

IN THE STATE COURT OF GWINNETT COUNTY  
STATE OF GEORGIA

EMERY SHANE SHEFFIELD,	)	
	)	
Plaintiff,	)	
	)	Case number:
vs.	)	20C-3866-4
	)	
DELOITTE & TOUCHE, LLP, KAREN	)	
LEHTO and VIRGINIA STATON,	)	
	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS DELOITTE & TOUCHE, LLP'S AND VIRGINIA STATON'S  
MOTION FOR SUMMARY JUDGMENT

Emery Shane Sheffield ("Sheffield") was employed by Hoshizaki America, Inc. ("Hoshizaki"), an American subsidiary of a Japanese company, Hoshizaki Japan ("HJ"), as the Chief Financial Officer ("CFO") of the American subsidiary. While employed with Hoshizaki as the CFO, Sheffield assumed some duties and responsibilities that had previously been performed by Karen Lehto ("Lehto") as the Human Resources Director. Deloitte & Touche, LLC ("Deloitte") is an independent auditor that was retained by Hoshizaki to perform an audit.

In 2019, while performing that audit, Deloitte received reports of alleged improper accounting practices by Sheffield. As these reports raised concerns about management integrity, Deloitte alerted HJ, as required by professional standards. Deloitte could not continue the audit until the allegations were investigated. HJ engaged an outside law firm, Miller & Chevalier Chartered ("M & C") who in turn engaged forensic accountants Ankura Consulting, LLC ("Ankura") to conduct an independent investigation. At the conclusion of the investigation, M & C provided HJ and Hoshizaki with recommendations for remediation and potential personnel decisions, including Sheffield's termination. Hoshizaki subsequently terminated Plaintiff. Deloitte resumed the audit process at the conclusion of the investigation.

Sheffield is the CFO of Alligare, LLP ("Alligare"). Alligare is a different audit client of Deloitte's. In 2020, Deloitte began its audit of Alligare, which is the subsidiary of an Israeli company

ADAMA Corporation (“ADAMA”). Defendant Virginia Staton (“Staton”), a Managing Director at Deloitte, led the engagement team for the Alligare audit. Staton had not had prior interactions with Sheffield and had not worked on the Hoshizaki investigation or spoken to anyone at Hoshizaki.

During the audit work, Staton learned that Sheffield had recently been hired as Alligare’s CFO. As a standard part of the audit procedures and under applicable professional standards, Staton and the audit team were required to reach a professional judgment as to whether they could rely on representations from members of management responsible for oversight of Alligare’s financial reporting. Sheffield, as the CFO, was that person. Deloitte and Staton (the “Deloitte Defendants”) determined after internal consultation, and in light of the findings in the Hoshizaki investigation, that they could not rely on management representations from Sheffield and communicated that decision to Alligare. Sheffield threatened to file a lawsuit, which he ultimately filed.

Sheffield alleged in the Complaint that Lehto, acting with malice, made and published several false defamatory statements about him, including the assertion that Sheffield had colluded with management to have his predecessor CFO fired. Sheffield further asserts that as a result of Lehto’s tortious acts towards him he was unemployable in his current profession and with his current employer and that as a CFO who cannot sign a management representation letter (“MRL”) or other documents requested by the company’s auditor he is unable to perform a vital function of his job.

Plaintiff has alleged claims of defamation and interference with current and prospective business relations. Sheffield is seeking damages for these claims, as well as attorney’s pursuant to O.C.G.A. §13-6-11 and punitive damages.

Defendants, Deloitte’s and Staton’s Motion for Summary Judgment is before this Court. After consideration of the Motion and brief, response thereto, reply briefs, oral arguments, affidavits and all other matters of record, and the applicable and controlling law, this Court finds as follows:

To prevail on a motion for summary judgment pursuant to O.C.G.A. §9-11-56, the moving party

must demonstrate that there are no genuine issues of material fact and that the undersigned facts, taken in the light most favorable to the non-moving party, warrant judgment as a matter of law. However, when the movant is the defendant who will not bear the burden of proof at trial, that movant does not have to affirmatively disprove the non-moving party's case, instead, the burden on the moving party is discharged by establishing by evidence in the record that there is an absence of evidence to support at least one essential element of the non-moving party's case.

Pursuant to O.C.G.A. §51-5-4, defamation consists in making charges against another in reference to his trade, office or profession, calculated to injure him therein or uttering any disparaging words productive of special damage which flows naturally therefrom. The tort of defamation has four elements: "(1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault by the defendant amounting at least to negligence and (4) special harm or the actionability of the statement irrespective of special harm." Eason v. Marine Terminals Corp., 309 Ga. App. 669 (2011).

In order to establish a viable claim for defamation, Sheffield must prove a false and defamatory statement made about him. However, when a challenged statement is true, a defamation claim cannot succeed as a matter of law. In the case at bar, the communication made by the Deloitte defendants to Alligare was that they would not accept an MRL from Sheffield. This is not a false and defamatory statement as a statement that one would not or should not do business with a person is not a statement that can be proven false. Chaney v. Harrison & Lynam, LLC, 308 Ga. App. 808 (2011). See also Gettner v. Fitzgerald, 297 Ga. App. 258 (2009).

A Plaintiff cannot assert what the opposing party's statement means in order to substantiate his claim for defamation. The trial court must look at the statement and determine as a question of law if it is susceptible to defamatory interpretation. Ferguson v. Park Newspapers of Georgia, Inc., 148 Ga. App. 848 (1979). Opinions about a person's professional abilities, even if they are negative opinions, cannot be

defamatory unless they state or imply facts that are provably false. N. Atlanta Golf Operations, LLC v. Ward, 363 Ga. App. 259 (2022).

The evidence before this Court, including Sheffield's deposition, does not show that the Deloitte defendants stated that Sheffield was incompetent, untrustworthy or dishonest. Sheffield inferred from the Deloitte defendants' refusal to accept and MRL was equivalent to them making these negative characterizations. However, implications are only defamatory if they imply specific facts or facts that can be disproven. N. Atlanta Golf Operations, LLC. The Court does not find that there is evidence that the statements implied a defamatory fact and even if it did it would merely be opinion.

The second element of a defamation claim requires that the communication be unprivileged. Georgia law sets forth that accountant-client communications are subject to a conditional privilege related to professional obligations and cannot be the basis for a defamation action unless actual malice is shown. Sheffield must provide proof of malice to overcome this privilege; he cannot rely solely on conclusory allegations unless he can substantiate those facts thus showing a material issue for trial. Saye v. Deloitte & Touche, LLP, 295 Ga. App. 128 (2008). To do so, Sheffield must demonstrate that Deloitte knew their statements were false or that they published them with "reckless disregard of the truth." Neff v. McGee, 346 Ga. App. 522 (2018). A Plaintiff must demonstrate by clear and convincing evidence that defendants "in fact entertained serious doubts as to the truth of [their] statements." Id.

There is no evidence in the record of "actual malice." Sheffield does not dispute that the M & C investigation reached the conclusions that it did nor that the Deloitte defendants as independent auditors had a professional obligation to evaluate Sheffield's credibility and determine if they could rely on him during their audit. Furthermore, there is no evidence before this Court of any motivation on the part of Deloitte to retaliate against Sheffield. Nor is there evidence that Staton had any personal animus toward Sheffield; Staton had not met Sheffield. Deloitte and Alligare had a relationship before Sheffield began his employment with Alligare. Deloitte did not communicate any information to Alligare about the

Hoshizaki investigation, not even the fact that there was an investigation.

Plaintiff did not meet his burden of establishing by clear and convincing evidence that the Deloitte Defendants acted with actual malice. The Deloitte Defendants' statements to Alligare were privileged as they were made in connect with discharging their professional obligations

A claim for tortious interference with business relations requires proof that defendant: (1) acted improperly and without privilege, (2) acted purposely and with malice with the intent to injure, (3) induced a third party or parties not to enter into or continue a business relationship with the plaintiff and (4) caused the plaintiff financial injury. In addition, the plaintiff must show that the defendant is "a stranger to the business relationship" at issue, without "a legitimate interest in either the contract or a party to the contract." Cox v. City of Atlanta, 266 Ga. App. 329 (2004).

O.C.G.A. §51-5-7(3) provides that in the context of tortious interference statements are privileged when they are "made with a good faith intent on the part of the speaker to protect his or her interest in a matter in which it is concerned." Statements made with malice would not be considered privileged, however, plaintiffs must provide more than mere conclusory allegations of malice to avoid summary judgment on the issue of privilege. Saye. As set forth above, there is no evidence in the record to support Sheffield's conclusory allegations of malice. Speculation is not sufficient to reach this burden.

The Court further finds that there is no evidence to support Sheffield's contention that the Deloitte Defendants' erred as to their decision regarding the management representations. The Deloitte Defendants had a legitimate business interest, under the applicable auditing standards, to make certain that they could accept representations from management of the company they were auditing. The Deloitte Defendants made their determination that they could not accept the representations based on confidential information they obtained relating to Sheffield's prior employment with another client of Deloitte's.


Malice, in this context, is not present when defendants have "valid business concerns that motivate their actions." Renden, Inc v. Liberty Real Estate, Ltd P'ship III, 213 Ga. 333 (1994). Sheffield

has the burden of demonstrating that the Deloitte Defendants directly intended to damage his business relationship with Alligare. To do so, he cannot rely on speculation which only raises a conjecture or a possibility. The Court does not find any evidence in this case that the Deloitte Defendants had any malicious intent to harm Sheffield. The Deloitte Defendants had a clear business purpose - to ensure that they could rely upon management representations in conducting the independent audit.

To satisfy the third element, the defendants must be strangers to the business relationship. Alligare and the Deloitte Defendants had a business relationship as client and auditor respectively prior to Sheffield's employment with Alligare. Sheffield set forth in his Amended Complaint that being able to sign an MRL for Alligare's auditor was a "vital function" of his employment as CFO. Thus, the business relationship between the Deloitte Defendants and Alligare and the relationship between Alligare and Sheffield are interwoven. The Deloitte Defendants' decision not to accept Sheffield's MRL was made directly as part of their business relationship with Alligare. And, Sheffield's ability to perform his duties as Alligare's CFO directly impacted the Deloitte Defendants' obligations as auditor. As such, the Deloitte Defendants were not strangers to the relationship between Sheffield and Alligare as it related to the audit Deloitte was hired to perform.

This Court does not find that there are any genuine issues of material fact remaining in this case. Therefore, Defendants Deloitte's and Staton's Motion for Summary Judgment is proper and is hereby GRANTED as to all claims against Deloitte and Staton.

SO ORDERED this 10<sup>th</sup> day of May, 2023.

  
Ronda S. Colvin, Judge  
State Court of Gwinnett County

copies to:  
attorneys of record

Emery Shane Sheffield vs. Deloitte & Touche, LLC et al, 20C-3866-4, Order Granting Defendants Deloitte and Staton's Motions for Summary Judgment