STATE OF MICHIGAN

COURT OF APPEALS

AFC ROOFING & INSULATION INC., a Michigan corporation, and SCOTT EVETT, individually,

Plaintiffs–Appellants,

v

PATRICK DEVLIN and DETROIT BUILDING TRADES COUNCIL,

Defendants–Appellees.

UNPUBLISHED

May 16, 1997

No. 184852
Wayne Circuit Court
LC No. 94411643 NZ

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* JJ.

PER CURIAM.

In this defamation action, plaintiffs appeal as of right from a grant of summary disposition for defendants pursuant to MCR 2.116(C)(10). We affirm.

I

This dispute arose out of comments made by defendant Patrick Devlin at an April 7, 1993, public meeting of the Livonia City Council. The Council was taking comments on a proposed ordinance. Plaintiff Scott Evett gave a statement to the Council regarding the prevailing wage issue. Devlin then spoke to the Council and stated, "That man is not beyond the point of committing unscrupulous acts. I have here in my hand a statement from the Immigration and Naturalization Service citing AFC about hiring illegal immigrants."

Plaintiffs allege that Devlin made the statement as an agent of the defendant Detroit Building Trades Council (DBTC) and failed to conduct a reasonable investigation into its truth or falsity. Plaintiffs claimed damage to their reputation, loss of earnings and loss of profits.

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Defendants filed a motion for summary disposition arguing that, under the National Labor Relations Act (NLRA), plaintiffs can recover only upon a showing that Devlin made the statement with knowledge that it was false or in reckless disregard of whether it was false. Defendants alleged that plaintiffs failed to make such as showing. Plaintiffs responded that the NLRA is inapplicable, and therefore, plaintiff need establish only that Devlin made the statement negligently.

The trial court granted defendants' motion for summary disposition, ruling without explanation that this is a labor dispute preempted by federal law.

II

The NLRA precludes state court jurisdiction over a defamation claim if a defendant's comments were an expression of views, argument or opinion made in the course of a labor dispute. 29 USC 158(c). This immunity, however, is not without exceptions. Where the complainant can show that the defamatory statements were published with malice, the complainant can pursue state law remedies. *Linn v United Plant Guard Workers*, 383 US 53, 64-65; 86 S Ct 657; 15 L Ed 2d 582 (1966). Plaintiffs acknowledge this rule, but contend that the alleged defamatory statement did not arise out of a labor dispute.

The NLRA defines "labor dispute" as:

> any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee. [29 USC 152(9).]

Although the definition clearly brings the comment within the contact of a labor dispute, plaintiffs argue that a "labor dispute" does not exist where the act occurs out of pure social or political concerns. *NLRB v International Longshoremen's Ass'n*, 332 F2d 992, 995-996 (CA 4, 1964). While plaintiffs' statement of law is correct, their authority is distinguishable from this case.

The Court in *International Longshoremen's Association* explicitly based its decision on the fact that the union was "not seeking to alter any terms or conditions of employment." *Id*. By contrast, in the present case, the proposed ordinance would alter terms or conditions of employment. Devlin made the comment at a public hearing regarding an ordinance which regulates wages. Therefore, even though the dispute involved a decision of a political body, the NLRA is implicated. Comments made in the course of a public debate on the issue implicate "the policies of the federal labor laws leading to protection for freedom of speech." The NLRA protects Devlin's statements to the extent that it was not made with actual malice. See *Letter Carriers v Austin*, 418 US 264, 267-268; 94 S Ct 2770; 41 L Ed 2d 745 (1974). Because this case involved a labor dispute within the meaning of the NLRA, plaintiffs must meet the standard for actual malice enunciated in *New York Times Co v Sullivan*, 376 US 254; 84 S Ct 710; 11 L Ed 2d 686 (1964).

III

Plaintiffs assert that a genuine issue of material fact exists as to whether Devlin acted with actual malice. A finding of actual malice requires a showing that the declarant made his statement with knowledge that it was false or in reckless disregard for whether it was false. *Glazer v Lamkin*, 201 Mich App 432, 438; 506 NW2d 570 (1993). It requires more than a showing that the declarant failed to properly investigate the statement's accuracy. Rather, the plaintiff must demonstrate that the declarant, in fact, entertained serious doubts concerning the truth of the statement published. *Spreen v Smith*, 153 Mich App 1, 9; 394 NW2d 123 (1986). Furthermore, ill will, spite or hatred do not alone rise to the level required by the constitution to constitute actual malice. *Postill v Booth Newspapers*, Inc, 118 Mich App 608, 626; 325 NW2d 511 (1982).

In support of their claim of malice, plaintiffs note that Devlin admitted that he received the Immigration and Naturalization Service document from a man named "John" approximately 30 to 45 minutes before Devlin spoke. John did not say how he got the document, and Devlin did not attempt to verify the information contained in it. These circumstances, plaintiffs argue, should have alerted Devlin to the probable falsity of the statements in the documents. His decision to speak despite the warnings demonstrates actual malice.

Plaintiffs' argument fails because, even if true, the statements would not constitute actual malice. Neither the documents themselves nor the circumstances under which they were obtained gave Devlin reason to believe that the information contained therein was false. In other words, plaintiffs' evidence establishes at most that a reasonable man would have investigated before publishing. While it may be sufficient to support a finding of negligence, it is insufficient to establish actual malice under the law. *Spreen, supra*. Thus, summary disposition pursuant to MCR 2.116(C)(10) was appropriate.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Marilyn Kelly
/s/ Joseph B. Sullivan