SUPREME COURT OF THE STATE OF DELAWARE

TAMIKA R. MONTGOMERY-REEVES
JUSTICE

THE RENAISSANCE CENTRE
405 N. KING STREET, SUITE 509
WILMINGTON, DE 19801

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Date Decided: January 17, 2020

Michael W. McDermott, Esquire
David B. Anthony, Esquire
Berger Harris LLP
1105 N. Market Street, 11th Floor
Wilmington, DE 19801

Mark M. Billion, Esquire
Billion Law
922 New Road, 2nd Floor
Wilmington, DE 19805

Zachary A. George, Esquire
Hudson, Jones, Jaywork & Fisher, LLC
225 South State Street
Dover, DE 19901

RE: ***Laser Tone Business Systems, LLC v. Delaware Micro-Computer LLC et al.*** Civil Action No. 2017-0439-TMR

Dear Counsel:

This letter opinion addresses Plaintiff and Counterclaim Defendant Laser Tone Business Systems, LLC's ("Laser Tone") and Third-party Defendant Steve Martin's ("Martin") Motion for Reargument. Because the Court did not overlook a controlling principle of law or misapprehend the law or facts, the Motion for Reargument is denied.[1]

[1] Citations to the trial transcript are in the form "Tr. # (X)" with "X" representing the surname of the speaker. Joint trial exhibits are cited as "JX #." Facts drawn from the Amended Joint Pre-Trial Stipulation and Order are cited as "PTO ¶ #." After

I. BACKGROUND

On November 27, 2019, this Court issued the Memorandum Opinion[2] holding *inter alia* that Steve Martin, personally and behalf of Laser Tone, committed libel and slander against Justin McGinnis ("McGinnis"). In the Memorandum Opinion, the Court held that Martin committed libel in a letter to Phyllis Mitchell dated May 10, 2017 (the "May 10 Letter"); and Martin committed slander per se in his statements that McGinnis "was a thief" and a "drug user." Using its discretion, the Court awarded general compensatory damages of $100,000 to be paid to McGinnis from Martin and Laser Tone jointly and severally. On December 2, 2019, Laser Tone and Martin filed their Motion for Reargument. McGinnis opposed the Motion, stating that he disagrees with Laser Tone's arguments but does not possess the funds to pay his attorney to file a more substantive response.

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initially identifying individuals, I reference surnames without honorifics or regard to formal titles such as "Doctor." I intend no disrespect.

[2] *Laser Tone Bus. Sys., LLC v. Del. Micro-Computer LLC*, 2019 WL 6726305 (Del. Ch. Nov. 27, 2019).

II. ANALYSIS

Under Court of Chancery Rule 59(f), a party may move for reargument within five days after the filing of the Court's opinion.[3] Reargument will be granted only where the Court "overlooked a decision or principle of law that would have controlling effect or . . . misapprehended the facts or the law so the outcome of the decision would be different."[4] A motion for reargument is not a mechanism to present new arguments or to relitigate claims already considered by the Court.[5]

Laser Tone and Martin contend that the Memorandum Opinion (1) "overlooked that allowing and ruling upon a slander per se claim asserted first and only in post-trial briefs is impermissible under Delaware law" and (2) "misapprehended trial record facts in awarding general damages as a remedy for defamation." These arguments fail.

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3 Ct. Ch. R. 59(f).

4 *Pontone v. Milso Indus. Corp.*, 2014 WL 4352341, at *1 (Del. Ch. Sept. 3, 2014); *accord Medek v. Medek*, 2009 WL 2225994, at *1 (Del. Ch. July 27, 2009).

5 *See, e.g.*, *Oliver v. Bos. Univ.*, 2006 WL 4782232, at *1 (Del. Ch. Dec. 8, 2006) ("[N]ew arguments that have not previously been raised cannot be considered for reargument." (quoting *Lane v. Cancer Treatment Ctrs. of Am., Inc.*, 2000 WL 364208, at *1 (Del. Ch. Mar. 16, 2000))); *In re ML/EQ Real Estate P'ship Litig.*, 2000 WL 364188, at *1 (Del. Ch. Mar. 22, 2000) ("Such motions are not a mechanism for litigants to relitigate claims already considered by the court." (citing *In re Will of Mansfield*, 1990 WL 176795, at *1 (Del. Ch. Nov. 5, 1990))).

A. The Court Ruled and Awarded Damages Based on Claims Raised Pre-Trial, During Trial, and Post-Trial

Laser Tone alleges the Court "overlooked that allowing and ruling upon a slander per se claim asserted first and only in post-trial briefs is impermissible under Delaware law."[6] Laser Tone and Martin state repeatedly that "McGinnis did not raise this issue—defamatory accusations of drug use—ever once before trial."[7] This is incorrect. In the Pre-Trial Opening Brief of Justin McGinnis, McGinnis contends, "[b]ased on expected trial testimony, [McGinnis] further believes that he can demonstrate further defamation by way of allegations of drug use, infidelity and financial theft."[8]

Laser Tone and Martin further allege that "in the [Amended Joint Pre-Trial Stipulation and Order (the "Pre-Trial Order")] entered a week before trial in December 2018 McGinnis states the *only* relief he seeks by way of defamation as follows: [w]hether Mr. Martin and/or Laser Tone defamed Mr. McGinnis by stating

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6 Mot. for Rearg. ¶ 18.

7 *Id.* ¶ 4; *see also id.* ¶¶ 5, 13, 16.

8 Def.'s Pre-Trial Opening Br. 24 n.9.

on numerous occasions that Mr. McGinnis had stolen Laser Tone's data."[9] This quote mischaracterizes the Pre-Trial Order. The Pre-Trial Order addresses defamation in five paragraphs across four subsections. Only once does the Pre-Trial Order specify a topic of the defamatory statements. The remaining four times the Pre-Trial Order mentions defamation broadly. With respect to the Pre-Trial Order's Statement of Relief Sought, contrary to Laser Tone's mischaracterization, McGinnis seeks broadly a "declaration that Mr. Martin and/or Laser Tone's actions constitute libel and/or slander" and "[d]amages for said libel and/or slander associated with the loss of Mr. McGinnis's job, reputation and business."[10]

The issue of defamatory accusations of drug use also was raised at trial. During trial, the issue first arose during direct examination of Laser Tone's own witness, Alex Farling. When Laser Tone's counsel asked about Martin's March 3, 2017 letter, Farling offered, "[Martin] also accused [McGinnis] of drug use at one point."[11] On cross examination, McGinnis's counsel did nothing more with this

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9 Mot. for Rearg. ¶ 12.

10 PTO ¶¶ IV.B.2-3.

11 Tr. 31:3-4 (Farling).

information than confirm that communication.[12] Similarly, Shane McGinnis testified, in response to a general question about conversations with Martin after McGinnis's departure, that "[Martin] said that [McGinnis] was a drug addict."[13] Only when McGinnis's counsel cross examined Martin did Laser Tone object on relevancy grounds. The objection was overruled.[14]

Finally, in the Post-Trial Opening Brief of Justin McGinnis, McGinnis raised defamation claims concerning accusations of drug use to which Laser Tone and Martin responded only that "truth is an absolute defense."[15] If the defense of truth was solely a response to the accusations that Martin maligned McGinnis as a thief, then Laser Tone and Martin did not respond at all to the drug-related defamation claims. Laser Tone and Martin also did not object to the drug use defamation claims in the post-trial briefing. McGinnis raised the defamatory claims before, during, and after trial, and thus the Court properly considered and ruled on these claims.

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12 Tr. 131: 21-24 (Farling) ("Q. You said that in a subsequent telephone call [Martin] said to you that [McGinnis] was using drugs. Correct? A. Correct.").

13 Tr. 497:1 (S. McGinnis).

14 Tr. 268:1-269:10 (Martin).

15 Def.'s Post-Trial Opening Br. 14, 67.

That the Court properly considered and ruled on defamatory drug use claims is enough to deny the Motion for Reargument, but even assuming *arguendo* that defamatory drug use claim was improper, the Motion for Reargument is still denied because that claim did not change the outcome of the decision. Laser Tone and Martin assert that "[t]he Court awarded joint and several damages against Laser Tone and Martin based on a specific ruling that: 'Martin's oral statements that McGinnis was a drug user constitute slander per se because they impute the crime of drug use to McGinnis.'"[16] This is an incorrect characterization of the damages award. While it is true that the Court found that Martin's oral statements that McGinnis was a drug user constituted slander per se, the Court also found that "Martin's oral statements that McGinnis was a thief constitute slander per se because the statements connect the alleged theft with McGinnis's employment and Laser Tone and, therefore, malign McGinnis in his trade, business, or profession."[17] The Court then concluded that "[t]he written statements in the letter to Mitchell and the oral statements made to Farling, Obringer, and Shane are sufficient to support a

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16 Mot. for Rearg. ¶ 4 (quoting *Laser Tone*, 2019 WL 6726305, at *14).

17 *Laser Tone*, 2019 WL 6726305, at *14.

claim of defamation against both Martin and Laser Tone."[18] The Court awarded "compensatory damages in the amount of $100,000 to be paid to McGinnis from Martin and Laser Tone jointly and severally."[19] The Court did not include a breakdown apportioning damages to the different topics of defamation. Instead, the Court highlighted that "[a]s a result of the defamatory statements, McGinnis has already lost two jobs, customers, and friends; and, he fears his business is in jeopardy."[20] Exclusion of either defamation claim would not affect the Court's ruling because each claim supports the compensatory damages award. Therefore, the Motion for Reargument and Laser Tone and Martin's request that the Court modify the damages award to reflect the preclusion of the defamatory drug claim are denied.

B. Facts Adduced at Trial Support the Damages Award

Laser Tone also alleges that the Court misapprehended trial record facts in awarding general damages as a remedy for defamation. Specifically, Laser Tone and Martin state that the Court "misapprehended that no facts were adduced at trial

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18 *Id.*

19 *Id.* 44.

20 *Id.* 43-44.

susceptible of supporting the conclusion that the [May 10 Letter] likely caused any reputational or business-related damage to McGinnis at all."[21]

First, it appears Laser Tone and Martin take issue with admissibility of the May 10 Letter as evidence. Laser Tone and Martin argue that "[n]o witness testified at trial about the May 10 Letter's contents or authenticity. McGinnis did not offer it into evidence at trial. And McGinnis did not present evidence at trial showing that the [May 10 Letter] was actually sent, received, read or acted upon—by anyone."[22] Notwithstanding, in the Pre-Trial Order the Parties stipulated that "[c]ounsel will work together in good faith to finalize a Joint Exhibit List that will be filed with the Court . . . . Subject to the reservation of rights in Paragraph 2 below, all exhibits may be admitted at trial, including exhibits to be admitted solely for cross examination . . . ."[23] Paragraph 2 states that "[u]nless an objection to a proposed trial exhibit has been noted on the Joint Exhibit List or an objection is made at trial, all trial exhibits shall be deemed admitted into evidence without objection."[24] The

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21 Mot. for Rearg. ¶ 22.

22 *Id*. ¶ 21.

23 PTO ¶VII.1.

24 *Id.* at 20-21.

Joint Exhibit list reflects that no party objected to JX 168 "Letter to Phillis [*sic*] Mitchell from Steve Martin," and because the May 10 Letter was not introduced at trial, no party objected at trial.[25] Therefore, the parties waived any objections to the May 10 Letter's admissibility; the May 10 Letter was admitted into evidence; and the Court could consider the May 10 Letter.

Second, Laser Tone and Martin seem to take issue with the Court's conclusions that the May 10 Letter "likely deterred Mitchell and her business, Mitchell and Hastings, from continuing business with McGinnis . . ." and that Mitchell as "a third party understood the character of the communication as defamatory."[26] The Restatement (Second) of Torts explains, "the jury determines whether a communication, capable of a defamatory meaning, was so understood by its recipient" and if "the case is tried to the court alone, the judge performs the functions designated as functions of the jury."[27] Thus, the Court determines whether Mitchell would understand the character of the communication as defamatory.

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25 Joint Exhibit List 7.

26 Mot. for Rearg. ¶ 20 (quoting *Laser Tone*, 2019 WL 6726305, at *14).

27 RESTATEMENT (SECOND) OF TORTS § 614 (1977); *Id.* at cmt. a, d ("Both the judge and jury in performing their respective functions take into account all the circumstances surrounding the communication complained of as defamatory."); *see also Strong v. Wells Fargo Bank*, 2012 WL 3549730, at *2 (Del. Super. July 20,

This element of defamation relates to "the broader social context or setting in which the statement appears."[28] In the absence of direct testimony from the third-party letter recipient demonstrating her understanding of the statement, the Court considered the broad context where the statement appeared. The defamatory statement appeared in a letter on official Laser Tone company letter head, signed by "Steve Martin President."[29] Not only did the May 10 Letter state that McGinnis stole Laser Tone information, but the letter also accused Mitchell of a lease violation for letting McGinnis remove her Laser Tone-leased Canon IR 500 from her location and threatened that "an invoice for immediate payment" has been sent.[30] Based on the substance and presentation of the letter, and the relationship between Laser Tone and Mitchell, the Court justifiably concluded that a third-party would have understood the May 10 Letter as defamatory. Because the letter was admissible evidence and the Court found that it was understood by Mitchell as defamatory, the Court properly

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2012); *Read v. Carpenter*, 1995 WL 945544, at *4 (Del. Super. June 8, 1995); *Re v. Horstmann*, 1987 WL 16710, at *3 (Del. Super. Aug. 11, 1987).

28 *Agar v. Judy*, 151 A.3d 456, 484 (Del. Ch. 2017) (quoting *Doe v. Cahill*, 884 A.2d 451, 465 (Del. 2005)).

29 JX 168.

30 *Id.*

considered the May 10 Letter in awarding general compensatory damages. Therefore, the Motion for Reargument and Laser Tone and Martin's request that the Court modify the joint and several damages award to reflect the lack of evidentiary support for damages resulting from the May 10 Letter are denied.

III. CONCLUSION

For the foregoing reasons, I DENY Laser Tone's and Martin's Motion for Reargument.

IT IS SO ORDERED.

Sincerely,

/s/ Tamika Montgomery-Reeves

Justice[31]

TMR/jp

[31] Sitting by designation pursuant to Del. Const. art. IV § 13(2).