

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.
Circuit Court Judge

Case No. 2015-CP-10-3891
Appellate Case No. 2018-000516

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OCT 31 2018

SC Court of Appeals

Athan Fokas,

Respondent,

v.

Philip Ferderigos and Spiro Ferderigos,

Appellants.

**INITIAL REPLY BRIEF OF ATHAN FOKAS TO
RESPONDENTS' JOINT RESPONDENTS' BRIEF**

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ARGUMENT

I. RESPONDENTS ATTEMPT TO SHIFT THE BLAME FOR THEIR DEFAMATORY STATEMENTS FROM THEMSELVES TO FOKAS' ATTORNEY.

Respondents take the position that because the defamatory statements¹ were made solely to Stan Barnett ("Barnett"), Fokas' attorney/agent, those statements were essentially made to Fokas. Since defamatory statements have to be published to third persons, Respondents posit, there was no publication as the statements in question were only made to Fokas via his attorney/agent Barnett. In support of that conclusion, Respondents cited Rodgers v. Wise, 193 S.C. 5, 7 S.E.2d 517 (1940), which states:

We are satisfied that the sounder and better supported [rule is that] communications made to a libeled party's attorneys, corresponding for him regarding the specific matter in connection with which the libelous matter is used, are not thereby given publication; . . .

Id. at ____, 7 S.E.2d at 518.

Respondents attempt to spread the Rodgers decision as thinly as possible such that it can be read to stand for the proposition that **anything** said to a party's attorney is **fair game** and cannot be considered defamatory. The issues with such a distorted interpretation of the Rodgers decision are patent: the Rodgers decision clearly states that the **attorneys** must be **talking about the specific matter at issue**. The comments made by Respondents to Barnett were slanderous statements unrelated to the contract matter. The statements made by Respondents were offered only as a warning shot - **"go away or else!"** To accept an interpretation of Rodgers decision that supports such conduct would be a travesty and would reward Respondents' for their offensive behavior.

¹ In its *Order* granting the Defendants' motion for summary judgment in this matter, the Trial Court did not make any determination as to whether the statements made by the Defendants were defamatory or not. As such, Fokas takes the position that the failure of the Trial Court to address that issue would make any argument as to the truth or falsity of those statements abandoned on appeal.

Respondents also take the position that the settlement conference was not designed to facilitate a resolution of the contract issues, but rather to address all issues between the parties. The uncontradicted, **reliable and competent** evidence in the Record establishes that the sole purpose for the meeting held on February 17, 2015, was to discuss resolution of the contract issue; there was no invitation extended to the Respondents to slander Fokas as they did and none of the slanderous comments bore any rational relationship to the contract issue. Even if Respondents' suggestion about the meeting is true, which it is not, to suggest that such a forum would afford a party the opportunity to slander freely and willfully without consequences simply defies the bounds of common sense and decency.

Lastly, in a stunning display of circular logic, Respondents state that they cannot be held liable for defaming Fokas because he repeated their allegedly slanderous statements to others. As set forth in Fokas' Appellants' Brief, the Record is replete with evidence, both direct and circumstantial, establishing that Respondents made slanderous statements to third persons themselves.

II. THE EVIDENCE IN THE RECORD FAILS TO SUPPORT RESPONDENTS' POSITION THAT THEIR SLANDEROUS STATEMENTS WERE "INVITED" BY FOKAS' ATTORNEY.

Respondents assert that because they intended to discuss all issues between themselves and Fokas at their meeting with Barnett, anything said during that meeting was "invited" by Barnett and therefore not actionable. Despite Respondents' protestations otherwise, the record is devoid of any evidence that supports the determination that Barnett invited Respondents to slander Fokas. To assume, as Respondents do, that an invitation to resolve actionable issues regarding a business deal would "invite" the Respondents to

personally attack Fokas shows the true character² of both that assertion and the parties offering it. To defend oneself against allegations considered spurious is one thing; to turn that situation into an opportunity to denigrate the other party *for no reason but the sheer joy of doing so* is quite another. There is no way logically to conclude that the invitation to discuss the contract issues extended by Barnett opened the door for Respondents to lambast Fokas without mercy.

III. IN KEEPING WITH THE ABOVE ARGUMENTS, ANY STATEMENTS MADE TO FOKAS' ATTORNEY OUTSIDE THE SCOPE OF THE PURPOSE FOR THE MEETING CANNOT BE CONSIDERED PRIVILEGED.

As stated in Fokas' Appellants' Brief, there is no authority for the proposition that the privilege afforded to judicial proceedings includes meetings that occur many months before any litigation is filed. Therefore, the meeting between Barnett and the Respondents cannot be characterized as being part of a judicial proceeding. The slanderous statements made by the Respondents had no relation to the subject matter of the meeting, which was whether a contract existed between Respondents and Fokas. Because the threats bore no relation to the scope of the meeting, the statements are not privileged and the trial court improperly granted summary judgment to the Respondents on that basis.

IV. RESPONDENTS' CLAIM THAT THERE WAS NO PUBLICATION OF SLANDEROUS STATEMENTS ABOUT FOKAS ON THEIR PART IS SIMPLY NOT SUPPORTED BY THE COMPETENT AND RELIABLE EVIDENCE IN THE RECORD.

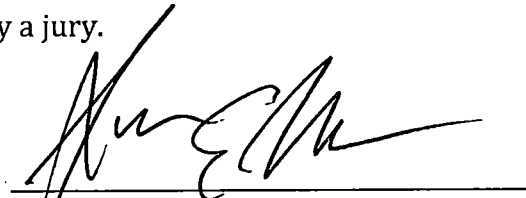
Lastly, Respondents state that there is no evidence to support Fokas' claim of publication of defamatory statements by Defendants to third parties. Interestingly enough, Respondents devote eleven (11) pages of their Brief to dissection of the evidence in an effort

² Or lack thereof.

to convince this court that the Record is devoid of any evidence of publication. As stated in Fokas' Appellant's Brief, the Record is replete with evidence of publication, be it non-privileged statements to Barnett, statements heard (on multiple occasions) by Fokas' mother³ and/or statements heard by Fokas' sister. Respondents attempt to discredit and discard that evidence in order to convince this Court that their obviously defamatory statements are not actionable because there was no publication, thus allowing them to escape the consequences of their actions.

CONCLUSION

For the reasons stated above and in Fokas' Appellant's Brief, Fokas respectfully requests that this Court reverse the trial court and allow the issue of whether the Respondents defamed Fokas to be determined by a jury.



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October 29, 2018

³ Respondents treatment of Irene Fokas' testimony is, at best, misleading. Irene Fokas was deposed through an interpreter and it is clear that she was confused at times.

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The Honorable J.C. Nicholson, Jr., Circuit Court Judge OCT 31 2018

SC Court of Appeals

Case No. 2015-CP-10-3919
Appellate Case No. 2017-002032

Athan Fokas,

Appellant,

v.

Phillip Ferderigos, Jacob Ferderigos,
and Spiros Ferderigos,

Respondents.

PROOF OF SERVICE

I hereby certify that pursuant to Rules 262(b) and 263(b), SCACR, I have served **Reply Brief of Respondent Athan Fokas** in this matter on all counsel of record by delivering a copy or mailing a copy, United States Mail, postage prepaid, on October 29, 2018, to the following addresses:

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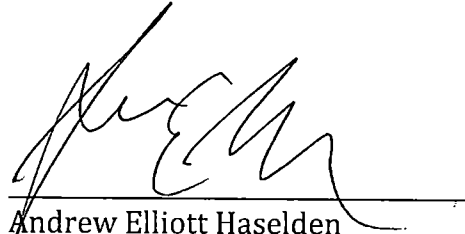
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RE: *Fokas v. Ferderigos*
C/A No.: 2015-CP-10-3891
Appellate Case No.: 2018-000516

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SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing are an original and one (1) copy each of the following documents in the above-captioned action:

- *Reply Brief of Respondent Athan Fokas*; and
- *Proof of Service* with respect to the Reply Brief of Respondent Athan Fokas.

We are not designating any additional items for inclusion in the Record on Appeal in connection with this Brief. Please return a stamped filed copy of each to me in the envelope provided.

By copy of this letter, I am serving all parties to the appeal with copies of each of the above-described documents via their attorneys of record. Thank you for your assistance in this matter and please do not hesitate to contact me with any questions or concerns.

Regards,


Andrew E. Haselden

AEH/khm

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