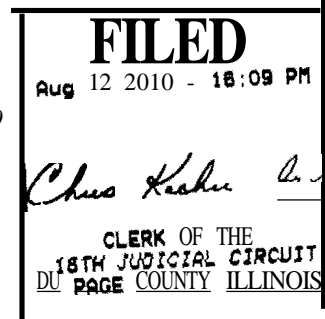


IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DuPAGE COUNTY, WHEATON, ILLINOIS

CONSTANTINE P. XINOS,

2010)001003
Plaintiff,)
Status Date: 11/09/10)
Mgmt Date: 01/31/11)
Assigned To: 2016)
)
)
)
Defendants.)



vs

SUZANNE O'BRIEN, DENNIS
O'BRIEN and MIKE STEWART,

COMPLAINT

NOW COMES the Plaintiff, CONSTANTINE P. XINOS, by and through his attorneys, SCHIROTT, LUETKEHANS & GARNER, P.c., and complaining of the Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, states unto this Honorable Court the following:

COUNT I

Defamation Per Se as to Defendants O'Brien and Stewart

1. Plaintiff is an individual who resides at 149 Briarwood North in the Village of Oak Brook, County of DuPage, State of Illinois.
2. At all relevant times, the Plaintiff was and is an attorney licensed to practice law in the State of Illinois.
3. As an attorney licensed to practice law in Illinois, the Plaintiff is required to be of good moral character.
4. Defendant, SUZANNE O'BRIEN, is an individual whose principal place of residence is 804 60th Place, Downers Grove, County of DuPage, State of Illinois.
5. Defendant, DENNIS O'BRIEN, is an individual whose principal place of residence is 804 60th Place, Downers Grove, County of DuPage, State of Illinois.

6. Defendant, MIKE STEWART, is an individual whose principal place of residence is 118 Briarwood Loop in the Village of Oak Brook, County of DuPage, State of Illinois.

7. On August 13, 2009, Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, published, or caused to be published, certain statements about Plaintiff to various third parties, including, but not limited to, the Board of Governors and residents of Briarwood Lakes, a subdivision located in the Village of Oak Brook, County of DuPage, State of Illinois.

8. Specifically, on August 13, 2009, Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, published, or caused to be published, to third parties the statements contained in the correspondence attached hereto as Exhibit A.

9. The Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, stated that the Plaintiff failed to comply with applicable association rules, regulations and covenants. *See Ex. A.*

10. The Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, stated that Plaintiff's actions in his capacity as president, managing agent and managing broker of the Briarwood Lakes Community Association, an Illinois not-for-profit corporation (the "Association"), were "recalcitrant" and "has cost us many added thousands of dollars in legal expenses." *See Ex. A.*

II. Further, the Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, stated that Plaintiff engaged in behavior which "is unethical, and immoral." *See Ex. A.*

12. Further, the Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, stated that Plaintiff "does not have the right to choose and abide by the Covenants only when it's profitable for him to do so!" *See Ex. A.*

13. Further, the Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, stated that Plaintiff interfered with the Association's rights "by the *arbitrary* exercise of the right of first refusal, because he lost the bidding sets a dangerous precedent!" *See Ex. A.*

14. Each statement set forth above and contained in Exhibit A is false.

15. The Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, enjoyed no privilege to publish the false statements set forth herein.

16. The foregoing false statements about Plaintiff harm the Plaintiffs reputation and lowers Plaintiff in the eyes of the community.

17. The foregoing false statements about Plaintiff would deter the community from associating with Plaintiff.

18. The Defendants', SUZANNE O'BRIEN's, DENNIS O'BRIEN's and MIKE STEWART's, statements impute that Plaintiff is unable to perform or lacks integrity in performing his employment duties as an attorney and as president, managing agent and managing broker of the Association.

19. The Defendants', SUZANNE O'BRIEN's, DENNIS O'BRIEN's and MIKE STEWART's, statements impute that Plaintiff lacks moral character, integrity and honesty and, as such, prejudice Plaintiff in his profession as an attorney.

20. The statements set forth herein made by Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, were made to impugn Plaintiffs integrity, damage his good name and reputation in the community and to harm the Plaintiff in his profession.

21. At the time the Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, made the statements, Defendants knew the statements were false or made the statements with reckless disregard for their falsity.

22. As a direct and proximate result of the Defendants', SUZANNE O'BRIEN's, DENNIS O'BRIEN's and MIKE STEWART's, publication of the statements set forth herein and in Exhibit A, Plaintiff has suffered damages, including, but not limited to, damage to his good name and reputation.

23. The statements published by the Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, as set forth above and as set forth in Exhibit A constitute defamation *per se*.

WHEREFORE, the Plaintiff, CONSTANTINE P. XINOS, prays this Honorable Court will enter judgment in his favor and against the Defendants, SUZANNE O'BRIEN, DENNIS O'BRIEN and MIKE STEWART, in an amount in excess of Fifty Thousand Dollars (\$50,000), plus punitive damages to be determined by the trier of fact and the costs of this action.

COUNT II

Defamation Per Se as to Defendant Stewart Only

1 - 23. The Plaintiff affirms, restates and realleges paragraphs 1 through 23 of Count I as and for his paragraphs 1 through 23 of this Count II as if once again fully set forth herein.

24. On or about August 17, 2009, the Defendant, MIKE STEWART, re-published the statements set forth above and as contained in Exhibit A by sending the correspondence containing the defamatory statements to numerous third parties, including members of the Association

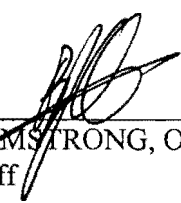
25. Defendant, MIKE STEWART, enjoyed no privilege to re-publish the statements set forth above and contained in Exhibit A.

26. The statements set forth herein re-published by Defendant, MIKE STEWART, were made to impugn Plaintiffs integrity, damage his good name and reputation in the community and harm the Plaintiff in his profession.

27. At the time the Defendant, MIKE STEWART, re-published the statements about Plaintiff as set forth herein and contained in Exhibit A, Defendant knew the statements were false or re-published the statements with reckless disregard for their falsity.

28. As a direct and proximate result of the Defendant's, MIKE STEWART, re-publication of the statements set forth herein and in Exhibit A, Plaintiff has suffered damages, including, but not limited to, damage to his good name and reputation.

WHEREFORE, the Plaintiff, CONSTANTINE P. XINOS, prays this Honorable Court will enter judgment in his favor and against the Defendant, MIKE STEWART, in an amount in excess of Fifty Thousand Dollars (\$50,000), plus punitive damages to be determined by the trier of fact and the costs of this action.


BRIAN J. ARMSTRONG, One of the Attorneys
for the Plaintiff

Phillip A. Luetkehans
Brian J. Armstrong
SCHIROTT, LUETKEHANS & GARNER, P.e.
105 East Irving Park Road
Itasca, IL 60143
630-773-8500
Attorney No. 8500

7 Due to the time frame of this issue needing to be resolved, I am submitting this letter through our residents internal mail (expedited communications).

Mike Stewart
Villa 118

To: The Board of Directors and Residents of Briarwood Lakes
From: Suzanne and Dennis O'Brien
Re: Property located at 156 Briarwood
Date: August 13, 2009

As you are aware the above property has been in foreclosure and for sale by the Washington Mutual Bank for almost one year. The asking price for this property has also been well known and publicized. Our bid was accepted for this property by the bank on July 24th. We were the highest bid in an open, fair and direct manner. We agreed to a mutually acceptable closing date of 8/11/2009 at 10: AM.

Washington Mutual emailed Connie on July 29th requesting the sign off documents.

At that point, the 15 day clock for the association to respond activated.

Connie, however, conveniently claims that said notice was never given and that he only received the mail version on August 6th.

Late Monday, August 10th, we were notified by Washington Mutual Bank that the president and property manager of our association refused to sign the necessary papers for the bank for this closing to occur.

Further Inquiry disclosed that the president wanted to assign "the right of first refusal" to a third party for the same price but the third party would pay an additional \$10,000 to the association. To wait until the bank accepted the offered price in a fair bidding process and circumvent that process with a third party proposal is unfair and unethical. I do not believe that this was even the intent of your by-laws. The recalcitrant actions of this president has cost us many added thousands of dollars in legal expenses.

Knowing the reputation of Briarwood Lakes, it is difficult to believe that this action would even be considered, let alone be brought forth. Last night at your association meeting, Connie Xinopoulos did indeed present this to the board. Many of the residents present, voiced enough concern over the propriety, ethics, and morality of doing this, that the Board decided to reconvene later in the week - to be determined - when the full board could be present to discuss this.

According to Connie Xinopoulos, the Association has not exercised its right of first refusal in over twenty years. He said that the last time the right was exercised; a realtor had taken advantage of an elderly unit owner and had the realtor's friend make an offer for an amount significantly less than fair market value. The Association at the time intervened to protect the best interests of all of the property owners in the Association: it exercised its right of first refusal, bought the property itself, and then resold it to an uninterested third party for fair market value.

This time the situation is dramatically different. This is a foreclosure situation, where we made a fair bid which was accepted. The Association does not want to buy the property for any purpose that would protect the interests of the community; Connie Xinopoulos wants to sell the Association's right of first refusal to the highest bidder which he admitted during the open board meeting on August 12, 2009.

Please do not let Connie convince you that he is trying to preserve property values. You need to be aware the Connie, himself, bid on this property for an amount far below what the bank was asking. His bid was denied by the bank. As such, he needs to recuse himself. His behavior is unethical, and immoral.

Please do not let Connie convince you that he has the right to basically steal this contract from us. The Covenants clearly state that the only reason to disapprove a contract is to maintain a ratio of 85% of the community's residents who are over 55 years old. As was well stated last evening by some of your neighbors, Connie does not have the right to choose to abide by the Covenants only when it's profitable for him to do so!

Residents, please help us. Allowing Connie to interfere and kill this contract by the arbitrary exercise of the right of first refusal, because he lost the bidding sets a dangerous precedent! My husband and I have been married for over 40 years and are empty nesters. We have lived in the Hinsdale/Burr Ridge area for over 30 years. We look forward to turning the above mentioned property into a very beautiful home. PLEASE ATTEND THE UPCOMING MEETING, the date of which is to be determined by Connie Xinopoulos within the next few days. Please watch for the letter and come support the integrity and preservation of your wonderful community. Please tell Connie and your board to approve our contract and issue the Association's waiver of its right of first refusal.

Sincerely,
Dennis and Suzanne O'Brien
790 Jorie Blvd.
Oakbrook, Illinois 60523

