

NEW YORK COURT OF APPEALS

Alf v. Buffalo News, Inc.

21 N.Y.3d 988 (2013) · Decided June 27, 2013

SUMMARY

The New York Court of Appeals affirmed summary judgment for The Buffalo News in a defamation action arising from reports about National Air Cargo's guilty plea and restitution agreement. The Court held that, viewed as a whole, the articles would lead an average reader to understand that the company, rather than plaintiff Christopher Alf personally, had pleaded guilty to wrongdoing. The challenged statements were substantially accurate reports of judicial proceedings and therefore protected by the absolute privilege under New York Civil Rights Law § 74.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Graffeo; Judge Read; Judge Smith; Judge Rivera; Judge Abdus-Salaam; Judge Pigott
JURISDICTION	New York
DECIDED	June 27, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff brought a defamation action based on newspaper articles and editorials concerning National Air Cargo's guilty plea and alleged overcharges. Supreme Court granted the newspaper summary judgment based on the absolute privilege for fair and true reports of judicial proceedings under Civil Rights Law § 74. The Appellate Division affirmed, and the Court of Appeals affirmed the Appellate Division's order.
STANDARD OF REVIEW	Review of the grant of summary judgment and application of the Civil Rights Law § 74 privilege to the challenged publications; the Court examined the articles as a whole to determine their defamatory effect and whether they were fair and true reports of judicial proceedings.
PRECEDENTIAL VALUE	Published New York Court of Appeals memorandum decision
PARTIES	Christopher Alf v. Buffalo News, Inc.

TOPICS

defamation

summary judgment

civil procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the challenged articles and editorials, viewed as a whole, would lead an average reader to understand that Christopher Alf personally pleaded guilty to wrongdoing rather than National Air Cargo.
2. Whether the challenged statements constituted a fair and true report of judicial proceedings protected by the absolute privilege under New York Civil Rights Law § 74.

HOLDINGS

1. In evaluating a libel claim, the publication must be considered in its entirety rather than by dissecting individual statements in isolation.
2. Statements in the challenged articles and editorials concerning National Air Cargo and Alf's involvement in the reported proceedings were immune from defamation liability because the News provided a substantially accurate, fair and true report of the plea agreement, fines, and restitution discussed in open court.

KEY QUOTATIONS

“The publication must be considered in its entirety when evaluating the defamatory effect of the words” (990)

“When determining whether an article constitutes a ‘fair and true’ report, the language used therein should not be dissected and analyzed with a lexicographer’s precision” (990)

FACTUAL BACKGROUND

The Buffalo News published articles and editorials in 2007 and 2008 concerning a federal investigation, related litigation, and National Air Cargo's guilty plea to resolve allegations that it had overcharged the federal government on military freight contracts. The reporting stated that National Air Cargo and its owner and chairman, Christopher Alf, had admitted that the company cheated the government over several years, would pay nearly \$28 million in fines and restitution, and that no executives would be imprisoned. Alf claimed the reports falsely suggested prolonged wrongdoing and that he personally had engaged in wrongful conduct.

PROCEDURAL HISTORY

Supreme Court granted summary judgment to Buffalo News, Inc. The Appellate Division, Fourth Department, affirmed with two Justices dissenting. The New York Court of Appeals reviewed the matter on submissions under section 500.11 of the Rules of the Court of Appeals and affirmed with costs.

DISPOSITION

affirmed

CASES CITED

- Dibble v. WROC TV Channel 8, 142 A.D.2d 966, 967 (4th Dep't 1988)
- James v. Gannett Co., 40 N.Y.2d 415, 419 (1976), rearg. denied, 40 N.Y.2d 990 (1976)
- Holy Spirit Ass'n for Unification of World Christianity v. New York Times Co., 49 N.Y.2d 63, 68 (1979)

OPINION

PER CURIAM.

OPINION OF THE COURT Memorandum. The order of the Appellate Division should be affirmed, with costs. This defamation case arose from a series of articles and editorials published by The Buffalo News (News) in 2007 and 2008 concerning a federal investigation, related lawsuits and a guilty plea in federal court by National Air Cargo (NAC), an air freight forwarder, to settle allegations that it had overcharged the federal government on military freight contracts in the continental United States.

The newspaper reported that NAC and its owner and chairman, plaintiff Christopher Alf, had admitted that NAC “cheated” the government over a period of several years in the amount of millions of dollars, that NAC would pay almost \$28 million in fines and restitution, and that no executives would face jail time. Plaintiff sued for defamation, arguing that the News’s reporting was false and misleading because it reported prolonged wrongdoing as opposed to a single admitted false statement and because the average reader would think that plaintiff had personally engaged in wrongful conduct.

Supreme Court granted summary judgment to the newspaper, holding that the News was entitled to the defense of absolute privilege under Civil Rights Law § 74, which provides that “[a] civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding.” The Appellate Division affirmed, with two Justices dissenting (100 AD3d 1487 [4th Dept 2012]).

We now affirm as well. *990When examining a claim of libel, we do not view statements in isolation. Instead, “[t]he publication must be considered in its entirety when evaluating the defamatory effect of the words” (Dibble v WROC TV Channel 8, 142 AD2d 966, 967 [1988], citing James v Gannett Co., 40 NY2d 415, 419 [1976], rearg denied 40 NY2d 990 [1976]).

As both Supreme Court and the Appellate Division held, viewing the articles as a whole, the average reader would conclude that the company, and not plaintiff, pleaded guilty to wrongdoing and that the amount of restitution covered more than the single, admitted incident.

As we have said, “newspaper accounts of legislative or other official proceedings must be accorded some degree of liberality. When determining whether an article constitutes a ‘fair and true’ report, the language used therein should not be dissected and analyzed with a lexicographer’s precision” (Holy Spirit Assn. for Unification of World Christianity v New York Times Co., 49 NY2d 63, 68 [1979]).

Here, the News provided substantially accurate reporting of the plea agreement and the fines and restitution, as discussed in open court. Thus, all the challenged statements concerning NAC and plaintiff relating to these proceedings are entitled to immunity under Civil Rights Law § 74. Chief Judge Lippman and Judges Graffeo, Read, Smith, Rivera and Abdus-Salaam concur; Judge Pigott taking no part.

On review of submissions pursuant to section 500.11 of the Rules of the Court of Appeals (22 NYCRR 500.11), order affirmed, with costs, in a memorandum.