

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Lydia Cook,

Plaintiff

v.

Regions Bank and Robyn Clevinger,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-25-343

FILED
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CLERK OF COURT
JAMES H. HARRIS
JUNIOR

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter came before the Court upon Defendants' Motion for Summary Judgment. A hearing on this motion was held on November 14, 2013 in the Court's chambers in Colleton County. Present at that hearing was John Tiller on behalf of the Defendants and, by telephone, Johnny Parker on behalf of the Plaintiff. After considering the arguments of counsel, the applicable law, and legal memoranda submitted by the parties, the Court hereby DENIES Defendants' Motion for Summary Judgment.

FACTUAL FINDINGS

This action arises out of statements Defendant Robyn Clevinger allegedly made concerning Plaintiff Lydia Cook. On May 10, 2011, both Cook and Clevinger were employees of the Regions Bank branch in Hampton County, South Carolina. In Cook's Amended Complaint, several allegations are made against Clevinger. First, it is alleged that on May 10, 2011, Clevinger falsely accused Cook of physically assaulting her. Amd. Compl. ¶ 5. Second, it is alleged that Clevinger published this false accusation to a number of co-workers. Amd. Compl. ¶ 5. Third, it is alleged that Clevinger made these false accusations in a retaliatory fashion against Cook. Amd. Compl. ¶ 5.

LEGAL STANDARD

Summary judgment is only appropriate where there is no genuine issue of material fact and it is clear that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In

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determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

DISCUSSION

Defendants have based this motion on two grounds: first, Defendants argue that Plaintiff has set forth no evidence proving that Clevinger published a defamatory statement about Cook. Second, defendants contend that even if the Court determines that a mere scintilla of evidence exists to find that a publication was made for purposes of Plaintiff's defamation claim, any statements published by Clevinger were done so pursuant to Regions' policy of reporting workplace violence and are therefore privileged communications.

In South Carolina, in order to establish an actionable defamation claim, a plaintiff must show that, "(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the published was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of a special harm caused by the publication. Erickson v. Jones St. Publishers, L.L.C., 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

To support their contention that no publication was made by Clevinger, Defendants argue that Plaintiff has produced no evidence that there was any publication to a third party regarding Plaintiff, other than Regions employees. However, Plaintiff has produced excerpts from depositions taken of Barbaba Simpkins, Robyn Clevinger, and Andree Lloyd. Notably, in her deposition, Clevinger admits that she told her husband about the alleged physical assault that occurred between Cook and Clevinger. Taking the evidence presented in these depositions in the light most favorable to the non-moving party, Plaintiff has produced a mere scintilla of evidence that Defendants made publications of the allegedly defamatory statements to third parties. As a result, the question of whether defamatory statements were published to a third party is ordinarily one for the jury. Abofreka v. Alston Tobacco, Co. 288 S.C. 122, 127 341 S.E.2d 622, 625 (1986).

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When confronted with a defamation action, the defendant may assert the affirmative defense of conditional or qualified immunity. Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 514 S.E.2d 126, 134 (1999). Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged and (2) the privilege is not abused. Id. "[T]he question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court." Id. However, the question whether the privilege has been abused is one for the jury. Id. Factual inquiries, such as whether the defendants acted in good faith in making the statement, whether the scope of the statement was properly limited in its scope, and whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused." Id.

In the matter currently before the Court, Plaintiff has submitted a mere scintilla of evidence that shows that a conditional privilege was abused as a result of the privilege holder acting in bad faith. During the deposition of Andree Lloyd, when asked whether she believed that Cook had grabbed Clevinger so hard that Cook had bruised Clevinger's arms, Lloyd replied "No." Lloyd Dep. 39:10-15. When asked whether she thought Clevinger was "mentally unbalanced," Lloyd replied "Yes," and added "And a liar." Lloyd Dep. 40:6-9.

The question as to whether words spoken, if actionable in themselves, were spoken maliciously and defamatorily is always a question for the jury. Bell v. Bank of Abbeville, 208 S.C. 490, 496, 38 S.E.2d 641, 644 (quoting Smith v. Youmans, 3 Hill 85, 21 S.C.L. 43). The Court finds that Plaintiff has presented a mere scintilla of evidence to show that the words published by Clevinger were spoken maliciously and defamatorily. As a result, the Court finds that this question is one for the jury.

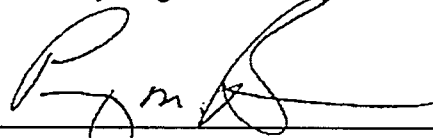
CONCLUSION

In the instant action, based upon the evidence before the Court, whether a publication was made is a question for the jury to decide. Likewise, whether any qualified privilege was abused by Clevinger is also a question for the jury to decide.

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IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment is hereby DENIED.

AND IT IS SO ORDERED.



Perry M. Buckner
Presiding Judge, Fourteenth Judicial Circuit

Walterboro, South Carolina

November 15, 2013