of law to establish falsity, and
14 this is a question for the Court.

15 Stated different in in case law, a defamation
16 claim is similar any not-actionable where it is found to be
17 substantially true. Meaning that the true facts, whatever they
18 are, would not have a materially different impact on the reader
19 than what was published. This doctrine of substantial truth
20 disregards inaccuracies that don't materially change the
21 meaning.

22 So in this particular case, it was -- the
23 article was substantially true in terms of associating
24 Mr. Avery as a Texian, and even with the headline as
25 secessionist, because in effect he was associating himself with

1 this group. It is undisputable that he was the host of the
2 Texian Congress on his property, and that he was present there
3 and addressed the group. So -- and also fundamentally that he
4 shares their fundamental belief.

5 Mr. Avery has characterized himself as a
6 dissolutionist, or an observer of dissolution, and says that's
7 difference here. But it's a difference or distinction here, I
8 would say, without any meaningful difference in terms of truth.
9 The Texians, Mr. Avery, they all believe that Texas should not
10 be flying under the American flag, or it shouldn't be under the
11 American flag; that it should be a separate sovereign
12 independent nation.

13 The way in which you explain you get there
14 differs. The Texians say, and this is reflected in the
15 article, that they don't believe that Texas was properly
16 annexed to the United States in 1845 as a legal matter.
17 Mr. Avery says that he doesn't believe that Texas is part of
18 the United States now because under the theories of John Lock
19 in his second treatise of government that the social contract
20 between the people and the Government has broken; and so
21 therefore, the Union has dissolved. There's no United States,
22 there's no Texas; and so therefore, it should be independent.

23 His claim is that that is different from being
24 called a secessionist because that means you want to separate.
25 It assumes that there's a proper government bond at this time.

1 Our argument, your Honor, and I believe this is
2 well-supported by the case law, is that the sort of differences
3 that are pointed out between these political philosophies in
4 terms of the reason for saying that Texas should not be part of
5 the United States is immaterial because at the end of the day,
6 they all share that goal and they all share that fundamental
7 belief.

8 A few of the things that the Plaintiff also
9 argues is that being labeled a Texian; and therefore, by
10 implication or derivative implication in -- in the article's
11 headline that that implies that he is part of a group as a
12 secessionist that engages in -- in violence or unlawful
13 conduct. And your Honor, if you read the article, the
14 article -- there's no way that a reasonable reader, and that is
15 the standard, could read the article in its entirety as a whole
16 and come away with the view that the Texians, as whether
17 they're labeled secessionists or not, are engaged in any sort
18 of violent or unlawful activity.

19 Specifically, in the second or third paragraph,
20 it says that the members of the Republic of Texas believe Texas
21 never legally became part of the United States; and therefore,
22 remains a sovereign nation, makes clear what their specific
23 belief is, and says that their mission is plotting a legalistic
24 escape from the United States. It goes on to point out that
25 they engage in perfectly lawful, peaceful activities; that they

1 have elected officials who meet to discuss the issues,
2 including the congress that met on Mr. Avery's property; that
3 they follow parliamentary procedure; that their Texian chief
4 justice has spent three years studying international law,
5 trying to determine a legalistic means of separating Texas from
6 the United States. And that they're considering the group
7 filing a memorial with the international court at the Hague to
8 demonstrate that the U.S. annexed Texas illegally, and to seek
9 recognition as a sovereign nation.

10 It also specifically says in the article that
11 the Texian group foreswears violence, and is not engaged in any
12 sort of violent activity. So what everyone might think of the
13 term "secessionist," in the article as applied to the Texians,
14 it clearly does not mean somebody engaged in unlawful or
15 violent conduct.

16 In fact, the way the word is used is consistent
17 with the dictionary use of the word; and we have in there the
18 dictionary definition from Miriam Webster Dictionary, which is
19 at Exhibit R of the Bishop declaration --

20 THE COURT: I find whenever lawyers have to
21 resort to the dictionary, they've run out of authority to
22 cite.

23 MR. DONNELLAN: There's not a lot of authority
24 on -- on secession. But the dictionary definition is, "a
25 person who thinks that a nation, state, et cetera, should

1 separate from another and become independent;" and that's
2 precisely what Texians believe. That's precisely what
3 Mr. Avery believes.

4 However, they feel the mechanism should be to
5 get that that again, we're dealing with a distinction without a
6 difference. Applying the commonly understood definition, it's
7 substantially true to call Texians secessionists, just as it
8 would be substantially true to call a dissolutionist a
9 secessionist as well. They all think that Texas should not be
10 part of the United States; that it should be independent.
11 Those are the grounds for our motion, your Honor.

12 THE COURT: All right, Mr. Avery, why should I
13 grant that motion?

14 MR. AVERY: Your Honor, yes, first of all, I
15 would like to ask the Court --

16 THE COURT: They don't want you to put your hand
17 in your pockets.

18 MR. AVERY: Oh, okay. I would like to motion
19 the Court to take it under advisement and read the 33-page long
20 motion, with the 22 exhibits, containing 138 pages. Plaintiff
21 has a record of response to the motion of 39-page, 8-page
22 affidavit, 10 exhibits --

23 THE COURT: Do you have any authority?

24 MR. AVERY: -- and 34 pages.

25 THE COURT: Do you have any argument you want to

1 make?

2 MR. AVERY: I do.

3 THE COURT: I wish you would get to it.

4 MR. AVERY: Okay, thank you.

5 The -- the article that they wrote, they didn't
6 mention that they had four links, three or four links; and
7 these links went to an article by Homeland Security that
8 likened the Republic of Texas group, calling themselves the
9 Republic of Texas, to sovereign citizen extremists who would do
10 violence at home, during travel, and in government facilities.
11 And they also link to an article about other secessionists
12 that -- called the Texas National Movement where one member
13 went to Russia to participate in a far right convention of
14 neo-Natzis and fascists, and the title of that article was,
15 "Putan's Plot to Get Texas to Secede." And they had another
16 link to an article titled, "The Growing Right Wing Terrorist
17 Threat."

18 And these links were -- were not -- they say --
19 the Defendant say those links were made to contrast --

20 THE COURT: How were you defamed by those links?

21 MR. AVERY: Well, that's -- I was implied --
22 since they said I was a secessionist, which all the record --
23 all evidence in the record proves I am not a secessionist, and
24 can't possibly be one --

25 THE COURT: The article they attached, there's a

1 retraction --

2 MR. AVERY: Yeah.

3 THE COURT: -- that they incorrectly identified
4 you as the man wearing the jacket, and he's not a member of the
5 organization, is not in the photograph.

6 MR. AVERY: Yeah, but they didn't correct it --
7 they didn't correct their on-line article. I have --

8 THE COURT: This is the on-line article.

9 MR. AVERY: That's -- they have a photo -- if
10 you go the photograph three, which is my Exhibit I, it shows me
11 standing at the microphone, a photograph of me, and it says,
12 "Members Take Turns at the Microphone." And there I am,
13 standing at the microphone as a member, described as a member;
14 and -- and that's liable by photographic -- photographic means
15 and caption. And that's still there. They have not corrected
16 that. So they -- I am still a secessionist --

17 THE COURT: Are you identified in the
18 photograph?

19 MR. AVERY: I'm sorry?

20 THE COURT: Are you identified in the
21 photograph?

22 MR. AVERY: Am I identified?

23 THE COURT: In the photograph? The caption of
24 the photograph, does it identify you?

25 MR. AVERY: It was originally, and they took my

1 name out. But it's still me. I mean, I'm in the photograph.

2 It is me.

3 THE COURT: What were you doing at the
4 photograph?

5 MR. AVERY: Huh?

6 THE COURT: What were you doing at the
7 microphone? What were you doing at the microphone?

8 MR. AVERY: I was -- I was reading a paper I
9 wrote on dissolution, the principle of dissolution, and how
10 that would affect the Republic of Texas. That's what it was.
11 It was not on secession. The word "secession" appears in the
12 introduction one time. The rest of it is all about
13 dissolution, and the word "dissolution" appears 18 times.

14 It's about -- I cannot be a secessionist.
15 Dissolution and succession are exclusively different, and they
16 can't -- they do not relate. You cannot secede from a
17 dissolved union. Impossible. So they mislabel me, put me with
18 a group I'm not a member of. And then they, by juxtaposition,
19 a bunch of radical, terroristic stuff, and they're converting
20 me into a domestic terrorist.

21 And they wait five months to publish this thing.
22 This -- this event happened on April the 11th. They wait until
23 the weekend of September 11th. They publish it on Sunday
24 on-line, on September the 13th. On September the 14th, a
25 Monday, they publish front page a picture of some guy, and they

1 call it me. They said that's Ron Avery, and that I've given up
2 my -- that I've informally given up my citizenship in Texas as
3 shown by Ron Avery's jacket.

4 Your Honor, there's -- there's tons of evidence
5 showing that I have been smeared by this newspaper. They have
6 tried to make me into a domestic terrorist. That's exactly
7 what has happened; and I'm the guy that was participating,
8 using his free speech. All evidence shows I'm the only one
9 doing that. And -- and they've turned this act around to
10 protect big newspapers, and slaughter the individuals that try
11 to stand up and talk about things.

12 THE COURT: Do you have any legal authority you
13 want to cite to me, Mr. Avery?

14 MR. AVERY: Well, there's some -- there's -- I
15 don't --

16 THE COURT: I intend to take this under
17 advisement and read the motion and your response.

18 MR. AVERY: Thank you, your Honor, very much.

19 THE COURT: And then respond by mail. If
20 there's anything else you want to add --

21 MR. AVERY: I think that would be wonderful.

22 THE COURT: Okay, well, hopefully I'll be able
23 to get to it next week, and you'll be notified by mail on
24 whatever my ruling is.

25 MR. AVERY: Thank you, your Honor.

1 THE COURT: Anything else?

2 MR. DONNELLAN: Yes, sir. Just to respond to a
3 few points, I mean, clearly the article makes clear, when you
4 read it, that the Texians are not domestic terrorists at all.
5 It makes clear that they are law-abiding, peaceful people.

6 And Mr. Avery's claim is not built on any direct
7 statements about him. It's based on a series of implications,
8 derivative implications. He's saying because his picture
9 there, where he was actually addressing the Texian Congress,
10 that he is being associated as a Texian, which in turn means
11 he's being associated with the headline characterizing Texians
12 as secessionists, which in turn associates him with the links
13 in the articles. But you have to go back to the text of the
14 article and read it as a whole in defamation law, and it's
15 clear The Houston Chronicle article does not label anybody as
16 any sort of a domestic terrorist. The articles that are linked
17 to, first of all, are not incorporated within the article, and
18 they all have to be read in their entirety, and clearly deal
19 with separate groups also. So it's -- it's -- it's not a fair
20 characteristic to say that that in any way would impugn him.

21 Now, I can appreciate Mr. Avery's passion for
22 political theory, and in particular, John Lock. We understand
23 that he is frustrated that the article didn't sufficiently
24 address the fine distinctions between his views, the Texians
25 views, and what he believes it means to be a secessionist; but

1 that failure, if it is one, doesn't make the article's use of
2 the word "secessionist" materially false as applied to the
3 Texian, or as applied to him.

4 The article is substantially true as a matter of
5 law, and it's also clear that the article is not defamatory of
6 Plaintiff. It associates him with a group that he, himself,
7 associates with. A group dedicated to the lawful and
8 non-violent means of separation from the United States.

9 And there is one case that we do cite in our
10 brief, your Honor, which deals with this on the point of no
11 defamatory meaning, which is Simmons V. Weir (phonetic), cited
12 at Page 22 of our brief. And the Court in that case held that
13 a news report stating that Plaintiff drank a toast to the
14 castration of the district attorney was substantially true
15 since the Plaintiff attended a party where the toast occurred,
16 even though he denied participating at all. Being present at
17 the same party was enough to make that substantially true as a
18 matter of law, the Court held.

19 And applying the same principles here, Mr. Avery
20 was not only present at the meeting of the Texian congress, he
21 was the host of it. It was on his property and he gave an
22 address to it. So as a -- as a legal matter, it's
23 substantially true to say he was there, and it's certainly not
24 defamatory within the notion of defamatory meaning for somebody
25 who does associate with a group to say, "I was associated with

1 the group."

2 THE COURT: I understand. All right, thank you,
3 Gentlemen. As I say, I'll do this as quickly as I can, and
4 notify you by mail or e-mail as quickly as I can.

5 MR. DONNELLAN: Thank you very much, your Honor.

6 (Proceedings recessed).

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