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MDS:CMS

September 23, 1982

Mr. Edward W. Doherty
United States Catholic Conference
1312 Massachusetts Avenue, N.W.
Washington, D.C. 20005

Re: Irish National Caucus v. United States
Catholic Conference and Edward W. Doherty

Dear Ed:

Enclosed herewith is a copy of Judge Pratt's decision on our motion for summary judgment. Guess what? We won! Thanks again for all your help. Working with you on this case has truly been a pleasure. If you have any further questions, please call me.

Very truly yours,

Michael D. Sullivan
Michael D. Sullivan

Enclosure

SEP 21 1982

Superior Court
of the District of Columbia
Washington, D. C.

IRISH NATIONAL CAUCUS, INC. :

Plaintiff :

v. :

Civil Action No. 5515-81

EDWARD DOHERTY :

U.S. CATHOLIC CONFERENCE :

Defendants :

MICROFILMED

SEP 21 1982

O R D E R

This matter is before the Court on the defendants' Motion for Summary Judgment and the plaintiff's Opposition thereto. The Court has carefully considered the pleadings and the exhibits in support thereof, and, for the reasons set forth below, finds the defendants' motion should be granted.

The defendants have moved for summary judgment on the ^{1/} ground that the defamatory statement at issue was not published with the requisite degree of fault, that being actual malice since, in the defendants' view, the plaintiff is a public figure. The plaintiff argues that it has not

^{1/} This suit grows out of the decision of Father Timothy Healy, President of Georgetown University, in February of 1981, to confer an honorary degree on British Prime Minister Margaret Thatcher. The Irish National Caucus protested that action and The Washington Star quoted Father McManus, National Director of the Irish National Caucus, as condemning Father Healy's decision and further stating that the purpose of the Irish National Caucus is "to make the violation of human rights in Northern Ireland an American issue." In response to this statement, defendant Doherty, an advisor in the Office of International Justice and Peace at the United States Catholic Conference, wrote a letter to the editor of The Washington Star, published in the February 27, 1981 edition, in which he said: "Timothy Healy, the respected President of Georgetown University needs no defense against the vulgar and slanderous attacks of the Irish National Caucus, but readers of The Star . . . should know that the Irish National Caucus, which is provoking students at Georgetown to attack Healy, far from being a 'human rights' organization, is actually a propaganda front for the Provisional Irish Republican Army, a small highly organized terrorist organization in Northern Ireland which has little support from Catholics in either part of Ireland."

yet reached the point of being a public figure, but that if it has, there are material issues of fact in dispute with reference to the issue of actual malice.

The status of a plaintiff in a libel action is a question of law for the Court. See Hoffman v. Washington Post Company, 433 F.Supp. 600, 604 (D.D.C. 1977), aff'd, 578 F.2d 442, 188 U.S.App.D.C. 206 (1978). "[W]here undisputed facts admit to but one conclusion, then, on a motion for summary judgment, the court properly decides the issue." Rosanova v. Playboy Enterprises, Inc., 580 F.2d 859, 862 (5th Cir. 1978). A person may be a limited public figure if he has thrust himself to the forefront of a particular controversy in order to influence the resolution of the issues involved. Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). Although the public figure concept "has eluded a truly working definition," Rosanova v. Playboy Enterprises, Inc., 580 F.2d at 861, past decisions of other courts have elucidated the relevant criteria.

Essential to the finding of a public figure is the court's determination that a public controversy exists. Gertz v. Robert Welch, Inc., 418 U.S. at 344-45. Notwithstanding the plaintiff's efforts to characterize the debate over the situation in Northern Ireland as an "extremely limited controversy" and one which "is almost never the subject of discussion by the man in the street," plaintiff's opposition at page 2, the record clearly demonstrates otherwise. The Court has carefully examined the exhibits submitted together with the pleadings and finds that the record establishes that the controversy over the situation in Northern Ireland, and the United States' involvement in that controversy, has been debated, not only in Ireland, but in this country. Moreover, the record shows that the issues concerned have been covered by the news media in a manner indicating the subject is more than one of idle

curiosity. See Waldbaum v. Fairchild Publishers, Inc., 201 U.S.App.D.C. 201, 311, 627 F.2d 1287, 1297 (1980). The Court therefore concludes that a public controversy exists. See McManus v. Doubleday & Co., 513 F.Supp. 1383 (S.D.N.Y. 1981).

Once the court determines a public controversy exists, the question is whether the plaintiff has thrust himself to the forefront of that controversy. Gertz v. Robert Welch, Inc., 418 U.S. at 345. The Court disagrees with the defendants insofar as they rely upon the plaintiff's own words, through its members and its publications, to prove its status as a public figure. As the court in Rasanova v. Playboy Enterprises, Inc., 580 F.2d at 861 stated, "the status of a public figure vel non does not depend on the desires of the individual." Just as the plaintiff in Rosanova could not avoid public figure status merely because he did not want it, the plaintiff in this case does not achieve public figure status merely because it aspires to such a status or boasts it has attained that status. The Court must look to the nature and extent of the Caucus' participation in the controversy^{2/} to determine if it has achieved a "special prominence in the debate." Gertz v. Robert Welch, Inc., 418 U.S. at 351.

The record in this case demonstrates that the Irish National Caucus has been at the very forefront of the debate over Northern Ireland, and has used almost all available media channels to make clear its position. It

2/ In Waldbaum v. Fairchild Publishers, Inc., 201 U.S.App. D.C. at 311, 627 F.2d at 1297, the court said that in determining whether a plaintiff had thrust himself to the forefront of a controversy a court should look to the plaintiff's past conduct, the extent of the press coverage and the public reaction to his conduct and statements.

has been influential in raising Congressional support for the Irish issue, it has made continued and public efforts to effect a resolution to the situation in Northern Ireland, and it has done so not only by taking a stand on issues directly related to the fighting in Northern Ireland, but matters indirectly related as well; for example, protesting Georgetown's conferral of an honorary degree on British Prime Minister Thatcher. The Court finds, therefore, that the record amply demonstrates the plaintiff's status as a limited public figure.

As a limited public figure, the plaintiff has a cause of action against the defendants only if the defendants acted with actual malice in publishing the defamatory statement.^{3/} Actual malice, for purposes of a libel action, means publication with knowledge that the statement is false or with reckless disregard of its truth or falsity. New York Times Co. v. Sullivan, 376 U.S. 254, 279 (1964).

In the context of a motion for summary judgment, where the defendant sets forth evidence showing an absence of malice, the court does not act to determine the facts or weigh the evidence. Rather, the court looks to the evidence offered by the plaintiff in opposition to the motion, to determine whether, taking the plaintiff's evidence as true with all reasonable inferences that can be drawn therefrom, a reasonable jury could find malice with convincing clarity. Nader v. de Toleando, 408 A.2d 31, 50 (D.C.App. 1979). If the plaintiff puts forth sufficient evidence from which a jury could so find, the court must deny the motion.

3/ The only claim against the United States Catholic Conference is that one of its members, defendant Doherty, made a defamatory remark about the plaintiff. If Doherty did not act with malice, the Conference cannot be held liable. Hence, the Court discusses the evidence regarding malice only as it pertains to defendant Doherty.

Defendant Doherty has set forth sufficient evidence which, standing alone, demonstrates an absence of malice. He has demonstrated that in stating the Irish National Caucus operated as a propaganda front for the Provisional Irish Republican Army he relied upon news articles which in some instances quoted high-ranking officials within the Republic of Ireland as stating that the Caucus was linked to the Provisional Irish Republican Army. In addition, Doherty relied upon Father McManus' own statement during a British television interview that he supported the Provisional Irish Republican Army. The burden is therefore on the plaintiff, in accordance with Super.Ct.Civ.R. 56(d) to set forth specific facts showing there is a genuine issue for trial on the question of malice.

The plaintiff does not contend the defendant acted with knowledge of the publication's falsity, but rather with reckless disregard of its truth or falsity. In support of its position, the plaintiff relies upon the following:

(1) that several Bishops of the United States Catholic Conference have stated they do not believe the Irish National Caucus is linked to the Provisional Irish Republican Army;^{4/} (2) that the Irish National Caucus has repeatedly declared itself to be wholly independent of the Provisional Irish Republican Army; and, (3) that the defendant relied in part on newspaper reports which, the plaintiff contends, "are inherently less reliable than the plaintiff itself."

The record in this case makes clear that the defendant Doherty, prior to publishing his letter, was aware of the

4/ In a letter dated 10 June 1982 addressed "To Whom it May Concern," Reverend Thomas J. Drury states that the Irish National Caucus is an organization devoted to achieving justice and peace in Ireland by non-violent means. Plaintiff's motion does not state that the defendant was aware of Reverend Drury's view prior to publication of the letter, nor does the motion demonstrate that it was reckless of the defendant not to consult Reverend Drury.

plaintiff's protestations that it was not linked with the Provisional Irish Republican Army, but chose not to believe them. This in itself cannot establish malice. See Edwards v. National Audobon Society, Inc., 556 F.2d 113, 121 (2d Cir.), cert. denied, 434 U.S. 1002 (1977). Particularly in a case such as this where the defamatory statement at issue is to the effect that the plaintiff is a front for another organization, it would be unreasonable to say that the defendant's knowledge that plaintiff denies such allegations alone indicates the defendant's knowledge of the falsity of his allegation or his reckless disregard for its truth. The defendant's conduct is not measured by what a reasonable person would have done or believed, but by what the defendant actually believed at the time of the publication. St. Amant v. Thompson, 390 U.S. 727, 731 (1968). To show recklessness, the plaintiff must present evidence which would permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Id. The mere fact that the defendant had knowledge of what the plaintiff professed is not evidence from which a reasonable jury could find malice with convincing clarity.

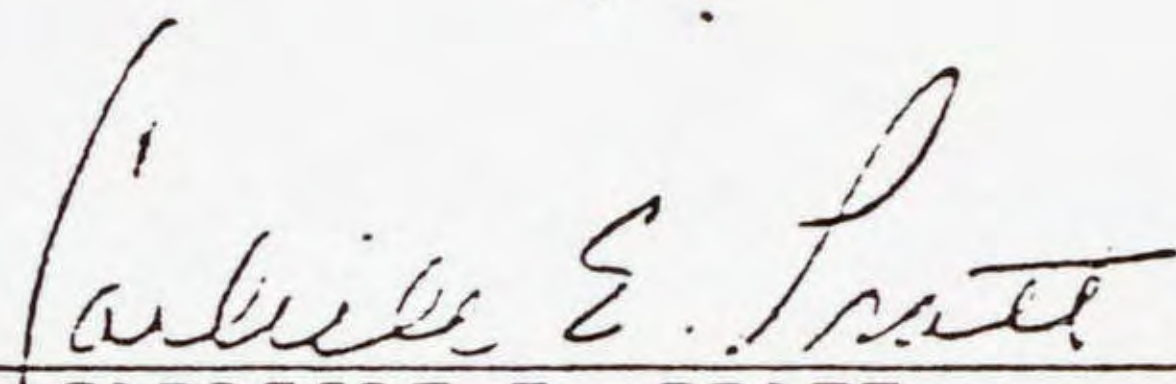
It is true that the defendant relied upon newspaper reports as a source of information. But the plaintiff's only objection to this reliance is that such reports are inherently less reliable than first hand information; i.e., from the plaintiff. Under the circumstances, this is simply another way of stating the defendant should have relied upon the plaintiff's own statements. The plaintiff puts forth no evidence indicating that the defendant in fact doubted the veracity of these reports, or evidence

from which such doubt could be reasonably inferred. ^{5/}

This Court is not weighing the plaintiff's evidence, but judging its legal sufficiency. Finding that the plaintiff has failed to present any evidence from which a reasonable jury could infer malice with convincing clarity, the Court must grant the motion for summary judgment.

Accordingly, it is by the Court, this 16th day of September, 1982,

ORDERED, that defendants' motion for summary judgment is granted and the complaint is hereby dismissed.


CARLISLE E. PRATT
JUDGE

^{5/} The defendant's state of mind can be evidenced by such objective criteria as that "the story is fabricated by the defendant, is the product of his imagination, or is based wholly on anonymous, unverified telephone call" or where "the publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation" or where "there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports." St. Amant v. Thompson, 390 U.S. 727, 732 (1968).

Copies mailed this 21st day
of September, 1982 to:

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