

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

KASHYAP P PATEL,

Plaintiff,

v.

CABLE NEWS NETWORK, ET AL.,

Defendants.

CASE NO: CL-2020-20690

ORDER

THIS MATTER came to be heard on January 20, 2023, on Defendant's Demurrer to the Amended Complaint, and

UPON CONSIDERATION of the relevant pleadings including the Amended Complaint with the attachments thereto, the Defendant's Memorandum of Points and Authorities, the Plaintiff's Memorandum in Opposition, and the Defendant's Reply Memorandum; the oral arguments urged at the hearing; and the prevailing law, the Court finds:

1. That the Amended Complaint fails to assert any allegations of specific harm suffered by the Plaintiff as a result of the four statements made by the Defendant;
2. That absent facts asserting specific harm or special damages, the words or statements used by the Defendant must be *per se* actionable to withstand demurrer;
3. That the four statements made by the Defendant do not constitute defamation *per se*, as the statements: do not impute to the Plaintiff the commission of some criminal offense involving moral turpitude; do not impute that the Plaintiff is infected with some contagious disease; do not impute to the Plaintiff unfitness to perform the duties of an office or employment of profit; and do not prejudice the Plaintiff in his profession or trade; *see Fleming v. Moore*, 221 Va. 884, 889 (1981);
4. That the failure to assert allegations of specific harm, coupled with the failure to assert statements rising to the level of defamation *per se*, is fatal to the Amended Complaint and the Defendant's Demurrer must be sustained on this basis alone;
5. That the nature of the four statements made by the Defendant relate to matters of public concern, and are subject to Virginia Code § 8.01-223.2;

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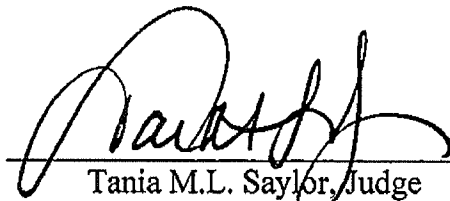
6. That Virginia Code §8.01-223.2 affords immunity against claims of defamation absent a showing of actual malice, specifically that the statements were made with actual or constructive knowledge that they were false or with reckless disregard for whether they were false;
7. That the Amended Complaint fails to state sufficient facts to support Plaintiff's bare conclusory allegation that the Defendant acted with actual malice; such conclusory allegations without factual support are insufficient to withstand demurrer and the Defendant's Demurrer must be sustained on this separate and alternative basis;
8. That statements 1, 2, and 4 (collectively the "Ukraine Statements") are protected by Virginia's Fair Report Privilege as substantially accurate reporting of "The Trump-Ukraine Impeachment Inquiry Report" ("Ukraine Report") which is a government document, and the Defendant's Demurrer must be sustained on this separate and alternative basis;
9. That, as to Count II, the Amended Complaint fails to identify the "words actually used" that give rise to the defamatory implication, and the Defendant's Demurrer to Count II must be sustained on this separate and alternative basis;
10. That the Plaintiff made no request for leave to amend in connection with these proceedings.

IT IS THEREFORE ADJUDGED, ORDERED and DECREED that the Defendant's Demurrer to the Amended Complaint is SUSTAINED as to all counts with prejudice, and it is

FURTHER ORDERED that the Clerk of Court shall mail a copy of this Order to all counsel of record, and any objections hereto shall be filed within 10 days.

THIS CAUSE IS FINAL.

Entered this 30<sup>th</sup> day of January, 2023.

  
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Tania M.L. Saylor, Judge  
Fairfax County Circuit Court

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.

cc: Steven S. Biss, Esquire  
John D. McGavin, Esquire  
Katherine M. Bolger, Esquire (*pro hac vice*)