EXHIBIT H

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Arthur Alan Wolk v. Walter Olson

From English Wikademia

Arthur Alan Wolk v. Walter Olson is a notable[1][2][3] 2010 Internet libel case where the United States District Court for the Eastern District of Pennsylvania ruled that the same rule for mass media applies to the Internet when calculating a statute of limitations.

Contents

Background

On September 30, 2002, in a lawsuit in federal court in the United States District Court for the Northern District of Georgia, *Taylor v. Teledyne*, Judge Julie E. Carnes sanctioned Arthur Alan Wolk for "intentionally disobeying the orders and directives of the Court."[4] As part of the settlement of the case in 2003, the court agreed to vacate the order critical of Wolk.[1][4] Wolk unsuccessfully sought the impeachment of Judge Carnes in retaliation for her order critical of him.[5]

After the settlement, Wolk sued Teledyne and its attorneys, Lord Bissell & Brook, for libel because they transmitted "a United Stated District Court order that was valid, binding, and publicly available at the time it was transmitted."[6] In 2007, Judge Norma Levy Shapiro of the United States District Court for the Eastern District of Pennsylvania dismissed the lawsuit as without legal merit.[1][6]

In 2007, Ted Frank wrote a blog for Overlawyered critical of Wolk's conduct in the *Wolk v. Teledyne* and *Taylor v. Teledyne* litigation.[1][7]

Lawsuit

In 2009, Wolk sued Overlawyered editor Walter Olson, Frank, Overlawyered, and Overlawyered blogger David Nieporent, claiming that the blog libeled him.[7] According to the complaint, Wolk did not discover the article until April 2009.[7] In a notable decision in 2010, Judge Mary A. McLaughlin of the United States District Court for the Eastern District of Pennsylvania dismissed the lawsuit for failure

to comply with the one-year statute of limitations on the grounds that a blog is mass media and the statute of limitations runs from the date of publication.[1][2][3][7]

Aftermath

Wolk has appealed his loss.[1][2]

When *Reason* wrote about the lawsuit, Wolk threatened to sue *Reason*.[8]

References

1. ↑ 1.0 1.1 1.2 1.3 1.4 1.5 Jacob Sullum, *Reason*, "Lawyer Trying to Protect His Reputation As an Effective Advocate Misses Deadline for His Libel Suit" (http://reason.com/blog/2010/08/06/lawyer-trying-to-protect-his-r) , August 6, 2010
2. ↑ 2.0 2.1 2.2 Shannon P. Duffy, *The Legal Intelligencer*, Discovery Rule for Libel Doesn't Apply to Blogs, Says Federal Judge (http://www.law.com/jsp/article.jsp?id=1202464319845) , August 6, 2010
3. ↑ 3.0 3.1 Jeff Blumenthal, *Philadelphia Business Journal*, Overlawyered blog case testing statute of limitations for defamation (http://www.bizjournals.com/philadelphia/blogs/law/2010/08/overlawyered_blog_case_testing_sta August 6, 2010
4. ↑ 4.0 4.1 Taylor v. Teledyne (http://scholar.google.com/scholar_case?case=10732480973753870380)
5. ↑ Wolk v. United States (http://scholar.google.com/scholar_case?case=1985348583634262494)
6. ↑ 6.0 6.1 Wolk v. Teledyne (http://scholar.google.com/scholar_case?case=3373776095983930739)
7. ↑ 7.0 7.1 7.2 7.3 Wolk v. Olson (http://www.paed.uscourts.gov/documents/opinions/10D0758P.pdf)
8. ↑ "Who You Calling Touchy?" (http://reason.com/blog/2010/09/16/who-you-calling-touchy)

External links

- *Arthur Alan Wolk v. Walter Olson (http://www.paed.uscourts.gov/documents/opinions/10D0758P.pdf)*
- Docket (http://dockets.justia.com/docket/pennsylvania/paedce/2:2009cv04001/321303/)

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- Last edited on November 5, 2010
- Copyrights

EXHIBIT I

White and Williams LLP

www.whiteandwilliams.com

Publications

Legal News and Information

COURT DISMISSES DEFAMATION CLAIM AGAINST LEGAL BLOG

Philadelphia - The United States District Court for the Eastern District of Pennsylvania, Judge Mary A. McLaughlin, recently dismissed a mass-media defamation claim against the legal weblog Overlawyered.com, defended by White and Williams.

In the suit, Arthur Alan Wolk, a well-known aviation attorney, sued Overlawyered.com, Walter Olson, Theodore Frank, and David Nieporent for defamation, false light, and intentional interference with prospective contractual relations allegedly arising from an article published on the Overlawyered website in 2007. Wolk filed suit in May 2009, claiming that he did not discover the article until April of that year.

White and Williams attorneys Michael N. Onufrak and Siobhan K. Cole - on behalf of the defendants - moved to dismiss the complaint on the grounds that the case was not brought within the statute of limitations (one-year in Pennsylvania for defamation) and therefore the complaint failed to state a claim. Wolk countered the motion by arguing that Pennsylvania's discovery rule tolled the statute of limitations until Wolk became aware of the article in 2009.

The threshold issue before the District Court, therefore, was whether Pennsylvania's discovery rule applies in a defamation case, such that the statute of limitations would be tolled until the plaintiff had actual notice, where the allegedly defamatory statements were published and widely available. The District Court held that it must not.

While noting the absence of any decision from the Pennsylvania Supreme Court on the precise issue of whether the discovery rule applies to mass media defamation claims, the District Court relied upon the Pennsylvania Supreme Court's instruction that "the discovery rule should be employed only for 'worthy cases'; it 'cannot be applied so loosely as to nullify the purpose for which a statute of limitations exists.'" (McLaughlin Opinion, Pg. 5) (quoting Dalrymple v. Brown, 701 A.2d 164, 167 (Pa. 1997)); (further citing 42 Pa. Cons. Stat. Ann. § 5533(a) (2010) and Pocono Int'l Raceway, Inc., v. Pocono Produce, Inc., 468 A. 2d 468, 471 (Pa. 1983) for the proposition that ignorance, mistake or misunderstanding will not toll a statute of limitations, even though a plaintiff may not discover an injury until it is too late.)

Judge McLaughlin's Opinion further cites numerous opinions from other jurisdictions and three from the Eastern District of Pennsylvania, all of which held that the discovery rule does not apply to mass-media defamation.

Despite the Court's unequivocal opinion, and the wealth of case law upon which it rests, Wolk immediately appealed the District Court's decision, and the issue will now be presented to the Third Circuit. Defendants and their counsel remain convinced that the District Court's opinion is infallible, and look forward to affirmation from the Third Circuit on this important issue so closely tied to the rights of free speech and press.

Mr. Onufrak, a partner in the firm's Commercial Litigation Department, served as the lead attorney on the case. Siobhan Cole, an associate in the Commercial Litigation Department, assisted with the case.

EXHIBIT J

LAW.COM

Discovery Rule for Libel Doesn't Apply to Blogs, Says Federal Judge

Shannon P. Duffy

08-06-2010

Aviation lawyer and seasoned pilot Arthur Alan Wolk knows quite a bit about the stratosphere and the troposphere, but he may have learned something new this week about the blogosphere when a federal judge tossed out his libel suit against the bloggers at Overlawyered.com.

As U.S. District Judge Mary A. McLaughlin sees it, a blog is legally the same as any other "mass media," meaning that any libel lawsuit filed against a blog in Pennsylvania must make its way to court within one year.

Wolk was hoping for a break on the strict time limit. His lawyers -- Paul R. Rosen and Andrew J. DeFalco of Spector Gadon & Rosen -- argued that the "discovery rule" should apply to toll the statute of limitations until the target of an allegedly libelous blog entry discovers it.

But McLaughlin found that blogs, by virtue of publishing on the Internet, qualify as mass media that simply cannot be subjected to the discovery rule.

"The court is not aware of any case in which the discovery rule has been applied to postpone the accrual of a cause of action based upon the publication of a defamatory statement contained in a book or newspaper or other mass medium," McLaughlin wrote in her nine-page opinion in *Wolk v. Olson*.

McLaughlin said she followed the lead of several of her colleagues on the Eastern District of Pennsylvania bench, as well as numerous courts around the country, in holding that "as a matter of law, the discovery rule does not apply to toll the statute of limitations for mass-media defamation."

In court papers, Wolk said he first learned of the existence of the allegedly defamatory article on Overlawyered when he was advised at a seminar on client relations in early 2009 to perform a Google search of his own name.

It was only then, Wolk claims, that he found the April 2007 blog entry by Overlawyered's Theodore Frank that allegedly included false allegations about Wolk's handling of a case in Georgia.

"The discovery rule in Pennsylvania is a rule of statutory construction applicable to all cases," Rosen and DeFalco argued.

But Overlawyered's lawyers -- Michael N. Onufrak and Siobhan K. Cole of White & Williams -- argued that the discovery rule simply cannot apply to any defamation suit that stems from a "published" statement.

McLaughlin agreed and found that Rosen and DeFalco were asking the court to stretch the discovery rule beyond its intended scope.

"Not all cases are worthy of the discovery rule. Worthy cases are those pertaining to hard-to-discern injuries,"

McLaughlin wrote.

"If the rule is intended for hard-to-discern injuries, it would be at odds with a cause of action based upon a defamatory statement disseminated through a mass medium, like a website, and received by tens of thousands of readers," McLaughlin wrote.

Applying the discovery rule in Wolk's case would also "undermine the purpose" of the statute of limitations, McLaughlin found.

"If a plaintiff may bring a person into court after a limitations period has expired simply by invoking the discovery rule, and if a court is bound from dismissing the claim no matter how public or ancient the injury may be, then the discovery rule will have nullified the stability and security that the statute of limitations aims to protect," McLaughlin wrote.

McLaughlin cited a string of decisions that followed the same logic, including *Schweihs v. Burdick*, a 1996 decision in which the 7th U.S. Circuit Court of Appeals adopted a "mass-media exception" to the discovery rule, explaining that the rule only applies to defamation "in situations where the defamatory material is published in a manner likely to be concealed from the plaintiff, such as credit reports or confidential memoranda."

Wolk has already filed a notice of appeal to challenge McLaughlin's ruling.

Rosen said he believed that McLaughlin had erred by failing to apply recent Pennsylvania Supreme Court decisions that say the discovery rule tolls the statute of limitations until an "awakening event."

The Internet, Rosen said, poses "unique challenges" for the courts in the field of defamation.

"Unlike mass media print defamation claims, where the publication is pervasive for a short time, but soon becomes yesterday's news, the Internet is a different animal," Rosen said.

"In cases such as Mr. Wolk's, involving a blog that is relatively obscure, but which published a false statement that may appear on any Google type search, the discovery rule is of particular importance," Rosen said.

Onufrak said that if his clients had not won the case on statute-of-limitations grounds, he was confident that they would have won on First Amendment grounds because the blog entry was not defamatory and would have been considered protected opinion.