

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

YUIN UNIVERSITY,

Plaintiff and Appellant,

v.

KOREAN BROADCASTING SYSTEM,

Defendant and Respondent.

B226977

(Los Angeles County
Super. Ct. No. BC383449)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Ernest M. Hiroshige, Judge. Affirmed.

Charles D. Yu and Andrew Kim for Plaintiff and Appellant.

Jiyoung Kym for Defendant and Respondent.

This matter involves a defamation action filed by appellant Yuin University (Yuin) against respondent Korean Broadcasting System (KBS) for a news broadcast which characterized Yuin as a “degree factory.” Judgment was entered for KBS on Yuin’s libel claim. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Broadcast

On September 2, 2007, KBS broadcast a segment on its Sunday news program entitled “Degree Factory Confers Doctorate Degrees even to Persons who Plagiarize.”¹ The broadcast aired during a controversy in Korea over high profile Koreans lying about their academic credentials. The broadcast identified Yuin in Compton, California as a “suspected . . . degree factory.” The reporters visited the university but “found no students, teachers and no officials except a signboard that is the only indication showing that this [i]s a university. [¶] The reason that the school is left vacant in this way can be verified by a graduate who is working as a professor.” The former graduate told the reporters that he twice stayed one week in Los Angeles to obtain his degree from Yuin but otherwise never came on campus. The reporter concluded that Yuin “confer[s] degrees to persons who have not properly studied at their place.”

The broadcast further reported that 47 people disclosed to the Korean Research Foundation that they received doctorate degrees from Yuin and 40 dissertations were lodged there. The reporters found some of these graduate theses to be identical and others to be of poor quality. With the exception of the first two pages listing different titles and authors, two of the theses were identical even down to the typographical errors found in the table of contents. The authors were identified as Mr. Young Tae Baik, who received a degree from Yuin in the first semester of 2002, and Mr. Young In Byun, who received a degree from Yuin in the second semester of 2002. Both theses were signed by the same advisor professor. When interviewed, Byun explained that it was a simple

¹ The broadcast was originally in Korean. The parties stipulated to a transcript of the broadcast which was translated into English.

mistake attributable to his teaching aide who “must have sent a wrong one during the course of putting it together and editing it.” Although Byun stated that he requested the Korean Research Foundation to correct the error, KBS noted that no formal steps were taken to do so. The reporters also stated that two other dissertations for a doctorate in theology were identical, including the typographical errors in the footnotes, and another one appeared to have been copied from articles found on the internet. Another thesis for a doctorate degree in oriental medicine was judged to “display[] a shameful level even to be submitted as an undergraduate paper.” “There was even a thesis for [a] doctorate degree that is said to abstract contents from Internet portal sites.”

The broadcast concluded that “[t]he school in question is virtually a ghost school that cannot be found on any . . . reliable websites including that of the State of California. [¶] Without being controlled, this school that recklessly issued degrees no[t] admissible even in [the] U.S.A. has invited new students by maintaining an admission office in Korea until last year.”

II. The Lawsuit

Yuin brought suit against KBS on January 8, 2008, alleging libel, fraud, negligent misrepresentation and intentional infliction of emotional distress. KBS demurred to the complaint and filed a cross-complaint against Yuin’s founder, Henry Yu, for libel. With only the libel claim surviving KBS’s demurrers, a bifurcated bench trial on the existence of libel as a matter of law on both the complaint and the cross-complaint was held on March 30, 2010.² In its trial brief, Yuin took issue with three statements made in KBS’s broadcast. First, the statement that Yuin was “vacant” was reasonably susceptible of a defamatory meaning because it meant that the building was abandoned, but the evidence showed that Yuin was open and had students enrolled. KBS made no investigation of whether Yuin was actually abandoned, did not bother to contact Yuin and did not know who its founder was. Second, the statement that the university was a “ghost school” was libel by innuendo because it was clearly based on the prior assertion that Yuin was

² While the trial court ruled against KBS on its cross-complaint, KBS chose not to appeal that ruling and this appeal only addresses the libel claim filed by Yuin.

vacant. Third, the contention that the dissertations by Baik and Byun were “perfectly identical” was false. Yuin submitted Baik’s and Byun’s “completely different” dissertations as evidence.

The trial court issued its tentative decision on April 30, 2010, and found “the statements offered by Yuin to support its defamation claim against KBS TV are not reasonably susceptible to a defamatory interpretation as a matter of law.” The trial court reasoned that the references to Yuin being vacant or a ghost university were hyperbolic speech “to describe the reporter’s observation of there being no student, teacher, or officials at the time KBS made its visit” and therefore was constitutionally protected. To the extent the statements were factual, the statements were true in that there were no students, faculty or staff at the school and it was closed at the time KBS visited the campus.

The trial court noted, “Yuin further contends that another instance of defamation in the broadcast was KBS’s contention that certain Ph.D. dissertations were ‘perfectly identical’ (those authored by Baik and Byun) when the two dissertations are in fact, completely different. Yuin argues that for this reason, KBS’s later assertion that Yuin was a ‘degree factory’ allowing students to become ‘fake doctors with unqualified theses’ is libel by innuendo. KBS, however, submits evidence in support of its position that the copies on which KBS prepared the report were identical except the first two pages as reported. [Citations.] Although Yuin submits Exhibits 8 and 9 to show that the dissertations are ‘completely’ different, the evidence does not establish that the statement made by KBS, based on the dissertations available to it at the time the broadcast was made, was ‘utterly false.’ ”

DISCUSSION

On appeal, Yuin urges this court to view KBS’s characterization that it was “vacant,” a “ghost school” and a “degree factory” within the context of KBS’s entire broadcast. According to Yuin, “the gist of the Broadcast is not simply how an otherwise *legitimate* school has fallen short of requisite academic standards for degree-conferral; rather, by highlighting the ‘vacant’ status of the school, and by neglecting to discuss any

actual curricula or processes that Appellant employs in conferring degrees, the Broadcast casts sharp doubt on the very legitimacy itself of Appellant as a valid educational institution.” While the broadcast may very well have cast doubt on the merits of a graduate degree from Yuin, we do not find it to be actionable when considered in context.

I. Standard of Review

The primary issue for the trial court to determine was whether as a matter of law, the statements in the broadcast constituted libel per se or were reasonably susceptible to a defamatory meaning. (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 647; *Freeman v. Mills* (1950) 97 Cal.App.2d 161, 166.) There are no factual disputes since the parties stipulated to a translation of the broadcast into English. Accordingly, our review on appeal is de novo and we will affirm the judgment if it is correct on any theory. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799; *Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329-330.)

II. Totality of the Circumstances

Libel, a form of defamation, “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 has a tendency to injure him in his occupation.” (Civ. Code, § 45.) “Whether a statement declares or implies a provably false assertion of fact is a question of law for the court to decide.” (*Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 385.) In resolving this question, courts employ a totality of the circumstances test, first examining whether the language of the statement has a defamatory meaning and then considering the context in which the statement was made. (*Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1337-1338; *Franklin v. Dynamic Details, Inc.*, *supra*, at p. 386.)

In reviewing an alleged defamatory meaning, “ ‘the context in which the statement was made must be considered [¶] This contextual analysis demands that the courts look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed. [Citation.] “ ‘[T]he

publication in question must be considered in its entirety; “[i]t may not be divided into segments and each portion treated as a separate unit.” [Citation.] It must be read as a whole in order to understand its import and the effect which it was calculated to have on the reader [citations], and construed in the light of the whole scope [of the publication]. [Citation.]’ ” ’ [Citation.]” (*Monterey Plaza Hotel v. Hotel Employees & Restaurant Employees* (1999) 69 Cal.App.4th 1057, 1064-1065.) Likewise, when the alleged false statement is contained in a television broadcast, the court must examine the statement in context with the remainder of the news report to determine if it has the meaning attributed to it by the plaintiff. (*Id.* at p. 1065.)

Yuin contends, “The statement about Appellant’s ‘vacancy’ was part and parcel to harmful insinuations about the legitimacy of Appellant’s operation as an academic institution.” “Highlighting the ‘vacant’ status of a school building in a news story about ‘fake degrees’ and ‘degree factories’ suggests the depicted school is not operating in the way a school should in order to be considered a legitimate academic institution These insinuations are harmful to a legitimate educational institution’s reputation because they question the school’s academic integrity; they suggest the institution does not engage in the actual work of scholarship and teaching.” Similarly, labeling Yuin as a “ghost school” that cannot be found on any reliable websites including that of the State of California supports KBS’s insinuation that Yuin is not a legitimate university.

The Higher Education Opportunity Act defines a “diploma mill” as an unaccredited institution which offers diplomas or certification for a fee but which requires little or no education or coursework. (20 U.S.C § 1003.) Yuin contends KBS’s description of it as a “degree factory” is demonstrably false because it is approved to operate in California, though unaccredited, and it has submitted evidence that it requires a standard curriculum involving completion of a certain number of units in class or by correspondence before a degree may be conferred. As a result, KBS’s broadcast was libel per se and by insinuation. We disagree. When considered in the context of the entire broadcast, we do not find the disputed statements to be libelous as a matter of law.

The broadcast begins with a statement that it has investigated a school “that is *suspected* as a degree factory.” (Italics added.) KBS then provides underlying facts to support its opinion, such as identifying a number of dissertations from Yuin which are either identical³ or of very poor quality. KBS also describes Yuin as “vacant” because it was empty of faculty, staff or students at the time its reporters visited the campus. It interviewed a prior graduate, who told KBS that he only visited the campus on two occasions for one week to receive his degree. The statements that Yuin was a ghost school and was vacant were attention-grabbing or hyperbolic speech to support the broadcast’s conclusion of the questionable quality of coursework from Yuin.

Given the context in which KBS presents its characterization of Yuin as a “suspected degree factory,” it is apparent that the statement was an expression of opinion, which cannot support a defamation action, rather than a statement of fact which may be demonstrably false. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720; *Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 260.) California courts have developed a “totality of the circumstances” test to determine whether an alleged defamatory statement is one of fact or of opinion. First, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense. (*Baker v. Los Angeles Herald Examiner, supra*, at pp. 260-261.) Where the language of the statement is “cautiously phrased in terms of apparency,” the statement is less likely to be reasonably understood as a statement of fact rather than opinion. (*Gregory v. McDonnell Douglas Corp.* (1976) 17 Cal.3d 596, 603.)

³ Although Yuin submitted evidence that Baik’s and Byun’s theses were “completely different,” the trial court credited KBS’s evidence that the theses available at the time of broadcast were identical. In any case, Yuin does not challenge KBS’s descriptions of the other dissertations mentioned in the broadcast that were identical or of poor quality.

Also, courts have found statements to be nonactionable opinion when the facts supporting the opinion are disclosed. For example, a statement that a defendant thought the planning commission had been “bought” was deemed nonactionable opinion in part because he disclosed the facts on which his opinion was based. (*Carr v. Warden* (1984) 159 Cal.App.3d 1166, 1170.) Similarly, a letter to the editor in *Okun v. Superior Court* (1981) 29 Cal.3d 442, in which the author accused the plaintiff of corrupt and collusive activities in connection with a real estate transaction with Beverly Hills officials was held to be nonactionable opinion in part because “[the] letter’s apparent aim . . . was to disclose whatever pertinent facts were known to the writer.” (*Id.* at p. 452.)

Yuin takes issue with KBS’s failure to contact Yuin or its founder and provide information about Yuin’s curriculum, coursework or the process by which it evaluates dissertations. Even if we agree that the KBS broadcast was not fully researched, slanted reporting is not actionable. (*Paterno v. Superior Court* (2008) 163 Cal.App.4th 1342, 1352.) “Media defendants are liable for calculated falsehoods, not for their failure to achieve some undefined level of objectivity.” (*Ibid.*) In *Paterno*, a newspaper publisher brought a defamation action for statements in a magazine article about the newspaper deciding to “kill” a story about a drunk driving sentence imposed on its editorial page editor. (*Id.* at pp. 1351-1352.) The newspaper contended that the statements should be deemed false because the journalist failed to include available material facts explaining the reason for the decision. The court held the journalist was not obligated to include the newspaper’s side of the story and was “entitled to a ‘reasonable degree of flexibility in [the] choice of language.’ ” (*Ibid.*) As noted by the California Supreme Court, “[f]air and objective reporting may be a worthy ideal, but there is also room, within the protection of the First Amendment, for writing which seeks to expose wrongdoing and arouse righteous anger; clearly such writing is typically less than objective in its presentation.” (*Reader’s Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 259.)

DISPOSITION

The judgment is affirmed. KBS shall recover its costs on appeal.

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BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.