
In The
Supreme Court of Virginia

RECORD NO. 201231

ATCHUTHAN SRISKANDARAJAH,

Petitioner – Appellant,

v.

**INDRAMOHAN CHELLIAH, REKHA MOHAN,
and SANKAR PRABHUKUMAR,**

Respondents – Appellees.

BRIEF IN OPPOSITION

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Statement of the Case and Material Proceedings Below

The Plaintiff/Petitioner in this defamation case, Atchuthan Sriskandarajah, is a Virginia attorney. This action arises out of a bar complaint filed against him by Defendant/Respondent Indramohan Chelliah.¹ The basis for the bar complaint was a series of international wire transfers totaling \$80,250 sent from Mr. Sriskandarajah's client trust account to a personal account in India. Based on that unusual transfer of money, Mr. Chelliah asked the Bar to determine whether Mr. Sriskandarajah had "potentially mismanaged client trust funds" on the ground that "these acts put the lawyer in direct violation of various provisions of Rule 1.15 of the Virginia State Bar Professional Guidelines." (Am. Compl. ¶ 10). Shortly after the Bar announced its determination that Rule 1.15 had not been violated, Mr. Sriskandarajah brought this action for defamation, claiming the Defendants' characterization of his conduct was "false."

¹ The Amended Complaint alleges that all three Defendants "drafted the [bar] complaint, together" (Am. Compl. ¶ 5), but only Mr. Chelliah's name appears on the complaint form.

Mr. Sriskandarajah filed his defamation action on October 25, 2019. While he did not deny the factual basis for the bar complaint (*i.e.*, that he transferred \$80,250 from his law firm's trust account directly into a personal account he owned in India), he claimed he had nevertheless been defamed by what he referred to, without elaboration, as a "false bar complaint". (Compl. ¶¶ 2, 8). The Defendants demurred, due in large part to Mr. Sriskandarajah's failure to identify the exact words in the bar complaint that he claimed were defamatory. The trial court agreed and sustained the Demurrer, without prejudice, on January 31, 2020.

Mr. Sriskandarajah filed an Amended Complaint on February 14, 2020, clarifying that his defamation claim was based on the assertion in the bar complaint that the wire transfers at issue were "in direct violation of various provisions of Rule 1.15 of the Virginia State Bar Professional Guidelines." (*See* Am. Compl., Count One). Mr. Sriskandarajah also decided to raise the stakes by adding a second count (for statutory business conspiracy) and increasing his *ad damnum* from \$600,000 to \$2,400,000.00.

The Defendants demurred again,² this time arguing (among other things) that the statement about violating the rules of ethics amounted to a non-actionable statement of opinion. With respect to the business-conspiracy claim, the Defendants pointed out that Mr. Sriskandarajah had failed to allege any damages (a necessary element of the cause of action).

In his Response to Amended Demurrer filed on April 22, 2020, Mr. Sriskandarajah argued that the statement at issue was not just the one about violating Rule 1.15 but also the immediately preceding sentence in the bar complaint stating that Mr. Sriskandarajah “potentially mismanaged client trust funds and mis-accounted for client trust funds.” (Response to Am. Dem. ¶ 14). Nowhere in his Response did Mr. Sriskandarajah take the position that any other statements were at issue or needed to be analyzed by the trial court.

Oral argument on the Amended Demurrer to Amended Complaint took place by remote hearing on July 10, 2020. At the hearing, Defendants

² The Defendants filed their Demurrer to Amended Complaint on March 6, 2020, then followed up with an Amended Demurrer to Amended Complaint on April 3, 2020.

argued that the statements at issue (including the assertions about potentially mismanaging client funds) amounted to non-actionable expressions of opinion. Mr. Sriskandarajah argued that these statements were all assertions of fact. The trial court agreed with the Defendants and sustained the Amended Demurrer as to Count One. At no time during the hearing (or at any other time prior to filing his Petition for Appeal) did Mr. Sriskandarajah take the position that the trial court needed to consider any other statements.

The trial court also sustained the Demurrer as to Count Two on the ground that Plaintiff had failed to allege any damages caused by the alleged business conspiracy. Thus, on July 10, 2020, the trial court sustained the Amended Demurrer in full and dismissed the case with prejudice.

As the hearing took place remotely, the trial court invited the parties to file with the court any objections to the court's ruling. On July 22, 2020, Mr. Sriskandarajah filed a long list of eight enumerated objections. Mr. Sriskandarajah made no objection to the trial court's supposed failure to consider other passages from the bar complaint, or to the trial court's

finding that Mr. Sriskandarajah had failed to plead damages with respect to his business-conspiracy claim.

Statement of Facts

On or about April 29, 2019, Defendant Indramohan Chelliah filed a complaint against Mr. Sriskandarajah, a Virginia attorney, with the Virginia State Bar (“VSB”). (*See* Bar Complaint, attached to Complaint). Mr. Chelliah was not a client but someone who had “managed [Mr. Sriskandarajah’s] accounting, bookkeeping and paralegal operations.” (*See id.* at 2). The basis for the bar complaint was a series of international wire transfers totaling \$80,250 sent by Mr. Sriskandarajah from his client trust account to a personal account in India.³ Based on that unusual transfer of money, Mr. Chelliah asked the VSB to determine whether Mr. Sriskandarajah had “potentially mismanaged client trust funds” on the ground that “these acts put the lawyer in direct violation of various

³ The fact that these wire transfers took place is not in dispute. Mr. Sriskandarajah takes issue only with the characterization of these wires transfers as unethical or improper.

provisions of Rule 1.15⁴ of the Virginia State Bar Professional Guidelines.”
(Am. Compl. ¶ 10).

The VSB investigated Mr. Chelliah’s complaint for approximately six months and ultimately dismissed it, concluding it was unable to find “clear and convincing evidence of any ethical violation.” (Compl. ¶ 10). Shortly after the VSB dismissed the complaint, Plaintiff brought this action against the Defendants, claiming they conspired to defame him. (Am. Compl. ¶ 2). Mr. Sriskandarajah’s position is that the VSB’s finding that his wire transfers had not violated Rule 1.15 means that Mr. Chelliah’s VSB inquiry suggesting otherwise was “false.”

Standard of Review

The legal question presented by a circuit court’s decision to sustain a demurrer requires application of a de novo standard of review. *Cline v. Dunlora S., LLC*, 284 Va. 102, 106 (2012). A demurrer tests the legal sufficiency of a pleading and should be sustained if the pleading, considered in

⁴ Virginia Rule of Professional Conduct 1.15, entitled “Safekeeping Property,” contains the rules governing the proper handling of client money.

the light most favorable to the plaintiff, fails to state a valid cause of action.

Welding, Inc. v. Bland Cty. Serv. Auth., 261 Va. 218, 226 (2001).

Argument

I. The Plaintiff Did Not Preserve His Assignments of Error in the Trial Court.

Mr. Sriskandarajah argues in his First Assignment of Error that “the trial court erred when...it found that the Plaintiff offered only a single quote in support of his claim for defamation...” (Pet. at 2). First of all, that Mr. Sriskandarajah based his defamation claim on a single quote from the bar complaint was never in dispute. At the hearing on the first Demurrer, the trial court ordered Mr. Sriskandarajah to identify the exact words in the bar complaint claimed to be defamatory. Mr. Sriskandarajah responded by filing an Amended Complaint in which he revised his defamation claim to include the exact words, as follows:

The Defendants engaged in defamation per se, and damaged the Plaintiff when they conspired together to assert, support, and follow up with the Virginia State Bar on their claims made through the filing of a false bar complaint, telephone calls, and meetings in person with state bar investigators, that the Plaintiff was, “in direct violation of various

provisions of Rule 1.15 of the Virginia State Bar Professional guidelines.”

(Am. Compl. Count One, page 6). Count One contains no other quotations.

Mr. Sriskandarajah now argues (for the first time) that the trial court “ignored” an alleged statement included at the end of paragraph 11 of his Amended Complaint. (*See* Pet. at 6). The trial court didn’t ignore this statement; it simply was not included within the scope of Count One’s language (quoted above) which made clear that the defamation claim was based only on a single statement about Rule 1.15. Mr. Sriskandarajah did not mention this other statement anywhere in his Response to Amended Demurrer and did not bring it up a single time at the hearing on the Amended Demurrer.

Arguments never brought to the trial court’s attention are not preserved for appeal. *Barr v. Atl. Coast Pipeline, LLC*, 295 Va. 522, 537 (2018); *see* Va. Sup. Ct. R. 5:25 (“[n]o ruling of the trial court...will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling.”). Here, the trial court analyzed the only statement put at issue by Mr. Sriskandarajah’s pleadings and found it to be non-

actionable as a matter of law.⁵ Mr. Sriskandarajah's counsel made several objections to the order sustaining the Amended Demurrer, but did not object to the trial court's supposed failure to consider other statements. Therefore, Mr. Sriskandarajah has failed to preserve error with respect to his new argument that the trial court should have analyzed statements beyond the one identified in Count One of his Amended Complaint.

Mr. Sriskandarajah has also failed to preserve error with respect to the entirety of Assignment of Error No. 2. Mr. Sriskandarajah's counsel objected to various aspects of the trial court's order sustaining the Amended Demurrer, but made no objection to the trial court's finding that Mr. Sriskandarajah had failed to plead damages on his business-conspiracy claim. He has therefore waived the objection.

⁵ In his Response to Amended Demurrer, Mr. Sriskandarajah argued that he was also concerned with the assertions in the bar complaint that he had "potentially mismanaged client trust funds and misaccounted for client trust funds." (See Response to Am. Dem. ¶ 14). Even if the trial court had considered these statements as part of the defamation claim, the result would have been the same as those statements are clearly matters of opinion. See *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 47 (2009) (holding that when a statement is relative in nature and depends largely on a speaker's viewpoint, that statement is an expression of opinion).

II. The Amended Complaint Fails to Allege a False Statement of Fact.

The trial court was correct to sustain the Amended Demurrer to the defamation claim because the statement at issue was not one of fact but of constitutionally protected opinion. The elements of defamation under Virginia law are “(1) publication of (2) an actionable statement with (3) the requisite intent.” *Jordan v. Kollman*, 269 Va. 569, 575 (2005). To be actionable, a statement must be one of fact, not opinion. See *Schaecher v. Bouffault*, 290 Va. 83, 102 (2015) (holding that “speech which does not contain a provably false factual connotation, or statements which cannot reasonably be interpreted as stating actual facts about a person cannot form the basis of a common law defamation action”) (quoting *Yeagle v. Collegiate Times*, 255 Va. 293, 295 (1998)). Because the statement at issue in this case is one of pure opinion, the defamation claim was fatally defective.

A statement is one of opinion when it is relative in nature and depends largely on the speaker’s viewpoint. *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 47 (2009). Mr. Sriskandarajah’s defamation claim is based on the statement allegedly made by the Defendants to the Virginia State

Bar that Mr. Sriskandarajah was “in direct violation of various provisions of Rule 1.15 of the Virginia State Bar Professional guidelines.” Whether Mr. Sriskandarajah’s withdrawals from his firm’s client trust account violated ethical rules is a matter upon which reasonable minds can differ; it is not something that can be proven or disproven as a matter of fact.⁶ See *Fuste v. Riverside Healthcare Ass’n, Inc.*, 265 Va. 127 (2003) (holding that “unprofessional” is a statement of opinion or is otherwise non-actionable); *Hanks v. Wavy Broad., LLC*, 2012 WL 405065 (Case No. 2:11CV439) at *11–12 (E.D. Va. Feb. 8, 2012) (finding that statements accusing someone of acting “unprofessionally” or “unethically” are statements of opinion, not fact).

Moreover, the essence of Mr. Sriskandarajah’s claim is that the Defendants misrepresented Virginia ethics law to the Virginia State Bar. The VSB is the entity that oversees the attorney disciplinary process and interprets the Rules of Professional Conduct. The VSB is not going to be misled by a layperson about what Rule 1.15 permits or does not permit. In fact,

⁶ It should be noted here that the holding of *Cretella v. Kuzminski*, 640 F. Supp. 2d 741 (E.D. Va. 2009) is mischaracterized in the Petition for Appeal. Contrary to what has been represented, the statements at issue in that case did not include one that the plaintiff “violated Maryland’s ethics rules.”

this Court has held that in scenarios like this where the recipient of a statement is more knowledgeable on the subject of the statement than the writer, the statement is more likely to be viewed as a statement of opinion and thus not actionable. *See Schaecher*, 290 Va. at 105–06 (finding accusation that plaintiff was “lying and manipulating facts” to be non-actionable opinion where it was made to people with “an equal or higher degree of knowledge of the situation” than the speaker and who would therefore have perceived the accusation as “pure opinion...based upon her subjective understanding of the underlying scenario.”). The VSB could not have interpreted the statement at issue as anything other than the complainant’s personal opinion⁷ that certain international wire transfers may have violated the rules governing client trust accounts.

Mr. Sriskandarajah admits he wired money from his client trust account to a personal account in India. Whether those wire transfers were

⁷ Even if the assertion that certain conduct ran afoul of Rule 1.15 were treated as a statement of fact rather than opinion, it would still be insufficient to support a defamation claim because the alleged falsity would not be “of and concerning” Mr. Sriskandarajah; rather, it is a statement only about what Rule 1.15 permits and does not permit. *See Gazette, Inc. v. Harris*, 229 Va. 1, 37 (1985) (explaining “of and concerning” requirement).

“unethical” or violated Rule 1.15, or whether they amounted to “mismanagement” of client funds, are matters of pure opinion. As such, statements to that effect are not actionable as defamation and the trial court was right to sustain the Amended Demurrer.

III. The Amended Complaint Fails to Allege Damages Resulting From the Alleged Conspiracy.

The trial court also determined correctly that Mr. Sriskandarajah failed to allege any damages with respect to his claim for statutory business conspiracy. To state a claim under Va. Code § 18.2-499, a plaintiff must allege “(1) a combination of two or more persons for the purpose of willfully and maliciously injuring plaintiff in his business; and (2) resulting damage to plaintiff.” *Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207, 214 (2014). Mr. Sriskandarajah’s Amended Complaint contains no allegations of any damages proximately caused by the alleged conspiracy.⁸ No cause of

⁸ Mr. Sriskandarajah notes that his Amended Complaint did include a demand for money. (Pet. at 7). Including a demand for \$2,400,000, however, is not the same as pleading facts demonstrating that actual harm was caused by the alleged business conspiracy. *See McGlen v. Barrett*, 78 Va. Cir. 90 (Fairfax, Jan. 9, 2009) (sustaining demurrer where plaintiff demanded punitive damages but failed to allege any supporting facts showing an entitlement to such relief).

action for conspiracy exists without damages that resulted from the conspiracy. *Gelber v. Glock*, 293 Va. 497, 533–34 (2017); see *Syed v. ZH Techs., Inc.*, 280 Va. 58, 73 (2010) (damages are an element of Va. Code § 18.2-500).

By Mr. Sriskandarajah’s own admission, the VSB ultimately dismissed the bar complaint and did not discipline him in any way. (Am. Compl. ¶ 14). He did not allege any harm to his law firm or any of the other businesses he is affiliated with. In his Petition, he seems to acknowledge the lack of actual damages but argues he is entitled to “presumed” damages on his conspiracy claim, though there is no law supporting that position. (*See* Pet. at 7). Considering Mr. Sriskandarajah did not allege in his Amended Complaint that his business was harmed in any way by the alleged conspiracy, the trial court was correct to sustain the Amended Demurrer and dismiss his business-conspiracy claim.

Conclusion

The Court should refuse Mr. Sriskandarajah's Petition for Appeal.

First, he did not properly preserve his Assignments of Error. Second, even if he did, the trial court was correct to sustain the Defendants' Amended Demurrer to Amended Complaint. The defamation claim is fatally defective because there are no allegations of any actionable statement of fact.

The business-conspiracy claim is fatally defective because there are no allegations of damages caused by the conspiracy. This case was properly dismissed with prejudice as Mr. Sriskandarajah has not alleged facts that would support any claim upon which relief may be granted.

Respectfully submitted,

REKHA MOHAN
INDRAMOHAN CHELLIAH
SANKAR PRABHUKUMAR
By Counsel

A handwritten signature in black ink, appearing to read "Lee E. Berlik", is written over a horizontal line.

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Certificate

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I hereby certify that, on this 20th day of October, 2020, a copy of the foregoing Brief in Opposition was served via email and UPS Ground Transportation, upon opposing counsel at the address indicated above.

Pursuant to Rule 5:17(j)(4), I hereby request notice of the date and time of Petitioner's oral argument.



Lee E. Berlik