

STATE OF MICHIGAN
COURT OF APPEALS

HAROLD ARMOUR,

Plaintiff-Appellant/Cross-Appellee,

v

FEDERATED PUBLICATIONS, INC., d/b/a THE
LANSING STATE JOURNAL, and JOHN
SCHNEIDER,

Defendants-Appellees/Cross-
Appellants.

UNPUBLISHED
December 2, 2004

No. 245361
Ingham Circuit Court
LC No. 01-093328-NZ

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of defendants' motion for a directed verdict. We affirm.

This case arose when defendants published three articles regarding a \$329 toilet repair that two plumbers from plaintiff's company, Armour Plumbing, Inc., performed for an elderly widow. While the plumbing invoice only reflected that the plumbers "rebuilt" her toilet tank by replacing a flapper and ballcock, plaintiff provided evidence that the plumbers performed several other services at no additional charge. Defendants' articles did not report the additional work, but rather, the articles focused on Armour Plumbing's \$329 repair charge for the replaced flapper and ballcock. Nevertheless, viewing the evidence in the light most favorable to him, plaintiff failed to carry his burden of proving that the articles were materially false.

Plaintiff failed to plead a false statement of fact in any of the articles, but argued instead that defendants created a false impression of price gouging by their omission of the other work the plumbers performed. A claim for libel by implication involving a media defendant and a matter of public concern¹ requires the plaintiff to demonstrate a materially false implication

¹ On appeal, plaintiff argues that the plumbing repair was a purely private matter, and that defendants were the only ones making it a matter of public concern. Plaintiff failed to counter defendants' contrary assertion of the law in the trial court, however, and fails to persuade this
(continued...)

through innuendo or omission. *Royal Palace Homes, Inc v Channel 7 of Detroit, Inc*, 197 Mich App 48, 57; 495 NW2d 392 (1992). The corollary to material falsity is substantial truth, and the test for substantial truth is whether the pleaded truth would have produced a different effect in the mind of the reader than the publication did. *In re Chmura (After Remand)*, 464 Mich 58, 74; 626 NW2d 876 (2001).

In this case, plaintiff failed to demonstrate how the articles were materially false. While plaintiff argues that the articles excluded the additional work performed by the plumbers, such as the installation of a wax seal, an emergency shut-off valve, and new bolts, the undisputed evidence indicated that these additional services were performed at no *additional* charge. The sting or gist of the articles was that plaintiff's company would charge \$329 to replace a few parts in a toilet tank. The evidence demonstrated that the basis for this assertion was substantially true. The plumbers only began the additional work after they presented the elderly woman with an invoice stating that they were charging \$329 to put new parts in the toilet tank. While the articles did not mention one item contained in the price for repair (the old-fashioned linkage), this was a minor omission that defendants more than compensated for by printing plaintiff's explanation that the invoice did not reflect all the work done. The substantial truth doctrine does not require a detailed and absolutely accurate account as a precondition to shielding a defendant from liability. *Id.* Because the evidence undisputedly indicated that plaintiff's company would have charged the same price even if the plumbers had not done any extra work, plaintiff fails to demonstrate how defendants' failure to report the extra work was an omission that rendered the articles materially false. Therefore, viewing the evidence in the light most favorable to plaintiff, the trial court did not err when it granted defendants' motion for directed verdict. *Sniecinski v BCBSM*, 469 Mich 124, 131; 666 NW2d 186 (2003).

Our decision on this issue renders the remaining issues moot.

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell

(...continued)

Court that the matter was not already gaining publicity and worthy of attention as a consumer-affairs issue. See *Royal Palace Homes, supra* at 49-51; see also *Quantum Elecs Corp v Consumers Union*, 881 F Supp 753, 764 (D.R.I. 1995).