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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2025-000971

Latif Taheri-Azar, Appellant,

vs.

Tim Haake and Justin Marlow, Respondents.

BRIEF OF RESPONDENT TIM HAAKE

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May 5, 2026
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In accordance with Rule 208 of the South Carolina Appellate Court Rules, Respondent Tim Haake ("Haake") respectfully submits this brief in reply to the Initial Brief of Appellant Latif Taheri-Azar ("Appellant" or "Taheri-Azar"), in which Appellant appeals the Circuit Court's Order Granting Defendants' Motions for Summary Judgment, entered on March 21, 2025 (the "Summary Judgment Order"), and the Circuit Court's Order Denying Plaintiff's Motion for Reconsideration, entered on April 18, 2025 (the "Reconsideration Order").

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STATEMENT OF ISSUES ON APPEAL

1. Was the Circuit Court correct in finding, in connection with Haake's Motion for Summary Judgment, that Haake did not make any false and defamatory statements concerning the Appellant?

2. Was the Circuit Court correct in finding, in connection with Haake's Motion for Summary Judgment, that the e-mail that Respondent Justin Marlow sent to Mike Nugent at the City of Rock Hill on February 28, 2024, could not have caused any of the Appellant's alleged harm in this case because it was sent almost a week after the City of Rock Hill imposed a stop work order on Appellant's new home construction project?

3. Was the Circuit Court correct in granting Haake's Motion for Summary Judgment on the bases that (i) the statements that the Appellant alleged that Haake made to the City of Rock Hill were not defamatory because they did not concern the Appellant, and (ii) the Appellant could not establish that the statements allegedly made to the City of Rock Hill by way of Marlow's February 28th e-mail were false?

For the reasons discussed herein below, Haake respectfully requests that this Court answer each of these three questions in the affirmative, and affirm the rulings of the Circuit Court in granting the Respondents' Motions for Summary Judgment and denying the Appellant's Motion to Reconsider.

STATEMENT OF THE CASE

Appellant was the owner of certain real property located at 2124 Windemere Road in Rock Hill, York County, South Carolina, which is situated within the Poplar Forest subdivision (the "Property"). Appellant sought to build, and did build, a new home at the Property. Respondents are property owners within the Poplar Forest subdivision. On or about April 30, 1966, a set of Restrictive Covenants for the Poplar Forest Subdivision were recorded in the Office of the Clerk of Court for York County, South Carolina (the "Covenants"). At the time that the Appellant built the new home at the Property, the Covenants were still in full force and effect. The Covenants imposed certain architectural requirements and use standards on all lots within the Poplar Forest subdivision, which includes the Property. Contained within the Covenants were minimum square footage requirements, as well as a mechanism for enforcement of the Covenants. Appellant submitted plans for the new home that he intended to build at the Property to the City of Rock Hill (the "City"), and the City ultimately approved those plans. Appellant then began building the new home at the Property.

On February 22, 2024, the City issued a stop work order for the Appellant's construction of the new home at the Property. Almost a week later, on February 28, 2024, Respondent Justin Marlow ("Marlow") sent an e-mail to Mike Nugent at the City, in which Marlow informed Mr. Nugent that he was sending the e-mail "on behalf of the Poplar Forest HOA," which was

accompanied by a "letter and supporting documents to express the concerns of Mr. Haake and the Poplar Forest HOA with respect to the construction underway at [the Property]."

Appellant filed suit against Haake and Marlow on April 3, 2024, and asserted causes of action for tortious interference with prospective contractual relations, defamation, and declaratory judgment. Haake answered, counterclaimed, and moved to dismiss Appellant's claim for tortious interference with prospective contractual relations on May 9, 2024. That claim was subsequently dismissed. Appellant replied to Haake's counterclaim on June 10, 2024. Marlow answered Appellant's complaint on July 2, 2024.

Appellant testified on December 12, 2024, under oath during his deposition, that, "other than that letter" to Mr. Nugent on February 28, 2024, he has "no other information" about Haake making any false statements about the Appellant or the Appellant's business. Appellant also testified that his relationship with the City actually "got better" as a consequence of the work stoppage "because the more they know my work, the more they trust my work." In fact, according to the Appellant, the "whole matter" of his claims against Haake and Marlow is because "they represented they were on the HOA" of the Poplar Forest subdivision.

Haake filed a Motion for Summary Judgment and a memorandum in support thereof on January 24, 2025. Marlow filed a Motion for Summary Judgment on January 28, 2025, and Appellant filed a memorandum in opposition to both Motions for Summary Judgment on February 19, 2025. The motions for summary judgment were heard by the Circuit Court on March 11, 2025, and the Court entered an Order Granting Defendants' Motions for Summary Judgment on March 21, 2025. Appellant filed a Motion to Reconsider on March 31, 2025. That motion was denied by order entered on April 18, 2025, and Appellant filed a Notice of Appeal on May 16, 2025.

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Id.

ARGUMENT

I. THE CIRCUIT COURT WAS CORRECT IN GRANTING HAAKE'S MOTION FOR SUMMARY JUDGMENT BECAUSE HAAKE DID NOT MAKE ANY FALSE AND DEFAMATORY STATEMENTS CONCERNING THE APPELLANT.

Appellant erroneously argues that Haake and Co-Respondent Justin Marlow ("Marlow") made false and defamatory statements concerning the Appellant, and that, therefore, the Circuit Court erred in granting summary judgment in favor of Haake and Marlow. In support of this position, Appellant cites Burns v. Gardner, 328 S.C. 608, 615, 493 S.E.2d 356, 359 (Ct. App. 1997), in which the trial court dismissed the appellants' amended complaint pursuant to a motion to dismiss filed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. In affirming the trial court's dismissal of the appellants' amended complaint, the Court of Appeals in Burns noted that "the appellants are not mentioned, either by name or by implication," relying on the legal principle that "[i]n a defamation action, the challenged statement must 'be such that persons reading or hearing it will, in the light of surrounding circumstances, be able to understand that it refers to the person complaining, and it must have been so understood by at least one other person.'" Id. at 613-615, 359-360.

According to the Appellant himself, the "whole matter" of his claims against Haake and Marlow is that "they represented they were on the HOA" of the Poplar Forest subdivision. [Page 139, Lines 16-21 of Appellant's deposition transcript, filed with the Circuit Court on January 24, 2025.] As the undersigned counsel argued to the Circuit Court in connection with Haake's Motion for Summary Judgment, "[t]his is simply not a 'false and defamatory statement concerning [Appellant].'" [Memorandum in Support of Haake's Motion for Summary Judgment, filed with the Circuit Court on January 24, 2025.] Additionally, representing that they were "on the HOA" of the Poplar Forest subdivision, even if false, is not defamatory because, according to the legal principle on which the Court of Appeals relied in Burns, a third party reading or hearing it would not have understood (or even would have thought) that it was made in specific reference to the Appellant. On this basis alone, the Appellant's appeal fails.

Also in support of his position, Appellant correctly cites the first sentence of Paragraph 7(a) of the Restrictive Covenants for Poplar Forest Subdivision (the "Restrictive Covenants") in his Initial Brief, which provides that "[l]ot owners shall submit to an Architectural Committee comprising the Board of Directors of Poplar Forest Corp." However, Appellant curiously omits from his argument Paragraph 10 of the Restrictive Covenants, which provides the following:

> If the parties hereto, or any of them, or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said developments or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either prevent him or them from so doing or to recover damages or other dues for such violation.
> [Restrictive Covenants, Exhibit 1 to Appellant's deposition, Page 2.]

Paragraph 10 of the Restrictive Covenants afforded Haake and Marlow the right to enforce the covenants and prevent the Appellant from violating them irrespective of their membership "on the HOA," and regardless of whether there was a formal board of directors for

the Poplar Forest Subdivision. Indeed, Haake's and Marlow's authority to act to prevent the Appellant and anyone else from violating the Restrictive Covenants arises from their status as property owners within the subdivision, rather than some formal HOA or board of directors.

Appellant further argues in his Initial Brief that "Respondents asserted that Appellant was building a house in violation of the Restrictive Covenants and that a Poplar Forest's HOA's Architectural Review Board was in existence." In support of this argument, Appellant references Exhibit 5 of the Appellant's deposition, which is an e-mail that the Respondents sent to Mike Nugent at the City of Rock Hill (the "City") on February 28, 2024 (the "February 28th E-Mail"). Appellant contends that the Respondents' statements in the February 28th E-Mail resulted in the Appellant's alleged damages – namely, the City issuing a stop work order on Appellant's new home construction project. However, the Court need not consider any statements allegedly made in the February 28th E-Mail for purposes of the Appellant's defamation claim because the complained-of stop work order was issued on February 22, 2024, almost one week before the February 28th E-Mail was generated and sent. In other words, the February 28th E-Mail that Appellant references in his Initial Brief as containing defamatory statements concerning the Appellant could not possibly have caused the Appellant's damages that allegedly resulted from the stop work order because the February 28th E-Mail was not even in existence until almost a week after the stop work order was issued.

Based upon the foregoing, the Circuit Court was correct, and did not err, in granting Haake's Motion for Summary Judgment because Haake did not make any false and defamatory statements concerning the Appellant that caused the Appellant's alleged damages.

II. EVEN IF THE RESPONDENTS' FEBRUARY 28, 2024, E-MAIL TO MIKE NUGENT AT THE CITY OF ROCK HILL WAS FALSE, WHICH IS NOT SUPPORTED BY THE RECORD, THE FEBRUARY 28TH E-MAIL COULD NOT HAVE POSSIBLY CAUSED ANY OF THE APPELLANT'S ALLEGED HARM IN THIS CASE BECAUSE IT WAS SENT ALMOST ONE WEEK AFTER THE CITY ISSUED ITS STOP WORK ORDER.

It is well-established that in order to have an actionable claim for defamation, a plaintiff must prove, among other things, the existence of "a false *and* defamatory statement concerning another" (emphasis added). Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 578, 556 S.E.2d 732, 737 (Ct. App. 2001). In other words, a mere false statement is not sufficient under South Carolina law for a claim for defamation; rather, the false statement must be defamatory and concern another party. Even if this Court were to accept as true the Appellant's statements in his Initial Brief that "[t]here is no Poplar Forest Corporation in existence," and that there is "no Board of Directors that comprise an Architectural Review Board for the subdivision," and that Haake and Marlow made statements to the contrary to one or more third parties, those statements are still not defamatory and do not concern the Appellant. In his Initial Brief, the Appellant includes quotations from his deposition testimony regarding how he determined that there was no HOA and that, according to him, Haake's representation that he was the chairman of the architectural committee constitutes defamation. Unfortunately for the Appellant, established South Carolina law does not support his conclusion regarding defamation. Even if Haake's alleged representations that there was an HOA and that he was the chairman of the architectural committee were false when they were made, they are not defamatory concerning the Appellant.

Furthermore, the Appellant conceded during his deposition that, under Paragraph 10 of the Restrictive Covenants, Haake and Marlow could have "prosecute[d] any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from doing so" "as a neighbor alone." [Page 40, Lines 6-17 of

Appellant's deposition transcript.] In other words, the Appellant himself acknowledged that Haake and Marlow could have taken action to prevent the Appellant from violating the Restrictive Covenants irrespective of the existence of any HOA and whether or not Haake was, indeed, the chairman of that HOA's architectural committee. Essentially, Haake's alleged representations about the existence of an HOA and that he was the chairman of that HOA's architectural committee are immaterial because, as the Appellant himself acknowledged, Haake's authority to act to prevent the Appellant from violating the Restrictive Covenants arises under Paragraph 10 thereof and his status as a property owner.

In any event, since Haake's and Marlow's complained-of representations regarding the existence of an HOA and that Haake was the chairman of that HOA's architectural committee were not defamatory concerning the Appellant, the Circuit Court was correct in granting summary judgment in favor of Haake and Marlow.

III. THE RECORD OF THIS CASE DOES NOT SUPPORT THE ESTABLISHMENT OF THE ELEMENTS OF DEFAMATION BY THE APPELLANT, AND SO, THEREFORE, THE CIRCUIT COURT DID NOT ERR BY GRANTING SUMMARY JUDGMENT IN FAVOR OF THE RESPONDENTS.

Stated simply, the Appellant never established that Haake made "a false and defamatory statement concerning [the Appellant]," which is an essential element of a defamation claim under South Carolina law. In fact, the Appellant himself made clear during his deposition that the "whole matter" of his claims against Haake and Marlow is that "they represented they were on the HOA" of the Poplar Forest subdivision. [Page 139, Lines 16-21 of Appellant's deposition transcript.] This does not constitute a "false and defamatory statement concerning [the Appellant]" because it has absolutely nothing to do with the Appellant or the Appellant's business. Moreover, when asked during his deposition whether any of the statements or

representations allegedly made by Haake and Marlow had any adverse effect on Appellant's reputation, the Appellant responded that "it's speculation." [Page 104, Lines 11-22 of Appellant's deposition transcript.] This is important because an adverse effect on a defamation plaintiff's reputation is the core harm that the South Carolina Court of Appeals in Boone commented is the central purpose of the tort of defamation. In this regard, the best that the Appellant can offer with regard to any damage to or adverse effect on his reputation that was caused by any alleged statements or representations by Haake and Marlow is that "it's speculation." From the Appellant's own deposition testimony, he is unable to establish that any of Haake's and Marlow's alleged statements or representations negatively impacted his or his company's reputation, nor is the Appellant able to establish that Haake and Marlow made any false and defamatory statements *concerning the Appellant*. The most that the Appellant can offer in support of his position is that Haake and Marlow allegedly represented that there was an HOA for the Poplar Forest subdivision, and that Haake was the chairman of the HOA's architectural committee. Once again, neither of these statements and representations, even if false, were defamatory concerning the Appellant.

It also warrants mention at this juncture that the Appellant also testified during his deposition that, "[o]ther than [the February 28th E-Mail], I have no other information about" Haake making any false statements about the Appellant or Appellant's business. [Page 125, Lines 8-13 of Appellant's deposition transcript.] This sworn testimony by the Appellant confines his defamation claim to the February 28th E-Mail, which, as stated, could not have been the cause of any of the Appellant's claimed damages – the alleged 45-day work stoppage – because the February 28th E-Mail was generated and sent to the City six days after the City issued the complained-of stop work order. In fact, besides the Appellant's potential hurt feelings

and bruised ego, the Appellant is unable to identify any damage, adverse effect, or injury to his or his business's reputation that the February 28th E-Mail caused. The Appellant even testified during his deposition that his relationship with the City actually got better in conjunction with the work stoppage. [Page 138, Lines 22-25; and Page 139, Lines 1-3 of Appellant's deposition transcript.] By the Appellant's own account, his position and reputation vis-à-vis the City was not harmed in connection with the work stoppage, but rather it improved.

Since the record of this case is devoid of any evidence of a false and defamatory statement made by Haake and Marlow concerning the Appellant, together with resulting damage, adverse effect, or injury from the same, the Circuit Court did not err by granting summary judgment in favor of the Respondents.

CONCLUSION

Appellant misconstrues and misapplies the facts of this case to the prevailing law in South Carolina to arrive at the erroneous conclusion that the Circuit Court erred in granting summary judgment in favor of the Respondents. Based upon the foregoing analysis, the Circuit Court properly granted summary judgment in favor of the Respondents, and Haake respectfully requests that this Court AFFIRM the rulings of the Circuit Court.

May 5, 2026

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