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Summary of Jacobs v. Adelson, 130 Nev. Adv. Op. 44

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Jacobs v. Adelson, 130 Nev. Adv. Op. 44 (May 30, 2014)¹
CIVIL LAW: ABSOLUTE PRIVILEGE

Summary

The Court determined whether the absolute privilege rule applies to statements made to the media.

Disposition

Communications made to the media in an extrajudicial setting are not absolutely privileged when the media holds no more significant interest in the litigation than the general public.

Factual and Procedural History

Steven C. Jacobs filed a wrongful termination complaint against Las Vegas Sands Corporation (LVSC) and Sands China Ltd. (Sands China) alleging that Sheldon G. Adelson, the chief executive officer and majority shareholder of LVSC, demanded Jacobs to engage in “illegal” activities. Along with personal attacks against Adelson, Jacobs further alleged that his refusal to engage in such activities led to threats by Adelson and his termination. LVSC and Sands China filed a motion to dismiss Jacobs’ complaint, leading to hearing that received much attention from the media. Following the hearing, the *Wall Street Journal* published an article that quoted an email Adelson sent stating that Jacobs had not refuted any of the reasons as to why he was fired, and, instead, he had explained his termination by using lies and fabrications.

Jacobs later amended his complaint to include a defamation per se claim against Adelson, LVSC, and Sands China regarding the statements published in the *Wall Street Journal*. Adelson, LVSC, and Sands China filed motions to dismiss the defamation claim, arguing that the statements were absolutely privileged communications made in the course of judicial proceedings or that they were protected by the conditional privilege of reply. The district court granted the motion to dismiss, determining that Adelson’s statements were absolutely privileged communications relating to the litigation; the district court declined to consider whether his statements were covered by the conditional privilege of reply.

Discussion

The absolute privilege

The existence of an absolute privilege for defamatory statements made during the course of judicial proceeding has long been recognized in Nevada. The absolute privilege can apply to defamatory statements made in the context of a judicial proceeding if the proceeding is contemplated in good faith and under serious consideration and if the communication is related to the litigation.² Furthermore, statements made to someone who is not directly involved in the judicial proceeding will only be protected by the absolute privilege if the recipient is

¹ By Kylee Gloeckner.

² Clark Cnty. Sch. Dist. v. Virtual Educ. Software, Inc., 125 Nev. 374, 388, 213 P.3d 496, 508 (2009).

“significantly interested” in the proceeding.³ Here, Jacobs argued that the statements were made outside the judicial proceedings to disinterested persons; therefore, the statements are unrelated to the litigation and the absolute privilege does not apply. Conversely, Adelson argued that statements made to the media should be included in the scope of the absolute privilege rule and that the absolute privilege does apply because his statements were made during the course of the judicial proceeding and were directly related to the lawsuit. The Court rejected Adelson’s arguments and agreed with Jacobs that the absolute privilege did not apply.

Application of the absolute privilege in the media context

The Court has never addressed whether the absolute privilege applies to statements made to the media; however, it has held that communications are not related to judicial proceedings when made to someone without an interest in the outcome. Additionally, the majority of states have held that communications made to the media are not protected by the absolute privilege rule, and the policy considerations underlying the rule are not applicable to statements made to the media. Thus, the statements made to the media are not subject to absolute privilege.

Here, the statements were made outside the judicial proceeding because the *Wall Street Journal* does not have an interest, other than that of an observer. The dissent argued that the statements are privileged and that the media and the public have a significant interest due to the widespread media coverage of the underlying litigation. The Court did not agree and concluded that in order to determine if there is a significant interest, the recipient’s legal relationship to the litigation must be assessed and not its interest as an observer. Here, the *Wall Street Journal* did not have a direct interest in the outcome of the proceedings and did not have a legal or financial interest in the litigation; therefore, it did not have a significant interest and Adelson’s statements are not protected by the absolute privilege rule.

The conditional privilege of reply

Additionally, Adelson argued that his statements were privileged because they were made as a direct response to Jacobs’ defamatory statements in the complaint. The conditional privilege rule allows a limited right to apply for those who are attacked with defamatory statements. However, because the district court declined to consider these arguments and because the factual record has not been developed, the Court declined to address the applicability of the conditional privilege.

Conclusion

Adelson’s communications made to the media were not absolutely privileged because, in this case, the *Wall Street Journal* holds no more significant interest in the litigation than the general public. The Court vacated the district court’s dismissal order and remanded the case to the district court for further proceedings.⁴

³ Fink v. Oshins, 118 Nev. 428, 436, 49 P.3d 640, 645-46 (2002).

⁴ Judge Cherry with Gibbons and Parraguirre disagree with the majority’s conclusion that the absolute privilege rule does not extend to statements made to the media.