



claim for campaign finance violations against the defendants other than Waccamaw and Boschult.

During the course of the litigation Waccamaw and Boschult were successful in obtaining orders requiring plaintiff to respond to discovery, an order dismissing a purported Second Amended Complaint, an order dismissing the civil conspiracy claim, an order striking campaign finance violation allegations, an order severing the case against Waccamaw and Boschult from the case against the remaining 14 defendants. Ultimately plaintiff dismissed the intentional infliction of emotional distress claim, and Waccamaw and Boschult were granted summary judgment in their favor on the libel claim.

The news report stated that it was based on public records:

Gallman's history of conflict with his ex-wife goes back to at least 2014, according to records obtained by myhorrynews.com, which is basing this report on public court records, including interview notes, police reports and third-party affidavits in order to avoid relying purely on Price or Gallman's narratives.

*Myrtle Beach Herald*, June 19, 2020, p. A3.

In both his Complaint and Amended Complaint plaintiff alleged that a "dossier" had been circulated regarding him, and that it was the basis for the news report. (Compl. ¶¶ 21, 30; Amen. Compl. ¶¶ 25, 31). In his Complaint plaintiff acknowledged that his Family Court file was not sealed. (Compl. ¶ 73). In his Amended Complaint plaintiff states that neither he nor his attorney examined the contents of the Family Court file until months after the publication of the news report. (Amen. Compl. ¶ 47). In his Amended Complaint plaintiff alleges that the producer of a television commercial on behalf of his political opponent had access to the news report in advance of publication. (Amen. Compl. ¶ 50). In his responses to interrogatories plaintiff did

not identify any witness who would testify that the news report was based on a “dossier,” or that anyone had access to the news report in advance of publication.

Waccamaw incurred in excess of Seventy-six Thousand (\$76,000.00) in attorney fees and costs in the successful defense of this suit. This motion seeks sanctions against plaintiff and his attorney in the amount of attorney fees and costs incurred in the defense of this action on grounds that the action was frivolous under the provisions of the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. (1976) § 15-36-10, in that no reasonable party or attorney would have good faith belief that there was factual or legal support for the claims made against Waccamaw and Boschult. Additionally, plaintiff initiated and maintained this action for an improper purpose, to wit: to obtain the disclosure of a source that did not exist and to obtain confirmation that the news report had been disclosed in advance of publication.

### **ARGUMENT**

A reasonable plaintiff and attorney would have known that records in a court file are open for public inspection and copying unless sealed by court order:

**(a) Purpose.** Because South Carolina has a long history of maintaining open court proceedings and records, this Rule is intended to establish guidelines for governing the filing under seal of settlements and other documents. Article I, § 9, of the South Carolina Constitution provides that all courts of this state shall be public and this Rule is intended to ensure that Constitutional provision is fulfilled.

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**(d) Orders Sealing Documents.** All orders sealing documents...shall set forth with specificity the reasons that require they be sealed.

Rule 41.1, SCRPC.

It has long been the common law of South Carolina that the fair and substantially true reporting of the contents of public records, including court records, is privileged.

*White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997); *Padgett v. Sun News*, 278 S.C.

26, 292 S.E.2d 30 (1982); *Herring v. Retail Credit Co.*, 266 S.C. 455, 224 S.E.2d 663 (1976); *Jones v. Garner*, 250 S.C. 479, 158 S.E.2d 909 (1968); *Lybrand v. The State Co.*, 179 S.C. 208, 184 S.E. 580 (1936). No reasonable plaintiff or attorney would in good faith believe that the reporting of the contents of public records relating to plaintiff was not privileged.

In addition to the common law privilege protecting the publication of the contents of public records Waccamaw and Boschult could have liability for libel only if plaintiff could demonstrate in response to their motion for summary judgment that he had proof by clear and convincing evidence that would overcome the constitutional protection afforded publications concerning candidates for public office. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). A reasonable plaintiff and attorney should have known that there was neither law nor facts to support the libel claim.

Not only was the suit initiated without a foundation in law or fact, Waccamaw and Boschult believe plaintiff's action against them was frivolous as a matter of law as it was initiated and continued against them solely for the purpose of attempting to learn the source of the "dossier" which plaintiff incorrectly believed to have been the basis for the news report, and to learn the identity of any person plaintiff incorrectly believed had received a copy of the news report in advance of publication. Plaintiff's attorney on several occasions stated that the case would be settled if Boschult would identify his source of the Children's Recovery Center material, and identify to whom he provided advance copies of the news report:

If Mr. Boschultz [sic] is willing to tell me who gave him the CRC records, who coordinated with him to get an advance copy of the article, and other similar information, we may be able to settle rather quickly.

(April 1, 2021 email from Tucker Player to Jay Bender, attached as an exhibit to the Affidavit of Jay Bender filed in support of this motion).

On July 27, 2021 plaintiff's counsel reiterated plaintiff's interest in obtaining from Boschult the source of the Children's Recovery Center records, writing:

We know Boschult met with Chris Price, the new husband of Sarah Price, my client's ex-wife and the mother of his children. Price admitted it in a deposition.

If the CRC records were obtained or discovered through Chris Price, and your client can verify that in some way, I believe we can reach an agreement easily.

(July 27, 2021 email from Tucker Player to Jay Bender, attached as an exhibit to the Affidavit of Jay Bender).

On August 10, 2021 the undersigned wrote to plaintiff's counsel to call attention to Rule 11(a), SCRCR which imposes a duty on an attorney to investigate facts alleged in a complaint, and an obligation to believe there is a good ground to support each fact. The letter also noted that in the initial Complaint the status of the Court file was accurately portrayed as unsealed. The public and press have an unfettered right of access to review, publish and comment on matters in a court file.

(Letter from Jay Bender to Tucker Player, attached as an exhibit to the Affidavit of Jay Bender).

Plaintiff's counsel was told repeatedly, and the news report itself stated, that public records were the basis for the reporting, that Boschult never had a "dossier" in his possession, and that he did not provide an advance copy of the news report to anyone. A civil action is frivolous if brought for a purpose other than adjudication of the claim upon which the proceeding is based. S.C. Code Ann. (1976) § 15-36-10(C)(1)(c). Plaintiff's use of litigation against

Waccamaw and Boschult in a vain effort to identify a source that did not exist and learn details of an event that did not occur was frivolous.

The appropriate sanction against plaintiff and his attorney would be an order requiring the payment of “the reasonable costs and attorney’s fees” to Waccamaw as the prevailing party. S.C. Code Ann. (1976) § 15-36-10(G).

**CONCLUSION**

Plaintiff and his attorney initiated and maintained this action when no reasonable party or attorney would have in good faith believed there was support in the facts or the law for relief against Waccamaw and Boschult on any of plaintiff’s claims. Further, plaintiff and his attorney demonstrated an improper purpose for the litigation through their effort to learn of a source that did not exist, and to obtain confirmation of an event that did not occur. An award of attorney fees and costs to Waccamaw for its successful defense of this action is appropriate.

Columbia, South Carolina

April 3, 2023

/Jay Bender

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