

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Orkin v. Albert

Nos. 24-1532, 24-1614, 24-1734 (1st Cir. Dec. 11, 2025) · No. Nos. 24-1532, 24-1614, 24-1734 · Decided
December 11, 2025

SUMMARY

The First Circuit considers consolidated appeals arising from a dispute between siblings concerning Boost Web SEO, Inc., including claims for defamation and conversion. The court vacates in part and affirms in part, holding that an email accusing Wayne Orkin of fraudulent criminal activity was defamatory per se and remanding for findings regarding truth, fault, and damages. The court also addresses the conversion of Boost Web funds and related procedural and contempt matters.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	KAYATTA, Circuit Judge; Montecalvo; Lynch; Kayatta
JURISDICTION	United States Court of Appeals for the First Circuit
DECIDED	December 11, 2025
DOCKET	Nos. 24-1532, 24-1614, 24-1734
DISPOSITION	affirmed_in_part_reversed_in_part
PROCEDURAL POSTURE	Consolidated appeals from the district court's judgment after a bench trial, contempt order, and injunction order.
STANDARD OF REVIEW	For the bench trial: legal determinations reviewed de novo, factual findings for clear error, mixed questions of law and fact with deference. For contempt: factual findings reviewed for clear error, ultimate finding of contempt reviewed for abuse of discretion. For injunction: reviewed for abuse of discretion, but legal conclusions reviewed de novo.
PRECEDENTIAL VALUE	Published opinion of the First Circuit.
PARTIES	Wayne Orkin v. Lisa Sue Albert; Ian Albert; Boost Web SEO, Inc.

TOPICS

- defamation
- conversion
- contempt
- civil procedure

PRACTICE AREAS

torts

corporate law

civil procedure

appellate procedure

contempt

QUESTIONS PRESENTED

1. Whether the district court erred in finding that Albert did not defame Orkin in her email to CardConnect.
2. Whether the district court erred in finding that Orkin converted Boost Web funds by using them for personal expenses and by redirecting residuals.
3. Whether the district court erred in finding Orkin in contempt of court.
4. Whether the district court erred in issuing a permanent injunction against Orkin's prosecution of the Florida state court action.

HOLDINGS

1. Albert's email unambiguously imputed criminal fraud to Orkin, making it defamatory per se and actionable without proof of economic damages.
2. The district court applied the wrong legal standard by requiring actual damage rather than potential damage to reputation.
3. The district court's finding of truth was based on its erroneous interpretation of the email as merely expressing an intention, so the case must be remanded for a determination of whether the imputation of criminal fraud was substantially true.
4. The district court clearly erred in finding that Orkin had no right to take any of the money for himself as compensation, because the parties' conduct established an implied-in-fact contract for compensation.
5. The district court did not clearly err in finding that Orkin lacked authority to sign the Redirection Agreement and that the residuals belonged to Boost Web.
6. The contempt order must be vacated and remanded because it was based in part on conduct (pursuit of the Florida action and some communications) that did not clearly and unambiguously violate the district court's prior orders.
7. The district court abused its discretion by enjoining the Florida action because the issue of Boost Web's ownership was not actually decided by the district court's prior order.

KEY QUOTATIONS

"This email unambiguously 'imputes to [Orkin] a criminal offense.' Restatement (Second) of Torts § 571 (A.L.I. 1977)." (at 17-18)

"These circumstances fairly raise the unrefuted inference that both parties understood and intended some compensation be paid to Orkin. Of course, there is no documentation (other than apparently the W-2s) spelling out any understanding that the money Orkin spent on non-Boost Web expenses was compensation. But what else could it be?" (at 28-29)

"Even clerics who take a vow of poverty get more income than Orkin would under Albert's retrospective view of their arrangement." (at 29)

"Our role is to 'assess[] the precise state of the record and what the earlier federal order actually said,' not what the district court's 'post hoc judgment' deemed it 'intended to say.'" (at 44)

FACTUAL BACKGROUND

Wayne Orkin operated a business from the Dominican Republic using a U.S. corporation, Boost Web SEO, Inc., formed in 2013 by his sister, Lisa Albert, in Florida. Orkin ran Boost Web's day-to-day operations and generated all its business, while Albert was listed as the registered agent and officer/director. There were no written agreements on compensation or profit-sharing. A 2014 Consent Agreement assigned residuals from CardConnect to Boost Web. After a familial dispute in 2021, Albert terminated Orkin's access to Boost Web's bank account and sent an email to CardConnect accusing Orkin of 'fraudulent activities.' Orkin then redirected residuals away from Boost Web to a personal account. The district court found Orkin converted \$403,827.91 in personal expenses and \$234,941.60 in redirected residuals. Orkin contacted CardConnect multiple times urging it not to disburse funds to Boost Web, leading to a contempt finding. He also filed a Florida state court action seeking a declaratory judgment that he owned Boost Web.

PROCEDURAL HISTORY

Plaintiffs (Wayne Orkin and his father, Arthur Orkin) filed a lawsuit in Massachusetts Superior Court against defendants (Lisa Sue Albert and her son, Ian Albert) alleging state-law claims. The case was removed to the U.S. District Court for the District of Massachusetts. Boost Web SEO, Inc. intervened and filed a crossclaim against Orkin. After partial summary judgment, a bench trial was held on surviving claims: Orkin's defamation, breach of fiduciary duty, breach of contract, unjust enrichment, and injunctive relief claims against Albert and her son, and Boost Web's conversion crossclaim against Orkin. The district court ruled against Orkin on his claims and in favor of Boost Web on its conversion crossclaim. Orkin appealed. While the appeal was pending, the district court found Orkin in civil contempt for attempting to undermine its orders and issued a permanent injunction against Orkin prosecuting a Florida state court action. Orkin appealed the contempt and injunction orders as well. The First Circuit consolidated the appeals.

DISPOSITION

affirmed_in_part_reversed_in_part

REMAND INSTRUCTIONS

1. On defamation: Remand for the district court to consider whether Albert's imputation of criminal fraud to Orkin was substantially true, and if not, to determine fault and damages. 2. On conversion (personal expenses): Remand to determine how much Orkin was authorized to keep as compensation and whether any amount kept in excess of that authority was converted under Florida law. 3. On contempt: Vacate and remand for the district court to determine whether Orkin's remaining violations by themselves constitute contempt and whether to amend its order of sanctions. 4. The district court may decide the question of Boost Web's ownership on remand.

CASES CITED

- Aadland v. Boat Santa Rita II, Inc., 42 F.4th 34 (1st Cir. 2022)

- Shay v. Walters, 702 F.3d 76 (1st Cir. 2012)
- Amrak Prods., Inc. v. Morton, 410 F.3d 69 (1st Cir. 2005)
- Jones v. Taibbi, 512 N.E.2d 260 (Mass. 1987)
- Ravnika v. Bogojavlensky, 782 N.E.2d 508 (Mass. 2003)
- Phelan v. May Dep't Stores Co., 819 N.E.2d 550 (Mass. 2004)
- Douglas v. Braman Porsche Audi, Inc., 451 So. 2d 1038 (Fla. Dist. Ct. App. 1984)
- Transcapital Bank v. Shadowbrook at Vero, LLC, 226 So. 3d 856 (Fla. Dist. Ct. App. 2017)
- Frayman v. Douglas Elliman Realty, LLC, 515 F. Supp. 3d 1262 (S.D. Fla. 2021)
- Bel-Bel Int'l Corp. v. Comm. Bank of Homestead, 162 F.3d 1101 (11th Cir. 1998)
- Zinn v. Zinn, 549 So. 2d 1141 (Fla. Dist. Ct. App. 1989)
- Marine Transp. Servs. Sea-Barge Grp., Inc. v. Python High Performance Marine Corp., 16 F.3d 1133 (11th Cir. 1994)
- Bruce v. Weekly World News, Inc., 310 F.3d 25 (1st Cir. 2002)
- Sierra Fria Corp. v. Evans, 127 F.3d 175 (1st Cir. 1997)
- Farmer v. Humana, Inc., 582 F. Supp. 3d 1176 (M.D. Fla. 2022)
- ST Eng'g Marine, Ltd. v. Thompson, Maccoll & Bass, LLC, 88 F.4th 27 (1st Cir. 2023)
- F.H. Paschen, S.N. Nielsen & Assocs. LLC v. B&B Site Dev., Inc., 311 So. 3d 39 (Fla. Dist. Ct. App. 2021)
- Com. P'ship 8098 Ltd. v. Equity Contracting Co., 695 So. 2d 383 (Fla. Dist. Ct. App. 1997)
- Rhythm & Hues, LLC v. Nature's Lawn Care, Inc., 368 So. 3d 12 (Fla. Dist. Ct. App. 2023)
- Focus Mgmt. Grp. USA, Inc. v. King, 171 F. Supp. 3d 1291 (Fla. Dist. Ct. App. 2016)
- Magwood v. Tate, 835 So. 2d 1241 (Fla. Dist. Ct. App. 2003)
- Atl. Coast Line R.R. Co. v. Wilson & Toomer Fertilizer Co., 104 So. 593 (Fla. 1925)
- Kobel v. Schlosser, 614 So. 2d 6 (Fla. Dist. Ct. App. 1993)
- Edwards v. Landsman, 51 So. 3d 1208 (Fla. Dist. Ct. App. 2011)
- Calandro v. Sedgwick Claims Mgmt. Servs., Inc., 919 F.3d 26 (1st Cir. 2019)
- State Police Ass'n of Mass. v. Comm'r of Internal Revenue, 125 F.3d 1 (1st Cir. 1997)
- Mane FL Corp. v. Beckman, 355 So. 3d 418 (Fla. Dist. Ct. App. 2023)
- Holsum de P.R., Inc. v. ITW Food Equip. Grp. LLC, 116 F.4th 59 (1st Cir. 2024)
- Envision Waste Servs., LLC v. Cnty. of Medina, 83 N.E.3d 270 (Ohio Ct. App. 2017)
- Union Sav. Bank v. Lawyers Title Ins., 946 N.E.2d 835 (Ohio Ct. App. 2010)
- Grzely v. Singer, 971 N.E.2d 481 (Ohio Ct. App. 2012)
- Teamsters Union, Local No. 59 v. Superline Transp. Co., 953 F.2d 17 (1st Cir. 1992)
- Fla. Dep't Ins. v. Debenture Guar., 921 F. Supp. 750 (M.D. Fla. 1996)
- Goodrich v. Malowney, 157 So. 2d 829 (Fla. Dist. Ct. App. 1963)
- Project B.A.S.I.C. v. Kemp, 947 F.2d 11 (1st Cir. 1991)
- United States v. Saccoccia, 433 F.3d 19 (1st Cir. 2005)
- Goya Foods, Inc. v. Wallack Mgmt. Co., 290 F.3d 63 (1st Cir. 2002)

- Gilday v. Dubois, 124 F.3d 277 (1st Cir. 1997)
- NBA Props., Inc. v. Gold, 895 F.2d 30 (1st Cir. 1990)
- 28 U.S.C. § 2283
- Chick Kam Choo v. Exxon Corp., 486 U.S. 140 (1988)
- Fernández-Vargas v. Pfizer, 522 F.3d 55 (1st Cir. 2008)
- Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs, 398 U.S. 281 (1970)
- Aristud-González v. Gov. Dev. Bank for P.R., 501 F.3d 24 (1st Cir. 2007)
- Mass. Sch. of L. at Andover, Inc. v. A.B.A., 142 F.3d 26 (1st Cir. 1998)
- Harrison v. NetCentric Corp., 744 N.E.2d 622 (Mass. 2001)
- Mariasch v. Gillette Co., 521 F.3d 68 (1st Cir. 2008)
- Lluberes v. Uncommon Prods., LLC, 663 F.3d 6 (1st Cir. 2011)
- Orkin v. Albert, 729 F. Supp. 3d 194 (D. Mass. 2024)
- Orkin v. Albert, 738 F. Supp. 3d 84 (D. Mass. 2024)
- Orkin v. Albert, 742 F. Supp. 3d 17 (D. Mass. 2024)

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