

NO. HHD CV 19-6119733-S : SUPERIOR COURT  
VINCENT BENVENUTO : J.D. OF HARTFORD  
VS. : AT HARTFORD  
KEVIN BROOKMAN : AUGUST 26, 2021

**MEMORANDUM OF DECISION RE: BILL OF DISCOVERY**

This matter in the nature of a bill of discovery came before the court for trial. The plaintiff, Vincent Benvenuto, seeks a bill of discovery in aid of discovery of the identity of anonymous commentors to a blog, known as "We The People-Hartford," (Blog), maintained and operated by the defendant, Kevin Brookman. The Blog concentrates on police, fire, public works, the board of education and city hall as they relate to Hartford residents. In his complaint,<sup>1</sup> the plaintiff, a 12 year employee of the City of Hartford Police Department with the rank of Lieutenant<sup>2</sup>, claims that he suffered injury to his personal and profession reputation as a consequence of defamatory commentary by anonymous contributors, including one comment in which the plaintiff's name was listed as the blogger. The relief sought by the plaintiff includes an order requiring the defendant to release the internet protocol addresses and any other identifying information in his possession relating to anonymous users who made comments on the blog and

<sup>1</sup>The operative complaint is the second amended complaint, Entry No. 111.

<sup>2</sup> The plaintiff had previously worked with the New York Police Department.

to submit for forensic analysis the hard drive of the laptop and the media storage of his iPhone used to access, monitor and maintain the Blog.

The following facts are relevant to this decision. The Blog contains two sections. Brookman publishes his investigative reports derived, inter alia, from attending Hartford Police Department (HPD) and City Hall press briefings and news conferences and general investigation through various personal sources. Brookman takes full responsibility for these reports and are not the subject of the discovery request. The second section is comprised of individuals, posting comments, referred to herein, as “commentors,” who can elect to reveal their identity or use a pseudonym. It is this section that is the subject matter of the present bill of discovery. The plaintiff alleges that beginning in August of 2019, a variety of untrue and defamatory comments were made anonymously, under the pseudonym “Anonymous,” regarding the Plaintiff in relation to his professional work with the City of Hartford Police Department. The court examines these below in the context of the evidence adduced at trial.

The general law regarding the use of a bill of discovery is well known. “As a power to enforce discovery, the bill is within the inherent power of a court of equity that has been a procedural tool in use for centuries.... The bill is well recognized and may be entertained notwithstanding the statutes and rules of court relative to discovery.... Furthermore, because

a pure bill of discovery is favored in equity, it should be granted unless there is some well founded objection against the exercise of the court's discretion.

“To sustain the bill, the petitioner must demonstrate that what he seeks to discover is material and necessary for proof of, or is needed to aid in proof of or in defense of, another action already brought or about to be brought. Although the petitioner must also show that he has no other adequate means of enforcing discovery of the desired material, the availability of other remedies for obtaining information does not require the denial of the equitable relief sought. This is because a remedy is adequate only if it is one which is specific and adapted to securing the relief sought conveniently, effectively and completely. The remedy is designed to give facility to proof.

“Discovery is confined to facts material to the plaintiff's cause of action and does not afford an open invitation to delve into the defendant's affairs.... A plaintiff must be able to demonstrate good faith as well as probable cause that the information sought is both material and necessary to his action. A plaintiff should describe with such details as may be reasonably available the material he seeks and should not be allowed to indulge a hope that a thorough ransacking of any information and material which the defendant may possess would turn up evidence helpful to his case. What is reasonably necessary and what the terms of the judgment

require call for the exercise of the trial court's discretion.” *Journal Publishing Co. v. Hartford Courant Co.*, 261 Conn. 673, 680–81, 804 A.2d 823 (2002).

“Probable cause is the knowledge of facts sufficient to justify a reasonable man in the belief that he has reasonable grounds for presenting an action. Its existence or nonexistence is determined by the court on the facts found. Moreover, the plaintiff who seeks discovery in equity must demonstrate more than a mere suspicion; he must also show that there is some describable sense of wrong.” (Internal quotation marks omitted.) *Journal Publishing Co. v. Hartford Courant Co.*, *supra*, 261 Conn. 681-82.

The present action is a pure bill of discovery, distinguished from a bill of discovery and relief. The latter “not only seeks some information or document in the possession of the adverse party, but also requests that the court take some affirmative action on the asserted cause of action.” *Journal Publishing Co. v. Hartford Courant Co.*, *supra*, 261 Conn. 699. The present action seeks merely the discovery of evidence, that which will disclose the identity of the anonymous commentors, so that an ancillary action in defamation may be brought.

The court turns to the law of defamation. “A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Defamation is comprised of the torts of libel and slander: slander is oral defamation and libel is written

defamation. To establish a prima facie case of defamation at common law, the plaintiff must prove that (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement.” (Citation omitted internal quotation marks omitted.) *Silano v. Cooney*, 189 Conn. App. 235, 241, 207 A.3d 84 (2019).

“[I]t is not enough [however] that the statement inflicts reputational harm. To be actionable, the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion. A statement can be defined as factual if it relates to an event or state of affairs that existed in the past or present and is capable of being known. In a libel action, such statements of fact usually concern a person's conduct or character. An opinion, on the other hand, is a personal *comment* about another's conduct, qualifications or character that has some basis in fact.” (Citations omitted, internal question marks omitted.) *NetScout Sys., Inc. v. Gartner, Inc.*, 334 Conn. 396, 410–11, 223 A.3d 37 (2020).

Statements may fall into two categories of actionable classes, those that are defamatory and those that are defamatory per se. If the plaintiff establishes the latter, he “is entitled under Connecticut law to recover general damages without proof of special damages. This is because the law presumes general damages where the defamatory statements are actionable per se. On

the other hand, if the words are defamatory, but not actionable per se, the plaintiff may recover general damages for harm to her reputation only upon proof of special damages for actual pecuniary loss suffered.” Id. 242. In turn, statement that are defamatory per se fall within two recognized classes: “(1) statements that accuse a party of a crime involving moral turpitude or to which an infamous penalty is attached, and (2) statements that accuse a party of improper conduct or lack of skill or integrity in his or her profession or business and the statement is calculated to cause injury to that party in such profession or business.” Id. The first class requires that the crime be a chargeable offense which is punishable by imprisonment. Id. 242. The second class must charge “improper conduct or lack of skill or integrity in one's profession or business and is of such a nature that it is calculated to cause injury to one in his profession or business.” *Proto v. Bridgeport Herald Corp.*, 136 Conn. 557, 566, 72 A.2d 820 (1950).

One last issue remains, the plaintiff concedes that he is a public figure. Plaintiff's Post-Trial Memorandum of Law, Entry No. 121, p. 9 n. 3. This is significant because of the heightened burden placed on recovery for claims of speech that purportedly defame public officials following the decision of the United State Supreme Court in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), which resolved the tension between first amendment rights and the legitimate state interest in redressing injury to reputation by requiring proof that the defamatory content as to public officials or figures is published with

actual malice. “[I]f the plaintiff [alleging defamation] is a public figure ... the plaintiff also must prove that the defamatory statement was made with actual malice, such that the statement, when made, [was] made with actual knowledge that it was false or with reckless disregard of whether it was false.” *Gleason v. Smolinski*, 319 Conn. 394, 431, 125 A.3d 920, 948 (2015). Moreover, a public official who seeks to prove defamation must do so by clear and convincing evidence that the statement was made with actual malice. *Woodcock v. Journal Publishing Co.*, 230 Conn. 525, 535, 646 A.2d 92, 97 (1994).

The parties have not asked the court to identify “a standard to apply when faced with a public figure plaintiff’s discovery request that seeks to unmask the identity of an anonymous defendant who has posted allegedly defamatory material on the internet;” *Doe v. Cahill*, 884 A.2d 451, 457 (Del. 2005); although the plaintiff quotes from *Cahill* for the proposition that it would be difficult if not impossible for a public figure, tasked with proving a defendant made defamatory statements with actual malice, to do so without discovery of the declarant’s identity. *Id.* 464. In *Cahill*, The Supreme Court of Delaware reviewed the trial court’s denial of a motion for a protective order by a John Doe who objected to the disclosure of his IP<sup>3</sup> address by the owner of Doe’s IP address to two public figures who brought a claim of defamation. The *Cahill* court recited the elements a public figure was required to establish under Delaware law, similar,

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<sup>3</sup> “An IP address is an electronic number that specifically identifies a particular computer using the internet.” *Doe v. Cahill*, *supra*, 884 A.2d 454.

but not identical, to those present in Connecticut, including actual malice. Given the difficulty of proving actual malice without knowledge of the declarant's identity, the court dispensed with proof at the early discovery stage of the litigation. *Id.*<sup>4</sup> The research of the parties and that of the court has found no appellate authority on the subject in Connecticut.

Because a pure bill of discovery is "is favored in equity [and] should be granted unless there is some well-founded objection against the exercise of the court's discretion;" *Journal Publishing Co. v. Hartford Courant Co.*, supra, 261 Conn. 680–81; and because of the near impossibility that a public figure would be able to establish actual malice on the part of an anonymous declarant under the present circumstances such that the identity of the declarant is unknown, the court concludes that proof of actual malice is not required by a court exercising its powers as a court of equity in the context of a bill of discovery brought by a public figure seeking the identity of an anonymous commenter who it is claimed has defamed him or her.<sup>5</sup> "Equitable remedies are not bound by formula but are molded to the needs of justice." *TD Bank*,

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<sup>4</sup> The *Cahill* court ultimately adopted what has been referred to as "the most exacting standard" for balancing "the important value of anonymous speech... against a party's need for relevant discovery in a civil action;" *In re Anonymous Online Speakers*, 661 F.3d 1168, 1176-77 (9th Cir. 2011); by requiring the plaintiff to be able to survive a hypothetical motion for summary judgment and give notice to the speaker in order to discover the anonymous speaker's identity. *Doe v. Cahill*, supra, 884 A.2d 461.

<sup>5</sup> The defendant has himself observed that "[w]ithout the identity of the eight anonymous commentors, it is extremely unlikely Plaintiff herein will be able to commence any action." Defendant's Post Hearing Memorandum of Law, Entry No. 120, p. 6.



*N.A. v. M.J. Holdings, LLC*, 143 Conn. App. 322, 327, 71 A.3d 541 (2013). The plaintiff in the present case must, however, establish the remaining elements required to prove defamation.

The court next turns to the testimony relative to the claimed defamatory postings. There are eight such statements identified in the plaintiff's complaint for which the plaintiff seeks the pertinent discovery. These are, as set forth in paragraph 17 of the operative complaint, Entry No. 108:

- a. An August 5, 2019 thread disparaging the Plaintiff in a discussion regarding an ongoing HPD investigation;
- b. An August 28, 2019 thread accusing the Plaintiff of sleeping during his shift and appearing to accuse the same of impropriety regarding the use of his official vehicle;
- c. An August 29, 2019 comment accusing the Plaintiff of inappropriately leaking police information;
- d. An October 2, 2019 thread attacking the Plaintiff's ability to lead other officers, accusing the Plaintiff of making racist comments towards another officer, and accusing the Plaintiff of ignoring the racist comments made by subordinate officers;
- e. An October 2, 2019 comment making unsubstantiated comments regarding the Plaintiff's job performance while working with the NYPD, and alleging that "[the Plaintiff] was racist so they kept him out of queens [sic] and Bronx;"
- f. An October 18, 2019 comment stating, "All HPD Officers have been ordered not to read your blog by members of the Command Staff, Chief Thody included;"
- g. An October 21, 2019 comment alleging that the Plaintiff has threatened to cut the Defendant's throat, and characterizing the Plaintiff as "a complete disgrace to the badge;"
- h. An October 21, 2019 comment where an anonymous user of the Blog posted using the name "Lt. Vincent Benvenuto" in which the anonymous user impersonated the Plaintiff and stated that his promotion to Lieutenant was not based on merit.

The court considers these in order.<sup>6</sup> The elements of defamation are, again, that “(1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person<sup>7</sup>; and (4) the plaintiff’s reputation suffered injury as a result of the statement.” (Citation omitted internal quotation marks omitted.) *Silano v. Cooney*, 189 Conn. App. 235, 241, 207 A.3d 84 (2019). All of the following posts are anonymous.

The plaintiff did not offer evidence at trial of the August 5, 2019, relative to the allegations contained in Paragraph 17.a. of the Complaint so the court does not consider it. Paragraph 17.b. of the complaint claims defamatory a comment, dated August 28, 2019, that the plaintiff sleeps during work by posting “Go back to Sleep Vinnie. You have to start the van for the early commute in a few hours. Oh just kidding, you can sleep during your shift in 608 so you are well rested for your morning cup of Joe with lantern.” “Lantern” is a reference to then Assistant Chief Medina who bears this nickname in the Hartford Police Department. The plaintiff testified that he does not sleep during his shift. He has established probable cause that the comment was defamatory. The post is defamatory per se because it accuses him of improper

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<sup>6</sup> The court considers only those specific allegations of defamatory comment contained in the plaintiff’s complaint. *Foncello v. Amorossi*, 284 Conn. 225, 233, 931 A.2d 924 (2007)

“It is fundamental in our law that the right of a plaintiff to recover is limited to the allegations of his complaint.”

<sup>7</sup> All of the postings meet the third criteria because they were published to a third person by virtue of having been posted on the blog.

conduct or integrity in his profession and the statement is calculated to cause injury to that party in such profession business. *Proto v. Bridgeport Herald Corp.*, supra, 136 Conn. 566. The plaintiff is granted discovery relative to this allegation.

Paragraph 17.c. of the complaint involves commentary in a post on August 28, 2019, relative to an Interdepartmental Memorandum about a sexual harassment complaint made by the LGBTQ Liaison/Recruitment Officer which was obtained by the defendant who published it in his Blog. The anonymous post provided that “Vinny [the plaintiff] is the leak, fact.” This denotes the plaintiff is dishonest at work by revealing private secrets of investigations. The plaintiff denies the post and has established probable cause that it is defamatory. The comment implicates the plaintiff integrity in his profession and accuses him of improper conduct and is therefore defamatory per se. He may have discovery relative to this allegation.

The plaintiff asserts that an October 2, 2019 thread attacked the plaintiff’s ability to led other officers, accused him of making racist comments towards another officer and ignored racist comments made by subordinate officers. Compl. ¶ 17.d. The reference is contained in a thread found in plaintiff’s Exhibit 10 in which the only reference to the plaintiff appears in a sentence which reads “Roberts documented Jeff’s alleged use of the N word thru IAD like any Chief would have (except Thody for Vinni) and this was later unfounded.” This statement is not directed to the plaintiff and does not support a claim of defamation. Plaintiff’s exhibit 11

contains a reference to the plaintiff suggesting he will make an officer - who “played the Muslim call to prayer over the HPD intercom during Ramadan” in order to insult another officer – an operations supervisor and wonders whether this is a good idea equally does not support a claim of defamation because it is merely commentary on the advisability of the appointment of an officer to a position. Discovery on Compl. ¶ 17.d. is therefore disallowed.

The plaintiff complains that another October 2, 2019, post making unsubstantiated comments regarding the plaintiff’s job performance while working with the NYPD and alleging that the “plaintiff was racist so they kept him out of [Q]ueens and [the] Bronx.” Compl. ¶ 17.e The defendant cites the case of *Stevens v. Tillman*, 855 F.2d 394, 402 (7<sup>th</sup> Cir. 1988) for the proposition that accusations of racism are no longer “obviously and naturally harmful.” The court disagrees. The accusation of racism is particularly offensive in the context of the Hartford Police Department which must not only remain free from bias against its own members but also the public at large. Moreover, the court takes judicial notice, as invited by the plaintiff, of several Hartford police officers whom the City terminated following accusations of racism in violation of that Consent Decree, including Detective Robert Lanza in 2017, and Sergeant Stephen Barone in 2018. *See City of Hartford v. Hartford Police Union*, No. CV19-6112729-S, 2020 Conn. Super. LEXIS 899, at \*16 (Conn. Super. Ct. Aug. 6, 2020); Rebecca Lurye, *White Hartford police officer who lost his job after telling Black and Hispanic group he was feeling ‘trigger*

*happy' wants to rejoin force*; Hartford Courant, Jun. 17, 2020,

[https://www.courant.com/community/hartford/hc-news-hartford-police-barone-update-](https://www.courant.com/community/hartford/hc-news-hartford-police-barone-update-20200617-nk7qrglitbgpdckl67r5bt27lm-story.html)

[20200617-nk7qrglitbgpdckl67r5bt27lm-story.html](https://www.courant.com/community/hartford/hc-news-hartford-police-barone-update-20200617-nk7qrglitbgpdckl67r5bt27lm-story.html) (examining the circumstances of Sgt.

Barone's termination and threat to use excessive force against minority groups). Finally, the fact that the declarant is repeating a comment made by a "cousin" does not absolve the declarant from liability. "[O]ne who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it." Restatement (Second) of Torts § 578 (1977). The court finds that this post accuses the plaintiff of improper conduct or lack of integrity in his profession and is calculated to cause injury to him in the Hartford Police Department. The plaintiff may obtain discovery relative to this post.

The plaintiff complains of an October 18, 2019, post which declares that "'All HPD Officers have been ordered not to read your blog by members of the Command Staff, Chief Thody included.'" Compl. ¶ 17.f. Because this post does not identify the plaintiff it is not defamatory as to him.

Paragraph 17.g. of the plaintiff's complaint asserts that a comment that "Vinnie has threatened to cut [the defendant's] throat and made racially insensitive comments towards...an African American officer, do you think it's possible that 'Anonymous said: What makes you think [another officer] aligns himself with [the plaintiff].'" The plaintiff denies having made this

threat. The court finds that the threat aspect of the comment is not defamatory per se because the crime of threatening requires at a minimum the reckless disregard of the risk of causing terror to the recipient of the threat. See General Statutes § 53a-61aa and 53a-62. That is, to prove the lowest category of threat, § 52-62(a)(3), “the state must show that the defendant was aware of and *consciously disregarded* a substantial and unjustifiable risk that the target of the threat would be terrorized.” *State v. Taupier*, 330 Conn. 149, 174, 193 A.3d 1 (2018). Because the declaration does not provide any context in which the statements were allegedly made to demonstrate whether there was a “substantial and unjustifiable risk that the recipient...would interpret it as a serious threat” required to prove the crime; *Id.* 190; the comment does not satisfy the elements of the crime of threatening and is therefore not a crime and defamatory per se on this ground. However, the comment charges improper conduct in the plaintiff’s profession and is calculated to cause injury in his profession and therefore qualifies on this basis as defamatory per se. Further, the plaintiff denies having made any racist comment as to the other police officer. The plaintiff is entitled to discovery on this allegation.

Finally, the plaintiff complains of a comment in which an anonymous user posted using the name “Lt. Vincent Benvenuto” in which the anonymous user impersonated the Plaintiff and stated that his promotion to Lieutenant was not based on merit. Compl. ¶ 17.h. This comment is

clearly hyperbole or satire in that it is not meant, nor can it be meant, to be taken seriously as the comment of the plaintiff. The plaintiff will not be allowed discovery relative to this comment.

There remains the question of how to fashion an order relative to the discovery that protects the privacy interests of the defendant in the search of his computer and phone. The defendant testified, and the court credits the testimony, that he is no longer in possession of the laptop from which he managed the blog in the relevant period, 2019, having purchased a new laptop in May of 2020, and further replaced his iPhone in December of 2020. Moreover, the court received testimony, which it credits, that Google, the company through which the Blog is maintained, does not have available the IP addresses of the commentators who placed comments on the Blog. The defendant testified, credibly, that he does not have the IP addresses or any other identifying information relating to the anonymous users.

The only source, then, of any potential information relative to the identity of the commentators is, according to the plaintiff's expert, Scott Gibbs, who specializes in digital forensics and investigations, meta and other data contained in the defendant's laptop and cell phone. The former may yield information if the server used by the defendant to access the Blog could potentially pull down data from the previous computer. The latter is potentially a more viable tool because of the process of backing up and restoring data from the old phone to the new one. While a forensic analysis of the defendant's data is unlikely to yield an IP address it might

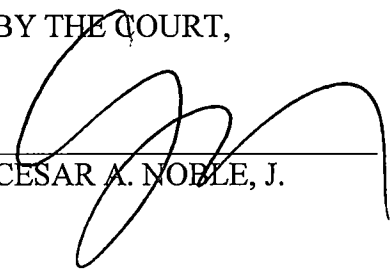
contain identifiers in emails and texts that may be used to identify identical key words relative to the comments. For example, the use of such key words as “sleep;” Compl. ¶ 17.b.; “leak;” Compl. ¶ 17.c.; “racist;” Compl. ¶ 17.e., and “threat” or “throat:” Compl. ¶ 17.g, in emails or texts, which do contain an IP address, may profitably be compared to the corresponding texts. This is potentially material and necessary for proof, or needed to aid in proof, of another action, that is, a defamation action against the anonymous commentators. See Berger v. Cuomo, 230 Conn. 1, 644 A.2d 333 (1994) (“to sustain a bill of discovery] the petitioner must demonstrate that what he seeks to discover is material and necessary for proof of, or is needed to aid in proof of or in defense of, another action already brought or about to be brought.”)

The court concludes that the plaintiff has demonstrated probable cause to bring an action for defamation and that, given the unavailability of the IP addresses of the commentators, grants the bill of discovery as to those allegations of the complaint contained in PP 17.b, c, e and g. The defendant is ordered to submit for forensic analysis the lap top hard drive currently used to access, monitor and maintain the Blog and the corresponding server as well as the mobile phone used for the same purposes. In order to safeguard the defendant’s privacy interest, the court orders the parties to attempt to reach an agreement on the terms of a protective order that adequately preserves the defendant’s interests, and to attempt to agree on search a protocol covering procedures, search terms and dates. If the parties are unable to reach agreement on



these subjects they are to submit proposed orders regarding the protective order and search protocols. The court will retain jurisdiction of this action until such time as the parties have filed agreements as to the above or the court resolves any related disputes.

BY THE COURT,



CESAR A. NOBLE, J.

## CHECKLIST FOR CLERK

Docket Number CV 19-6119733-5

Case Name Benvenuto v. Brookman

Memorandum of Decision dated 8-26-21

File Sealed:            yes \_\_\_\_\_ no X \_\_\_\_\_

Memo Sealed:            yes \_\_\_\_\_ no X \_\_\_\_\_

This memorandum of Decision may be released to the Reporter of  
Judicial Decisions for publication. X

This Memorandum of Decision may NOT be released to the  
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Ⓜ HHD-CV19-  
6119733-S

BENVENUTO, VINCENT G. v. BROOKMAN, KEVIN

Prefix: HD4

Case Type: M90

File Date: 11/08/2019

Return Date: 12/03/2019

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Case Look-up

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Information Updated as of: 08/26/2021

## Case Information

Case Type: M90 - Misc - All other

Court Location: HARTFORD JD

List Type: No List Type

Trial List Claim:

Last Action Date: 08/02/2021 (The "last action date" is the date the information was entered in the system)

## Disposition Information

Disposition Date:

Disposition:

Judge or Magistrate:

## Party & Appearance Information

### Party

No  
Fee  
Party  
Category

P-01 VINCENT G. BENVENUTO

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D-01 KEVIN BROOKMAN

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Defendant



Comments

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