

\$425K slander verdict affirmed against union local, president

by Steve Lash

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A Maryland appeals court has upheld a \$425,000 defamation verdict to a Maryland Transit Administration dispatcher against his union local and its president, who spread false rumors that the dispatcher had stolen money and "had to go" as the local's elected treasurer.

In its 3-0 decision, the Court of Special Appeals said a Baltimore jury reasonably decided that the local's president, David McClure, acted with a reckless disregard for the truth about the rumors against William T. Lovelace. That finding, in turn, supported the trial judge's instruction to the jury that it could presume Lovelace suffered damages from the slanderous statements.

"Based on the evidence produced at trial, there was clear and convincing proof that Mr. McClure had improper motives and that he made the defamatory statements with knowledge they were false or with reckless disregard for their truth," also known as "actual constitutional malice," Judge Michele D. Hotten wrote for the appellate panel. "[W]e conclude that the trial court did not abuse its discretion by instructing the jury that it could presume damages upon a finding of actual constitutional malice."

In May 2012, the jury awarded Lovelace, the former treasurer of the Amalgamated Transit Union Local 1300, compensatory damages of \$335,000 and \$90,000 in punitive damages. Of the punitive damages, the union was found liable for \$82,500 and McClure was liable for \$7,500.

Jeffrey R. Freund, the chief appellate attorney for the local and McClure, did not return telephone messages Tuesday seeking comment on whether he and his clients plan to petition the Court of Appeals to review the decision. Freund is with Bredhoff & Kaiser PLLC in Washington, D.C.

Lovelace's attorneys, Paul F. Evelius and Jason R. Potter, declined to comment on the decision. Evelius and Potter are with Wright, Constable & Skeen LLP in Baltimore.

Prior to the trial, a Nov. 29, 2011, summary judgment ruling by the Baltimore City Circuit Court found it was "undisputed that [Lovelace] has never stolen from the union."

At trial, Lovelace claimed McClure had made more than two dozen slanderous statements to union members and officials starting in 2007.

In the first incident, Lovelace said, McClure told union members at a general meeting that Lovelace had been stealing union funds. In April 2009, McClure told another union member that Lovelace had been stealing from the union and using member dues to pay for family vacations, according to trial testimony.

McClure on other occasions told members that Lovelace had taken amounts ranging from \$2,000 to \$10,000. McClure would follow the false allegations with a statement that Lovelace should not be re-elected as treasurer of the local, according to testimony.

In one instance, McClure reportedly told two union members that Lovelace "had to go" as the union's treasurer.

Lovelace said McClure, whose presidential tenure ended in June, wanted him out of office because of their frequent disagreements about how the union should be managed.

Lovelace alleged the multiyear smear campaign ultimately succeeded. When the union held its elections for officers in June 2010, he did not win re-election. Lovelace's lawsuit, filed that September, blamed the defamatory statements for the loss.

At trial, McClure denied disparaging Lovelace. McClure said he would never accuse anyone of

stealing unless he had proof, adding that he had no proof that Lovelace was stealing, according to Hotten's opinion.

But the Court of Special Appeals, in upholding the jury's verdict, said Lovelace presented 15 witnesses who had heard McClure accuse Lovelace of stealing.

"The jury, considering this evidence, could have concluded that Mr. McClure knew such statements were false and expressed the statements with reckless disregard for their veracity," Holland wrote in her opinion joined by judges Timothy E. Meredith and James P. Salmon, a retired jurist sitting by special assignment.

WHAT THE COURT HELD

Case:

David McClure et al. v. William Lovelace, CSA No. 1020, Sept. Term 2012. Reported. Opinion by Hotten, J. Argued Sept. 5, 2013. Filed Nov. 4, 2013.

Issue:

Did the jury reasonably find that the defendant in the defamation lawsuit acted with reckless disregard for the truth? Did the judge properly instruct the jurors to presume damages if they found reckless disregard?

Holding:

Yes to both; the jurors had "clear and convincing proof" of reckless disregard and damages can be presumed in cases of actual constitutional malice.

Counsel:

Bruce R. Lerner and John M. West for appellants; Paul F. Evelius and Jason R. Potter for appellee.

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