

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

RUSSELL E. WALKER, : C.A. No. S16C-04-006 RFS

Plaintiff, :

v. :

DARRYL A. PARSON AND :

THOMAS P. GORDON, :

in their professional capacity and :

individually, :

Defendants. :

:

ORDERS ON MOTION TO PROCEED *IN FORMA PAUPERIS*

AND UPON REVIEW OF COMPLAINT

1) Plaintiff Russell E. Walker (“plaintiff”) has filed a complaint against defendants Darryl A. Parson (“Parson”) and Thomas P. Gordon (“Gordon”) asserting claims of defamation and abuse of process. Plaintiff also has filed a motion to proceed *in forma pauperis*. This is my decision granting the motion to proceed *in forma pauperis* but dismissing the complaint. The complaint is dismissed because an absolute privilege attaches to the allegedly defamatory statements which were made in the course of judicial proceedings.

2) In connection with his motion to proceed *in forma pauperis*, plaintiff has submitted an affidavit which establishes he is indigent. Thus, I grant the motion to proceed *in forma pauperis*. However, the granting of the motion does not mean the action can proceed. The Court reviews the complaint, and if the complaint is deemed to be legally frivolous, then the Court dismisses it.<sup>1</sup>

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<sup>1</sup>10 *Del. C.* §8803(b).

3) Plaintiff's claims arise out of two lawsuits, one in Superior Court and one in Chancery Court.<sup>2</sup> The first lawsuit, which ultimately was dismissed with prejudice after plaintiff moved to voluntarily withdraw it, is *Walker v. New Castle County Code Enforcement/Customer Relations, Department of Land Use*, Del. Super., C.A. No. N13C-03-281 EMD ("NCC Superior Court Action"). The second lawsuit, which currently is pending in Chancery Court, is *Ford v. New Castle County*, Del. Ch., C.A. No. 11072-VCMR ("Chancery Court Action").

4) In the NCC Superior Court Action, plaintiff sought to stop the enforcement of the New Castle County Code with regard to his properties and he sought damages in connection with the enforcement of that Code. Defendant Darryl Parson, Esquire ("Parson"), the County Solicitor for New Castle County, represented the New Castle County defendants in that action. Plaintiff wrote a letter to Parson dated September 18, 2014, outlining plaintiff's theory of the case. Plaintiff made this letter a part of the Court's record by sending a copy of it to Superior Court Commissioner Vavala via cover letter filed on September 23, 2014. In a letter dated October 9, 2014, Parson responded to plaintiff's September 18, 2014, letter and likewise copied the Court. Contained in that October 9, 2014, letter is the following sentence: "You have indisputably operated unlicensed group homes providing sub-standard housing to County citizens, exploited the County's most vulnerable citizens, and abused the judicial process. [Emphasis added.]" Plaintiff alleges that the underlined portion of this sentence constitutes defamation.

5) The Chancery Court Action is another chapter in a series of disputes between New Castle County; plaintiff; plaintiff's daughter, Jillian Walker; and the Walkers' tenants. The

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<sup>2</sup>This Court may take judicial notice of these proceedings. Delaware Rules of Evidence, Rule 202(d).

plaintiff in the Chancery Court Action is a tenant of Jillian Walker and the litigation concerns property currently owned by Jillian Walker and previously owned by plaintiff Russell Walker. Plaintiff incorrectly refers to the document containing the alleged defamatory statement as a letter. Instead, the document is Page 1 of New Castle County and Chris Yasik's Brief in Support of Motion to Dismiss the Verified Complaint as Amended filed with the Court of Chancery on August 19, 2015. Defendant Parson signed the brief. The language in that brief which plaintiff claims defamed him is:

The Walkers exploit socio-economically disadvantaged persons and permit them to rent rooms, basements or garages in unlicensed, sub-standard boarding houses that the Walkers call group homes.

6) Plaintiff alleges Gordon, who is the New Castle County Executive, is involved in two ways. The first way appears to be under the theory of respondeat superior. Plaintiff also asserts Gordon was involved because he was copied on a letter from Parson to plaintiff dated March 14, 2016. The March 14, 2016 letter was in response to plaintiff sending Thomas Gordon a draft libel complaint against Gordon and Parson to be filed in Superior Court. In that March 14, 2016 letter, Parson states: "You have admittedly operated unsafe group homes providing sub-standard housing to County citizens. If you chose to burden the Superior Court with this libel complaint, the County will mount a zealous defense to this action." Plaintiff maintains that by copying Gordon, "that letter officially joins Defendant Gordon in clear agreement with Defendant Parson's series of statements [sic] against the Plaintiff."<sup>3</sup>

7) In the complaint in this matter, plaintiff asserts that the defendants engaged in libel, slander, defamation, abuse of power, and abuse of discretion in performing their professional

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<sup>3</sup>Complaint at page 8, para. 16.

duties. The assertions of plaintiff's claim for libel, which is the written form of defamation, are outlined above. There is no cause of action for abuse of discretion. The claim for abuse of process concerns Parson's sending the October 9, 2014, letter to Judge Davis and Commissioner Vavala. Plaintiff states:

Using the communication via letter to the Plaintiff and copying it to both Judge and Commissioner handling his two Superior Court complaints can only be attributed to an ulterior purpose (1<sup>st</sup> element of the abuse of process standard) by which the Defendants tried to sway the Court in their favor.<sup>4</sup>

8) The pertinent law regarding defamation is as follows. "Defamation generally is understood as a false publication calculated to bring one into disrepute. It includes the idea of calumny, aspersion by lying. The foundation of the action is that damage has resulted from a wrong done to reputation. [Citations omitted.]"<sup>5</sup> "[P]laintiff's standing in the community must be 'grievously fractured.'"<sup>6</sup> In other words, "[t]he plaintiffs' reputation in the entire community must be affected."<sup>7</sup> The harm to his reputation lowers him "in the estimation of the community" or it deters "third persons from associating or dealing with him."<sup>8</sup> "The law of defamation is a reflection of society's attempt to accommodate two important but often conflicting policies: on one hand, the policy of protecting a person in the enjoyment of his good name and reputation

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<sup>4</sup>Complaint at page 15, para. 7.

<sup>5</sup>*Snavely v. Booth*, 176 A. 649, 654 (Del. Super. 1935).

<sup>6</sup>*Q-Tone Broadcasting, Co. v. Musicradio of Maryland, Inc.*, 1994 WL 555391, \*4 (Del. Super. Aug. 22, 1994).

<sup>7</sup>*Id.*

<sup>8</sup>*Harrison v. Hodgson Vocational Technical High School*, 2007 WL 3112479, \*2 (Del. Super. Oct. 3, 2007).

and, on the other, the policy of encouraging freedom of expression.” “[D]efamation consists of the ‘twin torts’ of libel and slander. ... In shortest terms, libel is written defamation and slander is oral defamation...”<sup>10</sup>

However, a judicial privilege exists which bars the pursuance of a defamation claim. This privilege provides absolute protection against a defamation claim where the statements are 1) made as a part of judicial proceedings, and 2) the alleged defamation is relevant to a matter at issue in the case.<sup>11</sup> Whether the privilege attaches is a question of law.<sup>12</sup> Furthermore, it is appropriate to consider the applicability of the privilege when viewing a complaint filed by a plaintiff seeking to proceed *in forma pauperis*,<sup>13</sup> as it would be a waste of taxpayer resources to allow a clearly barred complaint to proceed.

The privilege, its purposes and its justifications are thoroughly examined in *Paige Capital Management, LLC v. Lerner Master Fund, LLC* (“*Paige*”).<sup>14</sup> The privilege “is thought to serve several important purposes, including encouraging the peaceable resolution of disputes in the courts, fostering the willingness of witnesses to testify freely and counsel to argue zealously, and

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<sup>9</sup>*Spence v. Funk*, 396 A.2d 967, 969 (Del. 1978).

<sup>10</sup>*Id.* at 970.

<sup>11</sup>*Barker v. Huang*, 610 A.2d 1341, 1345 (Del. 1992); *Adams v. Gelman*, 2016 WL 373738, \* 2 (Del. Super. Jan. 28, 2016); *Thompson v. Robbins*, 2015 WL 9312124, \*2 (Del. Super. Dec. 17, 2015); *Nix v. Sawyer*, 466 A.2d 407, 410 (Del. Super. 1983) (overruled by *Barker v. Huang*, 610 A.2d at 1345-6, with regard to holding there is a sham litigation exception to the privilege).

<sup>12</sup>*Thompson v. Robbins*, *supra*.

<sup>13</sup>*See Resop v. Figliola*, 2015 WL 6453085, \*\*3-4 (D. Del. Oct. 23, 2015).

<sup>14</sup>22 A.3d 710 (Del. Ch. 2011).

limiting the proliferation of follow-on lawsuits. [Footnote and citation omitted.]”<sup>15</sup> Furthermore:

The privilege has been described as resting “upon the public policy which deems it desirable that all suitors, whether malicious and bold, or conscientious and timid, should have free access to the conscience of the State with whatever complaint they choose to make... [and that ] [t]his is necessary to a thorough and searching investigation of the truth.” [Footnote and citation omitted.]

\*\*\* [T]here are at least two related policy justifications advanced for the continuing vitality of the absolute litigation privilege: first, that the protection afforded by it is necessary to encourage citizens to peaceably resolve their differences in court through litigation (or the threat of litigation) by allowing them to speak to their adversaries freely without fear of facing liability for what they say, and without the prospect of having their good faith legal claims prompt the initiation of more claims; and second, that there are already alternative enforcement mechanisms in place in the litigation context that render defamation actions against lawyers and other litigating parties less necessary. [Footnotes and citations omitted.]<sup>16</sup>

The privilege extends to all communications relating to the litigation.<sup>17</sup> This includes statements made maliciously or with knowledge of their falsity.<sup>18</sup>

9) At this stage of the litigation, the Court assumes, without deciding, that plaintiff states claims for defamation and abuse of process. I now examine the applicability of the judicial privilege to this case.

Here, the alleged defamatory statements were made in a letter filed with Superior Court and in a brief filed with Chancery Court. They constitute statements made during judicial proceedings. Thus, the first element of the privilege is met.

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<sup>15</sup>*Paige*, 22 A.3d at 711-12.

<sup>16</sup>*Id.* at 716.

<sup>17</sup>*Nix v. Sawyer*, 466 A.2d at 411; *Resop v. Figliola*, *supra* at \*5; *Carroll v. ABM Janitorial Services-MID Atlantic, Inc.*, 970 F. Supp.2d 292, 300 (D. Del. 2013), *aff'd*, 569 Fed. Appx. 110 (3<sup>rd</sup> Cir. 2014).

<sup>18</sup>*Barker v. Huang*, 610 A.2d at 1345.

The second element is met by “showing that the utterance in question is reasonably germane to the pending action”<sup>19</sup> or “has some connection to the subject matter of the pending action.”<sup>20</sup> In both situations, the allegedly defamatory statements have a connection to the basic subject matter of the pending actions: New Castle County’s enforcement of the New Castle County Code with regard to properties plaintiff owns or has owned. Thus, the second prong of the privilege is met. The absolute privilege applies to the defamation action, and this case cannot proceed.

10) The privilege also bars the abuse of process claim because that claim is predicated on the same acts providing the basis for the defamation claim.<sup>21</sup>

11) For the foregoing reasons, the complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED THIS 21st DAY OF APRIL, 2016.

*/s/ Richard F. Stokes*

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JUDGE

cc: Prothonotary’s Office  
Russell E. Walker  
Darryl A. Parson, Esquire

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<sup>19</sup>*Nix v. Sawyer*, 466 A.2d at 411.

<sup>20</sup>*Shearin v. Baldwin*, 1988 WL 77777, \*2 (Del. Super. July 5, 1988).

<sup>21</sup>*Barker v. Huang*, 610 A.2d at 1348-9; *Adams v. Gelman*, *supra* at \*3.