COURT OF APPEALS OF VIRGINIA

Record No. 0906-25-4

ARVINDER "SONNY" KAKAR
v.
MEHUL SANGHANI

Present: Judges O'Brien, Friedman and Frucci

Argued at Fredericksburg, Virginia

Opinion Issued November 10, 2026

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Randy I. Bellows, Judge

Rachel L. Loughlin (Charles M. Sims; Joseph M. Rainsbury; O'Hagan Meyer PLLC, on briefs), for appellant.

Imad Matini (Paul Werner; J. Chapman Petersen; Federico J. Zablah; Sheppard Mullin Richter & Hampton, LLP; Chap Petersen & Associates, PLC, on brief), for appellee.

PUBLISHED OPINION BY
JUDGE STEVEN C. FRUCCI

Following a bench trial, the circuit court entered judgment in favor of Mehul Sanghani and dismissed Arvinder "Sonny" Kakar's defamation suit against Mehul Sanghani. On appeal, Kakar contends that the circuit court erred in finding: (1) that the allegedly defamatory publication was qualifiedly privileged and (2) that the publication lacked malice. For the following reasons this Court affirms the circuit court.

BACKGROUND[1]

On November 30, 2020, Octo Consulting Group, LLC ("Octo") acquired Sevatec, Inc. ("Sevatec"). Sanghani was (and still is) the sitting CEO of Octo. Sevatec was founded and run by Kakar. As part of the acquisition agreement, Kakar would join Octo as its "Head of Strategy and Vice Chair of the Board." In that role, Kakar would lead mergers and acquisitions strategy and community service efforts, among other support and transitional tasks to promote community between the merging companies.

Following the deal closure, a disagreement arose regarding the name of the newly merged companies. Kakar insisted that the companies merge names. Octo held two board meetings to consider Kakar's proposal, ultimately concluding that the name would remain "Octo."

The disagreement rifted the relationship between Kakar and Octo, and consequently, Kakar and Sanghani. Following the board decision, Sanghani claims that Kakar ceased his responsibilities and engaged in willful misconduct. Sanghani states that, during one meeting when Kakar was reminded that the name would remain Octo, Kakar cursed at Sanghani and another company representative and made obscene hand gestures at them, telling them to "[f]uck off." Kakar allegedly began to disengage from his responsibilities, canceling meetings, failing to participate in board meetings, and mismanaging projects he was assigned.

During this time, Sanghani began discussing the matter with Robert McCord (who was a major investor in Octo, an advisor and friend to Sanghani, and a former president of the company). Sanghani had "continual" telephone and in-person conversations from March to June with McCord about Kakar's "disagreement[s]" and disengagement from his role at Octo. Several of these conversations were littered with expletives aimed at Kakar.

[1] We view "the evidence and all reasonable inferences fairly deducible from it in the light most favorable to the prevailing party at trial." *Xspedius Mgmt. Co. of Va., LLC v. Stephan*, 269 Va. 421, 425 (2005).

Sanghani made several attempts to resolve the issue with Kakar and encourage reconciliation. On one occasion, Kakar met with the chairman of Octo Platform (the parent company of Octo), and Kakar allegedly "threatened to punch him in the face." In response, the Board formed a Special Committee to investigate Kakar's behavior. The Special Committee excluded both Sanghani and McCord. Nonetheless, Sanghani was present for every meeting to "offer firsthand accounts . . . and offer input to the special committee . . . in their independent investigation."

Several board members also attempted to mend relations with Kakar but were unsuccessful. The Special Committee hired outside counsel to investigate Kakar's behavior. Following the investigation, outside counsel drafted and delivered a Notice of Material Breaches and Willful Misconduct (the "Notice") detailing the Committee's findings of misconduct to Kakar. The Notice was also sent to Sanghani. Sanghani then disseminated it directly to McCord, who was already aware of the Notice, after McCord texted Sanghani asking, "How did Sonny react?" Sanghani added that "[Kakar] sure must have lost his shit." The two continued to unflatteringly discuss Kakar and the situation, with Sanghani noting, "He is a shitty human and deserves all of it," to which McCord responded, "He is an arrogant, narcissistic greedy entitled asshole."

Kakar sued Sanghani for defamation.[2] At the close of Kakar's case-in-chief during the bench trial, Sanghani moved to strike the defamation claim on the grounds of qualified privilege. Following supplemental briefing and a hearing, the circuit court denied the motion, reasoning that qualified privilege was an affirmative defense. After the bench trial, the circuit court

[2] Kakar sued on the grounds that Sanghani had published the allegedly defamatory Notice to McCord. Kakar alleged that "[t]he Termination Notice falsely asserted that as Vice Chair and Head of Strategy of Octo Consulting Group, LLC ('Octo'), Kakar had abdicated his duties, breached his fiduciary duties to Octo, harassed employees, and that he materially breached his duty to manage certain contracts, among other false allegations."

declined to rule on whether the statements in the Notice were false. Rather, it found that the Notice was subject to qualified privilege as a matter of law when it was disseminated to McCord because of McCord's financial interest in the company as an investor and member. Further, it found that there was no clear and convincing evidence of malice to overcome the qualified privilege. As such, it dismissed Kakar's claim of defamation. Kakar appeals.

ANALYSIS

I. Qualified Privilege

Kakar appeals the circuit court's finding that McCord was qualifiedly privileged to receive the Notice from Sanghani. He argues that since McCord did not have an interest or duty in the subject matter, the dissemination of the Notice was defamatory.

In Virginia, defamation requires, "(1) publication of (2) an actionable statement with (3) the requisite intent." *Schaecher v. Bouffault*, 290 Va. 83, 91 (2015). However, otherwise defamatory communications between persons may be entitled to the defense of qualified privilege. *See Larimore v. Blaylock*, 259 Va. 568, 572 (2000). "A qualified privilege attaches to '[c]ommunications between persons on a subject in which the persons have an interest or duty.'" *Cashion v. Smith*, 286 Va. 327, 337 (2013) (alteration in original) (quoting *Larimore*, 259 Va. at 572). "Whether a communication is privileged is a question of law." *Id.* (quoting *Fuste v. Riverside Healthcare Ass'n*, 265 Va. 127, 135 (2003)).

A primary purpose of a qualified privilege is "to encourage open communications on matters of employment while not shielding the use of such communications for an individual's personal malicious purposes." *Larimore*, 259 Va. at 575. Historically, a qualified privilege has been extended to groups such as stenographers, supervisors, and board members. *See, e.g.*, *Chalkley v. Atl. C.L.R. Co.,* 150 Va. at 301 (1928) (stenographers); *Cashion*, 286 Va. at 327 (supervisors); *Larimore*, 259 Va. at 568 (board members). However, Virginia case law is silent

as to whether shareholders have a qualified privilege in such matters. Multiple sister state courts have addressed the question and are persuasive here.[3]

In Delaware, a qualified "privilege protects statements disclosed to any person who has a legitimate expectation in the subject matter." *Lipson v. Anesthesia Servs., P.A.*, 790 A.2d 1261, 1281-82 (Del. Super. Ct. 2001). Relevantly, Delaware found that privilege extends to "shareholders . . . [who] have an 'expectation' (or interest) in [a board member's] behavior as a representative of [a corporation]." *Id.* Similar to the case at hand, in that case, the corporation notified a variety of persons, including the "board of directors and other shareholders and employees," *id.* at 1282, of the plaintiff's medical misconduct, *id.* at 1269, 1271.

The Supreme Court of Utah has found a qualified privilege applied when a defendant "mailed a proxy solicitation to the stockholders of the corporation in which he cited allegations of what he termed fraud, deceit and conspiracy . . . against [the] plaintiffs." *Lind v. Lynch*, 665 P.2d 1276, 1277 (Utah 1983). In that case, the Supreme Court of Utah held that the "defendant . . . and the other stockholders shared a common business interest," therefore, "[h]is letter was protected by a qualified privilege." *Id.* at 1278-79.

The Supreme Court of Nebraska found that shareholders had an interest in the mismanagement of the corporation by an executive. *Young v. First United Bank*, 516 N.W.2d 256, 259 (Neb. 1994). Like in this case, a letter was sent to shareholders by the chairman of the corporation, detailing the mismanagement of the corporation by the plaintiff, and the court found the shareholders were qualifiedly privileged because the parties held a common interest. *Id.*

[3] In the absence of clear precedent, this Court may "find the reasoning in [other jurisdictions] persuasive." *Rash v. Commonwealth*, 9 Va. App. 22, 27 (1989); *see also Cody v. Commonwealth*, 68 Va. App. 638, 653 (2018) (affirming the circuit court after it relied on a Fourth Circuit case citing the Sixth Circuit).

Hawaii, also, has extended a qualified privilege to shareholders. In Hawaii, in a case similar to this one, a court held that "writing and sending the series of letters to the shareholders" was privileged because the defendant "acted in discharge of his private legal duty as corporate secretary and director to investigate and report to the shareholders on the affairs of [the corporation]." *Kainz v. Lussier*, 667 P.2d 797, 801 (Haw. 1983). Additionally, it found that the subject matter was one he "shared a common pecuniary interest [in] with [the corporation's] shareholders." *Id.* at 801-02.

The question at issue is whether a shareholder can have an interest or duty in allegedly defamatory subject matter and thus enjoy a qualified privilege. First, we address whether a shareholder *can* have a qualified privilege in the state of Virginia. In Virginia, to have a qualified privilege, both the disseminator and the receiver of the allegedly defamatory statement must have an interest or duty in the subject matter. *Cashion,* 286 Va. at 337; *see also Larimore*, 259 Va. at 572. Reflecting on the Virginia rule and caselaw set by our sister states, a qualified privilege can apply to a shareholder where (1) the shareholder (2) and the disseminator have an interest or duty in the subject matter. While a shareholder *may* be qualifiedly privileged to know allegedly defamatory material, this does not mean they *are*: the shareholder must still have an interest or duty in the subject matter. We agree with our sister states that a shareholder may have a qualified privilege in light of surrounding circumstances where the shareholder sufficiently has an interest or duty in the subject matter. Because McCord is a major shareholder and was substantially involved in the subject matter, this Court finds he had an interest in it, and therefore, the qualified privilege applies as a matter of law.

Here, Sanghani disseminated the Notice to McCord, the third largest shareholder in Octo and a member of Octo Platform. McCord was also a former executive, the former president, and former COO of Octo, and "is a critical advisor to Mr. Sanghani." Sanghani and McCord have

discussed other employees and company roles. McCord testified that he and Sanghani had discussions specifically about Kakar's role, regarding what McCord "would expect, from my experience, that an owner, being acquired, would do [referring to Kakar], which is . . . transition, execution, . . . integration." McCord was kept updated about the situation, and in at least one written exchange he advised Sanghani on the matter of a restraining order against Kakar.

While McCord was not part of the Special Committee, nor did he advise them, McCord was involved in the subject matter of Kakar's integration, both in his discussions with Sanghani and in his financial interest in the success of the integration. In finding qualified privilege applied, the circuit court noted that "McCord's interest in the financial health and growth of the company . . . is critical." In his role, McCord has a substantial financial interest in the success of Octo, the success of the integration of Octo and Sevatec, and the success of the integration of Kakar as a new executive that represents Octo. He has put a "major portion of his own assets" into the corporation, has held prior high-ranking positions within the company, and has advised the current CEO on matters of concern. Following the example of neighboring jurisdictional precedent, McCord's interest in the subject matter supports a finding of qualified privilege.[4]

Therefore, this Court affirms the circuit court on the matter of qualified privilege.

[4] This is not to say that every shareholder shares an interest in any subject matter regarding a corporation as it relates to the privilege, nor that every subject matter is sufficient simply because it relates to the corporation. However, in light of the facts of this case, the shareholder in question was *substantially* involved in Octo *and* in the subject matter: the success of integrating Kakar into an executive role and the related alleged misconduct. This case is reflective of *Lipson*, which we do not adopt, but note that similarly here McCord, as an involved major shareholder, "[had] an 'expectation' (or interest) in [Kakar's] behavior as representative of [Octo]." 790 A.2d at 1282. It stands to reason that McCord, a major investor who was very involved in the corporation, would have a financial interest in the successful integration of Kakar into Octo.

II. Malice

Kakar also appeals the circuit court's finding that Sanghani's publication of the Notice lacked malice. He argues there was clear and convincing evidence of malice based on Sanghani's conversations with McCord and other involved parties.

Once a communication is deemed privileged, "the question . . . is not whether the charge was true or false, but only whether the privilege was abused or the language employed was uttered and published with malice." *Chalkley*, 150 Va. at 306. "[T]he onus is cast upon the person claiming to have been defamed to prove the existence of malice." *Story v. Norfolk-Portsmouth Newspapers, Inc.*, 202 Va. 588, 590-91 (1961). By clear and convincing evidence, "personal spite or ill will, independent of the occasion on which it was made, [may] . . . establish common law malice." *Cashion*, 286 Va. at 339.

Any one of the following, if shown by clear and convincing evidence, is enough to be a showing of malice: (1) "strong or violent language disproportionate to the occasion is used," *Story*, 202 Va. at 590-91; (2) a showing "that the communication was actuated by some sinister or corrupt motive such as hatred, revenge, personal spite, ill will, or a desire to injure the plaintiff," *Chesapeake Ferry Co. v. Hudgins*, 155 Va. 874, 902 (1931); *see also Smalls v. Wright*, 241 Va. 52, 55-56 (1991) ("Common-law malice is 'behavior actuated by motives of personal spite, or ill-will, independent of the occasion on which the communication was made.'" (quoting *The Gazette, Inc. v. Harris*, 229 Va. 1, 18 (1985))); (3) the "equivalent to malice, that the communication was made with such gross indifference and recklessness as to amount to a wanton or wil[l]ful disregard of the rights of the plaintiff," *Chesapeake*, 155 Va. at 902; (4) "the statements were made with knowledge that they were false or with reckless disregard for their truth," *Cashion*, 286 Va. at 339; (5) "the statements were not made in good faith," *id.*; or (6) the

"statements [we]re communicated to third parties who have no duty or interest in the subject matter," *id.* (alteration in original). This list is non-exhaustive. *Id.*

"[M]alice [must] be proven to exist at the time the words were spoken." *Chesapeake*, 155 Va. at 907; *but see Smalls*, 241 Va. at 56 (analyzing prior context to determine if the defendant was malicious). "The question of whether a defendant has lost or abused the privilege is a question of fact for the jury." *Cashion*, 286 Va. at 339 (quoting *Fuste*, 265 Va. at 135).[5]

The circuit court found at the conclusion of its bench trial that Kakar failed to show clear and convincing evidence of malice. It stated that "in order for the Plaintiff to prevail, he must not only prove the falsity, he must also prove common law malice," and it assumed "that one or more of the statements were false.[6]"

Kakar contends that he met the burden of showing by clear and convincing evidence actual malice by Sanghani when he disseminated the Notice to McCord. Kakar admitted evidence that Sanghani texted McCord, months prior to the dissemination of the Notice, that he planned to talk to lawyers about a restraining order, and that the goal was "to buy [Kakar] out" by "offer[ing] him something to make him go the fuck away and then sweep up his equity." When Sanghani sent the Notice to McCord, he stated he was "sure [Kakar] must've lost his shit." Sanghani added "he is a shitty human and deserves all of it." In the same conversation, McCord stated that Kakar "is an arrogant, narcissistic greedy entitled asshole," to which Sanghani agreed.

[5] "When a trial court renders judgment after a bench trial, we cannot set aside that judgment as contrary to the evidence 'unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it.'" *Moncrieffe v. Deno*, 76 Va. App. 488, 496 (2023) (quoting Code § 8.01-680). "We give their determinations 'the highest degree of appellate deference.'" *Id.* (quoting *Palmer v. R.A. Yancey Lumber Corp.*, 294 Va. 140, 158 (2017)).

[6] The circuit court did not have to assume the statement's falsity or truth to complete the analysis. *Chalkley*, 150 Va. at 306.

Kakar argued that this was clear and convincing evidence of "personal spite, ill-will, and a desire to injure Kakar."

On the other hand, Sanghani notes that, considering Kakar's behavior, the comments made surrounding the dissemination of the Notice were not disproportionate to the occasion. Sanghani made several attempts to resolve the issue with Kakar and encourage reconciliation, beginning shortly after the relationship between Kakar and Octo began to deteriorate. Sanghani had been in contact with McCord regarding Kakar since around the time the disagreement began. Further, Sanghani testified that the text messages were sent in frustration due to Kakar's alleged misconduct, citing Kakar's alleged threats to step back from his responsibilities and physically harm the Chairman of Octo Platform. Consequently, Sanghani claims the messages were proportionate to the occasion. Sanghani testified that he believed the contents of the Notice to be true. Sanghani argues that "considering all the evidence 'in the light most favorable to' Sanghani," Kakar failed to show with clear and convincing evidence that the dissemination was motivated by spite, ill-will, a desire to injure Kakar independent of the occasion, or any other element required, and thus the circuit court was not plainly wrong.

In viewing "the evidence and all reasonable inferences fairly deducible from it in the light most favorable to the prevailing party at trial," the context of Sanghani's dissemination of the Notice to McCord supports the circuit court's finding that Sanghani's messages were not malicious because they were not disproportionate to the occasion. *Xspedius Mgmt. Co. of Va., LLC v. Stephan*, 269 Va. 421, 425 (2005) (discussing the standard of review for a prevailing party at trial). Sanghani's language was proportionate considering Kakar's alleged misconduct, threats, and behavior. Further, Sanghani's numerous attempts to remedy the situation suggest the dissemination was not motivated by ill-will or malice. This is further supported by Sanghani's testimony that he believed the contents of the Notice were true. Additionally, Sanghani had kept

McCord informed and had sought advice from McCord about Kakar on prior occasions, dissuading an argument of bad faith and supporting McCord's substantial interest in the subject matter as a major investor. In deference to the circuit court's factual findings, it does not appear the circuit court plainly erred, therefore, it is affirmed on this issue.

CONCLUSION

For the foregoing reasons, this Court affirms the circuit court.

Affirmed.