

NEW YORK COURT DISMISSES TRUMP CAMPAIGN DEFAMATION LAWSUIT AGAINST NEW YORK TIMES

Hodgson Russ Media and First Amendment Alert
March 22, 2021

A recent decision from a New York court regarding the 2016 presidential campaign of Donald J. Trump serves as a reminder of just how difficult it is for a public official (or entity) to maintain a defamation action against the press, particularly when the action is based on an article published in the opinion section of a newspaper or website.

In the aftermath of Robert Mueller's "Report on the Investigation into Russian Interference in the 2016 Presidential Election," the *New York Times* ran a column entitled "The Real Trump Russia Quid Pro Quo." Following publication of the column, President Trump's campaign filed suit against *The Times*, in a matter entitled *Donald J. Trump for President, Inc. v. The New York Times Company d/b/a The New York Times*, alleging that it had defamed the campaign. Applying well-established precedent, the New York County Supreme Court granted *The Times*' motion to dismiss the complaint.

On March 27, 2019, Max Frankel, *The Times* former executive editor, wrote an op-ed column relating to Mr. Mueller's election collusion investigation. While his report had not been released in its entirety at the time, Attorney General William Barr's summary of the report had been made public. According to the complaint, the column defamed the campaign because it claimed there was an "overarching deal" between the campaign and "Vladimir Putin's oligarchy" to "help in the campaign against Hillary Clinton" in exchange for "a new pro-Russian foreign policy, starting with relief from the Obama administration's burdensome economic sanctions." According to the Trump campaign, *The Times* published the statements despite the fact that its prior reporting debunked the claims. The complaint went on to allege that *The Times* published the defamatory article because it was biased against the campaign, and Republicans in general.

The Times moved to dismiss the lawsuit. On March 9, 2021, the court granted the motion on numerous grounds. The court began by observing that the column was published in the opinion section of the newspaper, alerting readers that what was being read was likely non-actionable opinion, not fact. Next, the court held that the statements were not "of and concerning" the campaign because the focus of the column was President Trump's associates and family members, not the campaign

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itself. Finally, the court held that the complaint failed because it did not allege facts sufficient to support an inference that *The Times* was motivated by actual malice. Noting that “bias, or ulterior motives does not constitute actual malice,” the court found that the campaign had not satisfied its “heavy burden” to pursue its defamation claim “because news organizations function as a platform for facilitating constitutionally protected speech on issues of public concern...”

Takeaway: No matter how salacious the subject matter, a defamation complaint must still satisfy four basic pleading requirements: (1) a false and defamatory statement of fact, (2) regarding the plaintiff, (3) which is published by a third-party, and (4) damages to the plaintiff. Statements, when taken in context, that can arguably be viewed as opinion will not be actionable. Nor will a court stretch to find that the statements are “of and concerning” a plaintiff. And when the person alleging defamation is a public figure or official, the bar is even higher, because they must plead that the publication acted with “actual malice,” as opposed to mere bias.

For any question you have regarding whether this recent decision impacts any of your organization’s activities, please contact [Ryan Cummings](mailto:ryan.cummings@hodgsonruss.com) (716.848.1665), [Aaron Saykin](mailto:aaron.saykin@hodgsonruss.com) (716.848.1345), or any member of our [Media and First Amendment Practice](#).