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IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN PAUL MAC ISAAC, Plaintiff/Counterclaim, Defendant Below, Appellant/Appellee, v. POLITICO LLC, ROBERT HUNTER BIDEN, AND BFPCC, INC. Defendants/Counterclaim, Plaintiff Biden Below, Appellees/Appellant Biden.	)	Case No. 448, 2024

FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

APPELLANT'S OPENING BRIEF

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Dated: February 5, 2025

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NATURE AND STAGE OF PROCEEDINGS

On October 17, 2022, John Paul Mac Isaac ("Mac Isaac") filed a complaint alleging, *inter alia*, defamation against Cable News Network, Inc. ("CNN"), Politico LLC ("Politico"), BFPCC, Inc. ("BFPCC"), Adam Bennett Schiff ("Schiff"), and Robert Hunter Biden ("Hunter"). On behalf of Schiff, the United States removed this case to the Federal District Court on March 7, 2023. The United States District Court for the District of Delaware dismissed the case against Schiff in March 2023 and remanded the case back to the Superior Court of the State of Delaware for further proceedings with the remaining defendants. On March 30, 2023, Hunter filed a counterclaim against Mac Isaac.

CNN, Politico, and BFPCC each filed motions to dismiss Mac Isaac's complaint. Mac Isaac filed a motion to dismiss Hunter's counterclaim and Hunter filed a motion for summary judgment. The motions were briefed by the parties and argued before the Superior Court. By order dated September 30, 2024, the Superior Court granted the motions to dismiss submitted by CNN, Politico, and BFPCC, granted Hunter's motion for summary judgment, and granted Mac Isaac's motion to dismiss Hunter's counterclaim.

This is Mac Isaac's timely Appeal from the Superior Court's dismissal of his complaint against Politico, BFPCC, and Hunter Biden.

SUMMARY OF THE ARGUMENT

1. The Superior Court incorrectly classified John Paul Mac Isaac as a limited purpose public figure. The court's decision was based on the notion that Mac Isaac had thrust himself into the public controversy surrounding Hunter Biden's laptop, which he did not do voluntarily. Mac Isaac's involvement was limited to providing the laptop to the FBI and later to Giuliani's attorney, with explicit requests to remain anonymous. His identity was inadvertently revealed by the New York Post, leading to unwanted media attention. The court's classification ignored the fact that Mac Isaac did not seek public attention and was drawn into the controversy against his will. Mac Isaac should not be deemed a public figure as he did not voluntarily engage in public discourse, and the defamatory remarks were made before any voluntary public engagement.

2. The Superior Court erred in determining that the defamatory remarks could not be defamatory because they did not "directly or indirectly" identify Mac Isaac. The argument asserts that a defamatory statement does not need to explicitly name the plaintiff if a reasonable person could ascertain the reference. Mac Isaac had become so intertwined with the Hunter Biden laptop story that the public could reasonably associate the defamatory statements with him, even if he was not. Hunter Biden's statements implied Mac Isaac's involvement in criminal activities, which were false and damaging to his reputation. The court's decision overlooked the

reasonable perception of the public, which linked the defamatory statements to Mac Isaac.

3. The Superior Court erred in determining that the defamatory remarks could not be defamatory because they did not "directly or indirectly" identify Mac Isaac. The argument asserts that a defamatory statement does not need to explicitly name the plaintiff if a reasonable person could ascertain the reference. Mac Isaac had become so intertwined with the Hunter Biden laptop story that the public could reasonably associate the defamatory statements with him, even if he was not named. Hunter Biden's statements implied Mac Isaac's involvement in criminal activities, which were false and damaging to his reputation. The court's decision overlooked the reasonable perception of the public, which linked the defamatory statements to Mac Isaac.

STATEMENT OF FACTS

Plaintiff filed his complaint after defamatory statements were made and/or published by Defendants about the Plaintiff and others alleged to be involved in the dissemination of information regarding a laptop abandoned by Hunter Biden ("Biden") at Mac Isaac's computer shop. Prior to the defamatory statements, Mac Isaac owned a small computer repair shop in Wilmington, Delaware. In April 2019, Biden approached Mac Isaac requesting assistance with three (3) separate laptops.(Appendix, Page A014)

One laptop simply needed a new keyboard so the Mac Isaac lent Biden an external keyboard to resolve the issue. The second laptop was unrecoverable. The third laptop was left with Mac Isaac so he could recover the data for Biden.

At Mac Isaac's request, Biden returned to his shop once more to leave an external hard drive onto which Mac Isaac was to transfer the recovered data from the laptop. (Appendix, Page A014 ¶18) Biden never returned to pick up the laptop and the external hard drive despite requests to do so. (Appendix, Page A015 ¶22) In December 2019, Mac Isaac turned over the laptop and an external hard drive with the recovered data to the Federal Bureau of Investigation ("FBI") concerned about what he had seen on the laptop while recovering the data. (Appendix, Page A015 ¶25) Mac Isaac retained an exact copy of the hard drive out of fear that the

information he provided to the FBI may be lost or used against him. (Appendix, Page A084)

At the conclusion of the impeachment hearings for President Donald J. Trump, believing the laptop contained information pertinent to the proceedings that was not provided to the President and relevant to his defense, Mac Isaac contacted Trump's personal lawyer, Rudy Giuliani ("Giuliani"). (Appendix, Page A084) Mac Isaac felt anyone being accused of a crime should be provided with all pertinent information that was in the hands of the accusers –including data from Hunter Biden's laptop in the possession of the FBI. Unbeknownst to Mac Isaac, Giuliani provided the laptop data to the New York Post ("NY Post") who, on October 14, 2020, published an article about some of the data from the laptop ("NY Post Article"). (Appendix, Page A115) As a direct response to the NY Post Article, Defendants began an offensive against the Mac Isaac, Giuliani, and others to protect Biden's father, then-Presidential candidate Joe Biden.

The Defendants discredited those identified as involved in the dissemination of the information from Biden's laptop by spreading defamatory falsehoods about the parties, specifically Mac Isaac. The Defendants successfully convinced the general public in the United States, and those in Wilmington, Delaware, where Mac Isaac's shop was, that Mac Isaac was a tool of a "Russian disinformation campaign."

Mac Isaac specifically requested to Giuliani that his name not be divulged to anyone, including President Trump (Appendix, Page A016 ¶27 & Page A018 ¶42). Unfortunately, Mac Isaac's identity was divulged when the NY Post failed to blur out the name of his computer shop in the NY Post Article. On the same day the NY Post Article was published, Mac Isaac was accosted by a group of journalists seeking more information about the story. He was told that he would not be left alone until he spoke to the journalists (Appendix, Page A116). The journalists even put words into his mouth when he said he was concerned for his and his family's safety by asking him about the Seth Rich story. Mac Isaac tried his best to answer questions as vaguely as possible so he could be left alone but, in the end, the journalists contorted the interview into one that supported their angle of the story. Mac Isaac was not aware of who was part of the group of journalists but learned that, at the very least, journalists from the Daily Beast and CNN were present. Mac Isaac did not voluntarily sit for the interview. (Appendix, Page A019 ¶45, Footnote 6)

What followed was a direct link between Mac Isaac and every negative story that was published about the Biden laptop story. Mac Isaac became synonymous with the "Delaware computer repair shop owner," identified in Politico's article. (Appendix, Page A032 ¶108) He was also cast as an integral part of the Russian disinformation campaign against Presidential-candidate Biden, as was pushed by Hunter Biden and BFPCC. (Appendix, Page A038 ¶136)

Hunter Biden was asked about the laptop left with a Delaware computer repair shop owner in multiple interviews and clearly lied in the interview stating that the laptop could have been hacked, stolen from him, or part of a Russian intelligence campaign.(Appendix, Page A042 ¶155) Hunter Biden appeared on CBS twice, not just once making defamatory statements about Plaintiff. When asked about the laptop in a television interview broadcast around the world, Biden stated, "There could be a laptop out there that was stolen from me. It could be that I was hacked. It could be that it was the – that it was Russian intelligence. It could be that it was stolen from me. Or that there was a laptop stolen from me."

At the time of the statements, Biden knew it was in fact "his laptop". Instead of admitting, it was his laptop, Biden imputed that Plaintiff was involved in one or more crimes including, theft of his laptop, hacking of his laptop, or being part of a plot by Russian intelligence. Biden's statements impute that Plaintiff has committed an infamous crime, i.e., treason and/or other crimes against the United States of America by participating in a Russian attempt to undermine American democracy and the 2020 Presidential election.

This, despite Biden's own attorney contacting Mac Isaac on October 13, 2020, the day before the story was published. (Appendix, Page A042 ¶157) Mac Isaac was unable to stop the avalanche of negativity against him and his reputation. In the

community in which he was previously seen as a trusted part, (Appendix, Page A014 ¶14) he was now a pariah.

As a direct and proximate result of the actions of the Appellees, Appellant has suffered substantial damages directly attributable to the actions of the Appellees including: (1) the loss of his business and, as a result, loss of future revenue, (2) the loss of his ability to find gainful employment, and (3) substantial injury to his reputation and goodwill.

ARGUMENT

I. THE SUPERIOR COURT INCORRECTLY CONCLUDED THAT APPELLANT IS A LIMITED PURPOSE PUBLIC FIGURE.

Questions Presented

Whether the Superior Court erred in its determination that Plaintiff was a limited purpose public figure when the defamatory remarks/publications were made. The issue was presented in Plaintiff's briefing of the motions to dismiss and motion for summary judgment. (Appendix, Page A099)

Standard and Scope of Review

The Delaware Supreme Court reviews the Superior Courts determinations *de novo*, particularly when the decision involves issues of law such as the classification of a plaintiff as a public figure. This means the Supreme Court examines the entire record and draws its own conclusions without deference to the lower court's findings. *Agar v. Judy*, 151 A.3d 456 (Del. Ch. 2017)

Merits of Argument

A. Limited Purpose Public Figure.

As the United States Supreme Court stated in *Wolston v. Reader's Digest Association*, "[while] participants in some litigation may be legitimate 'public figures,' either generally or for the limited purpose of that litigation, the majority will more likely resemble respondent, drawn into a public forum largely against their

will in order to attempt to obtain the only redress available to them or to defend themselves against actions brought by the State or by others. There appears little reason why these individuals should substantially forfeit that degree of protection which the law of defamation would otherwise afford them simply by virtue of their being drawn into a courtroom. *Wolston v. Reader's Digest Association* 578 F.2d 427 (D.C. Cir. 1978) This clarification followed the Supreme Court's landmark decision in *Gertz v. Robert Welch,* where they explained that, "those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." *Gertz v. Robert Welch,* 418 U.S. 323 (1974)

Plaintiff did not thrust himself into the forefront of a particular public controversy nor did he seek to influence the resolution of the issues involved. As clearly stated in the Plaintiff's Second Amended Complaint ("SAC"), on December 9, 2019, Plaintiff provided the Hunter's laptop to the Federal Bureau of Investigation ("FBI"). (Appendix, Page A015 ¶25) Then, in August 2020, Plaintiff provided a copy of the hard drive of Hunter's laptop to Robert Costello ("Costello"), attorney for Rudolph Giuliani ("Giuliani"). (Appendix, Page A015 ¶26) At the time, Giuliani had been serving as counsel to President Donald J. Trump during the impeachment hearings related to Ukraine.

Plaintiff turned over Biden's laptop to the FBI because he was concerned about its contents. After witnessing the impeachment hearings relating to Ukraine and not seeing or hearing any reference to Biden's laptop, which he knew contained information relevant to the hearings, Plaintiff contacted Giuliani and, as a result, connected with Costello.

After connecting with Costello and providing him with the copy of the laptop, Plaintiff specifically asked Costello to not identify him to Giuliani or anyone else when discussing Biden's laptop because he wanted to remain anonymous. (Appendix, Page A016 ¶27) Plaintiff's only contact with the NY Post was to verify how he came into possession of the laptop. (Appendix, Page A018 ¶41) During his brief discussion with the NY Post, he expressed his desire to remain anonymous. Unfortunately, his identity became known on October 14, 2020, when the NY Post published the story about the laptop ("NY Post Article"), which was based on information provided by Giuliani, and it failed to "blur" the name of Mac Isaac's computer repair shop on the work order given to Biden. (Appendix, Page A019 ¶44)

On the day the NY Post Article was published, Mac Isaac was descended upon by numerous journalists who, during the height of the Covid pandemic, forced their way into his shop and refused to leave until he answered some questions. (Appendix, Page A019 ¶45, Footnote #6) Plaintiff did the best he could to get them out of his shop but the recording of the "interview" clearly showed he did not consent nor did

he volunteer for the interview.[1] Plaintiff was unaware of which news organization each journalist represented. He only knew, or remembered, after the interview was published by the Daily Beast.

This was the only situation, one involuntary interview with numerous journalists who refused to leave his shop until he responded to their questions, in which Mac Isaac "participated" in an interview prior to the defamatory statements. These facts are contrary to the Superior Court's statement in the background section of its opinion that Mac Isaac, "gave several media interviews, including one with CNN." There were not several interviews, it was one painful interview with several journalists (including, apparently, CNN), against Plaintiff's will. Plaintiff's complaint clearly states that Mac Isaac did not voluntarily submit to the interview on October 14, 2020, yet the Superior Court ignored those uncontested facts.

In 2021, the Supreme Court even attempted to clarify its view of limited purpose public figures in *Berisha v. Lawson* by saying, "it is unclear why exposing oneself to an increased risk of becoming a victim necessarily means forfeiting the remedies legislatures put in place for such victims. And even assuming that it is sometimes fair to blame the victim, it is less clear why the rule still applies when the public figure 'has not voluntarily sought attention.'" (*Berisha v. Lawson* No. 19-10315

[1] Audio recording of the interview available at https://www.thedailybeast.com/man-who-reportedly-gave-hunters-laptop-to-rudy-speaks-out-in-bizarre-interview

(11th Cir. 2020) "Public figure or private, lies impose real harm," according to the Supreme Court in *Berisha*. That is exactly what happened here. Mac Isaac risked becoming a victim of retaliation by turning Biden's laptop into the FBI. When he grew concerned that the FBI was hiding the evidence, Mac Isaac took the even riskier chance of taking a true copy of the hard drive from the laptop to Giuliani. Mac Isaac did not seek attention, nor did he want it. Attention sought him and found him (and when it did, it cornered him and wouldn't let him go until he gave something).

October 14, 2020, was when the NY Post Article was published and when Mac Isaac was accosted by a group of journalists. Politico published its defamatory headline on October 19, 2020. Mac Isaac had not voluntarily participated in any interviews before that publication. Politico, in a separate article published on October 14, 2020, cites a direct quote from the Biden Presidential campaign (Defendant BFPCC), that the NY Post Article "is a Russian disinformation operation." (Appendix, Page A038 ¶136) Mac Isaac had not voluntarily participated in any interviews before that statement. On or about October 22, 2020, Symone D. Sanders, on behalf of BFPCC, stated in an interview on MSNBC that "[i]f the president [Trump] decides to amplify these latest smears against the vice president [Biden] and his only living son, that is Russian disinformation." (Appendix, Page A038 ¶137) Again, Mac Isaac had not voluntarily participated in any interviews before that statement. On October 22, 2020, it was reported that Deputy Campaign

Manager Kate Bedingfield, on behalf of BFPCC, stated, "I think we need to be very, very clear that what [Trump's] doing here is amplifying Russian misinformation." (Appendix, Page A038 ¶138) Mac Isaac had not participated in any voluntary interviews at that point. On October 25, 2020, then-Presidential candidate, Joseph R. Biden, Jr., himself even said, "[t]he intelligence community warned the president that Giuliani was being fed disinformation from the Russians. We also know Putin is trying to spread misinformation about Joe Biden. When you put the combination of Russia, Giuliani, and [President Trump] together…it is what it is. A smear campaign."(Appendix, Page A039 ¶140) [2] Mac Isaac had not participated in any voluntary interviews at that point.

Even if Plaintiff had voluntarily participated in interviews to defend himself, as the Ninth Circuit correctly points out, "media access that becomes available only 'after and in response to' damaging publicity does not make someone a public figure.". *La Liberte v. Reid*, 966 F.3d 79, 92 (2d Cir. 2020) Mac Isaac should not be deemed a limited purpose public figure solely because (eventually) he stepped forward to defend his reputation. "People become limited purpose public figures only when *they* '*voluntarily invite[] comment and criticism*' by 'injecting themselves into public controversies.'" (Appendix, Page A099) Mac Isaac did not

[2] *Id*. At ¶140 (link in ¶140 broken; see https://www.washingtonpost.com/politics/2023/02/13/hunter-biden-laptop-claims-russian-disinfo/

seek interviews to inject himself into the forefront of the Hunter Biden laptop controversy; he was pulled into the spotlight.

The Third Circuit correctly points out the two-pronged inquiry to determine whether the Mac Isaac qualifies as a limited purpose public figure:

> "Under the guidance of *New York Times*, *Gertz* and their progeny, the Third Circuit has adopted a two-pronged inquiry in determining whether a plaintiff qualifies as a limited purpose public figure: (1) whether the alleged defamation involves a public controversy, and (2) the nature and extent of plaintiff's involvement in that controversy. *McDowell*, 769 F.2d at 948 (citing *Marcone*, 754 F.2d at 1082). This analysis should be informed by an understanding of the undergirding rationale for the differential treatment of public figures under the First Amendment. *See U.S. Healthcare*, 898 F.2d at 938 (finding that the factors underlying the differing treatment of public figures inform the determination of whether an individual is a limited purpose public figure). The Third Circuit summarized this justification as follows:
>
> > First is the rationale of self-help. Public figures have greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy…Second, and perhaps more important, is the notion of assumption of risk. Public officials and public figures in some sense voluntarily put themselves in a position of greater public scrutiny and thus assume the risk that disparaging remarks will be negligently made about them. *McDowell*, 769 F.2d at 947-48 (internal quotation marks and citations omitted). Succinctly stated, in order "to be a limited purpose public figure, the plaintiff must voluntarily thrust himself into the vortex of the dispute." *Marcone*, 754 F.2d at 1083; *see Butts*, 388 U.S. at 155 (noting that a plaintiff may be labeled as a public figure where "his purposeful activity amount[s] to a thrusting of his personality into the 'vortex' of an important public controversy); *see, e.g., Steaks Unlimited*, 623 F.2d at 273-74 (holding that a meat producer that aggressively advertises its product in the media becomes a limited purpose public figure for purposes of public

> comment on the quality of the product advertised)." *Mzamane v. Winfrey*, 693 F. Supp. 2d 442, 498-99 (E.D. Pa. 2010)

Mac Isaac, a private individual, sought assistance in getting what he viewed as important, potentially exonerating, information to the authorities. He saw the FBI and Giuliani, who was representing President Trump in the impeachment hearings, as "the authorities." What happened thereafter was out of his hands and went beyond Mac Isaac's consent. His identity was negligently released and, as a result, his identity as the "Delaware computer repair shop owner" became ubiquitous with the "Hunter Biden laptop."

Even if *arguendo* Mac Isaac, at some point, became a limited purpose public figure, he clearly did not do so prior to the defamatory remarks/publications. Therefore, as the Supreme Court said in *Gertz*, "private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery." (*Gertz v. Robert Welch*, 418 U.S. 323, 345, 94 S. Ct. 2997, 3010 (1974))

II. THE SUPERIOR COURT ERRED IN ITS DETERMINATION THAT THE DEFAMATORY REMARKS/PUBLICATIONS CANNOT BE DEFAMATORY BECAUSE THEY DO NOT "DIRECTLY OR INDIRECTLY" IDENTIFY APPELLANT.

Questions Presented

Whether the Superior Court erred in its determination that the defamatory remarks/publications cannot be defamatory because they do not "directly or indirectly" identify Plaintiff. The issue was presented in Plaintiff's briefing of the motions to dismiss and motion for summary judgment. (Appendix, A034 ¶117)

Standard and Scope of Review

The standard of review for the Delaware Supreme Court when reviewing whether the Superior Court erred in determining that defamatory remarks/publications cannot be defamatory because they do not "directly or indirectly" identify the Plaintiff is *de novo*. Under the *de novo* standard of review, the Delaware Supreme Court must determine whether the facts of record entitle the movant to judgment as a matter of law, viewing those facts in the light most favorable to the non-moving party. (*Locey v. Hood*, 765 A.2d 952 (Del. 2000))

Merits of Argument

Courts throughout the U.S. agree that the Mac Isaac need not be specifically identified if at least one person could reasonably understand the reference to be to the Appellant.

The D.C. Court of Appeals recently held, "if the persons referenced were 'ascertainable,' *Service Parking* dictates that those persons could sue for defamation." (*Florio v. Gallaudet Univ.*, 119 F.4th 67, 75 (D.C. Cir. 2024) (*citing Service Parking Corp. v. Washington Times Co.*, 92 F.2d 502 (D.C. Cir. 1937))) The Ninth Circuit, in 2021, said, "'It is not necessary that everyone recognize the [plaintiff] as the person intended,' but 'the fact that only one person believes that the plaintiff was referred to is an important factor in determining the reasonableness of his belief.'" (*Miller v. Sawant*, 18 F.4th 328, 342 (9th Cir. 2021) (*citing Restatement (Second) of Torts* § 564, cmt b (1977)))

The Third Circuit, in *Cheney v. Daily News L.P.*, referenced the Supreme Court, stating, "[o]f course" the placement of Ms. Peck's picture next to the statements in the advertisement suggested that she had endorsed the whisky." (654 F. App'x 578, 581 (3d Cir. 2016) (*citing Peck v. Tribune Co.*, 214 U.S. 185, 29 S. Ct. 554, 53 L. Ed. 960, 7 Ohio L. Rep. 96 (1909)))

The Delaware Superior Court itself, in *Smartmatic USA Corp. v. Newsmax Media, Inc.* stated that an "allegedly defamatory publications should not be interpreted by extremes, 'but should be construed as the common mind would normally understand it.' The Court will consider whether an average person upon reading the allegedly defamatory publications statements could reasonably have concluded that Smartmatic was implicated. Although the "of and concerning"

requirement is generally a question of fact for the jury, it can also be decided as a matter of law where the statements 'are incapable of supporting a jury's finding that the allegedly libelous statements refer to a plaintiff,'" (No.:N21C-11-028 EMD, 2024 Del. Super. LEXIS 628, at *50 (Super. Ct. Sep. 12, 2024) (internal citations omitted)) The Court concluded that "a common mind would find this statement is 'of and concerning' Smartmatic even though it is does not mention Smartmatic specifically by name because the Election coverage in whole made it clear that Smartmatic was being accused of 'rigging' the Election."

Also, the Superior Court erred regarding Hunter Biden's defamatory statements against Plaintiff. Hunter Biden was asked about the laptop left with a Delaware computer repair shop owner in multiple interviews and clearly lied in the interview stating that the laptop could have been hacked, stolen from him, or part of a Russian intelligence campaign. (Appendix, Page A042 ¶155) Hunter Biden appeared on CBS twice, not just once making defamatory statements about Plaintiff. When asked about the laptop in a television interview broadcast around the world, Biden stated, "There could be a laptop out there that was stolen from me. It could be that I was hacked. It could be that it was the – that it was Russian intelligence. It could be that it was stolen from me. Or that there was a laptop stolen from me."

At the time of the statements, Biden knew it was in fact "his laptop". Instead of admitting, it was his laptop, Biden imputed that Plaintiff was involved in one or

more crimes including, theft of his laptop, hacking of his laptop, or being part of a plot by Russian intelligence. Biden's statements impute that Plaintiff has committed an infamous crime. Mac Isaac may not have been specifically named in the defamatory statements/publications, but he had become so intertwined with the Hunter Biden laptop story that a common mind, especially a person familiar with the Mac Isaac, would find the defamatory statements/publications by the Defendants "of and concerning" the Plaintiff. The common mind did just that and, as a result, Mac Isaac had to shutter his business and is unable to find employment to this day.

Biden's statement is not a statement of opinion or conjecture. When Biden stated that the laptop "certainly" could be his or that it could have been stolen, hacked, or part of a Russian intelligence operation, he was not engaging in conjecture or formulating an opinion. *He was lying because he knew that the laptop was his*. Deceit is not protected speech in a defamation action – it shows actual malice by Biden.

Further, the focus on whether the laptop "could" have been hacked prior to the laptop landing in Mac Isaac's shop is a red herring because no one asked Biden if he thought his laptop had been hacked prior to being dropped off at Mac Isaac's shop. The allusion was that the information Mac Isaac provided to the FBI and to Mr. Rudy Giuliani had been hacked by Mac Isaac and that Biden had never dropped off a laptop at Mac Isaac's shop. The real issue is that Biden knows the laptop was

real, that he had dropped it off at Mac Isaac's shop, and that Biden is leading the world to believe that he does not even think it is his laptop and that Mac Isaac is part of a criminal scheme.

III. THE SUPERIOR COURT ERRED WHEN IT CONCLUDED THAT THE POLITICO HEADLINE WAS NOT DEFAMATORY

Questions Presented

Whether the Superior Court erred in its determination that the headline published by Defendant Politico was not defamatory. The issue was presented in Plaintiff's briefing of the motions to dismiss and motion for summary judgment. (Appendix, Page A126)

Standard and Scope of Review

The standard of review for the Delaware Supreme Court to determine whether the Superior Court erred in its determination that a headline published by Defendant Politico was not defamatory is *de novo*. Under the *de novo* standard of review, the Delaware Supreme Court must determine whether the facts of record entitle the movant to judgment as a matter of law, viewing those facts in the light most favorable to the non-moving party. (*Locey v. Hood*, 765 A.2d 952 (Del. 2000))

Merits of Argument

Although the Superior Court did not base its decision to dismiss the Appellant's case against Appellee Politico on whether the headline is defamatory, the Superior Court erred in its dicta that the potentially defamatory impact of the headline is cured by the sub-headline and the article itself.

"In considering the defamatory quality of words, it is the duty of the Court to take them in their plain and natural meaning, and to understand them as would a person of average intelligence and perception." (*Corbett v. Am. Newspapers, Inc.*, 40 Del. 10, 13-14, 5 A.2d 245, 246 (1939)) In Delaware, "it does not suffice simply to allege that a statement is false and defamatory… a plaintiff must show at least negligence against a media defendant." (*Ramunno v. Cawley*, 705 A.2d 1029, 1037-38 (Del. 1998)) Plaintiff clearly showed that the Politico knew the headline was false because its article contradicts its headline. At minimum, Politico is negligent.

The Southern District of New York, in *Idema v. Wager*, listed a litany of examples where the headline was defamatory despite the article itself being truthful. (*Idema v. Wager*,120 F. Supp. 2d 361 (S.D.N.Y. 2000)) For example, in *Idema,* the court said, "to ascertain whether a headline is a 'fair and true headnote of the statement published,' the effect of the headline and the article on the ordinary reader must be examined together under a totality of circumstances." "Only where reasonable minds could disagree over the tone and content of an article and its headline must the claim go to the jury, 'to determine in what sense the words were used and understood by the ordinary reader.'"

The Ninth Circuit held that where a headline was defamatory, the fact that the accurate, non-defamatory article that followed, "did not negate the effect of the

headlines."(*Kaelin v. Globe Communs. Corp.*, 162 F.3d 1036, 1041 (9th Cir. 1998)) The Ninth Circuit, in *Kaelin*, stated:

> "*Since the publication occurred just one week after O.J. Simpson's highly publicized acquittal for murder, we believe that a reasonable person, at that time, might well have concluded that the "it" in the first sentence of the cover and internal headlines referred to the murders. Such a reading of the first sentence is not negated by or inconsistent with the second sentence as a matter of logic, grammar, or otherwise. In our view, an ordinary reader reasonably could have read the headline to mean that the cops think that Kato committed the murders and that Kato fears that he is wanted for perjury."*

Plaintiff was damaged by the headline that was published which, as argued throughout the proceedings, implicated him as being part of a Russian disinformation operation. He is referenced in the article but the article itself, while accurate, is tainted by its headline.

CONCLUSION

For the foregoing reasons, Appellant John Paul Mac Isaac respectfully requests that this Honorable Court vacate the September 30, 2024 order of the Superior Court dismissing his claims against Appellees.

Respectfully submitted,

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JOHN PAUL MAC ISAAC, Plaintiff/Counterclaim Defendant,	)	
v.	)	C.A. No. S22C-10-012 RHR
CABLE NEWS NETWORK, INC., POLITICO LLC, and BFPCC, INC., Defendants,	)	
and	)	
ROBERT HUNTER BIDEN, Defendant/Counterclaim Plaintiff.	)	

Submitted: April 16, 2024
Decided: September 30, 2024

Upon Defendant Cable News Network, Inc.'s Motion to Dismiss,
GRANTED

Upon Defendant Politico LLC's Motion to Dismiss,
GRANTED

Upon Defendant BFPCC, Inc.'s Motion to Dismiss,
GRANTED

Upon Plaintiff/Counterclaim Defendant John Paul Mac Isaac's Motion to Dismiss Counterclaims,
GRANTED

Upon Defendant/Counterclaim Plaintiff Robert Hunter Biden's Motion for Summary Judgment,
GRANTED

Upon Defendant Robert Hunter Biden's Motion to Strike Subpoenas,
MOOT

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ROBINSON, J.

This case began as a defamation claim filed by plaintiff against Cable News Network, Inc., Politico LLC, Robert Hunter Biden, and the Biden for President Campaign Committee, Inc. Biden countersued plaintiff, asserting invasion-of-privacy and related claims. This decision grants CNN's, Politico's, and Biden for President Campaign Committee, Inc.'s motions to dismiss, grants Biden's motion for summary judgment, and grants plaintiff's motion to dismiss Biden's counterclaims. Another pending motion—Biden's motion to strike third party subpoenas—is now moot.

BACKGROUND

The following background is drawn from the largely undisputed facts in the pleadings and the documents they incorporate by reference. John Paul Mac Isaac ("Mac Isaac") was the owner of The Mac Shop, Inc., a computer repair store in Wilmington, Delaware (the "Mac Shop").[1] He claims that in April 2019, Robert Hunter Biden ("Biden"), the son of the former vice president, sought the recovery of information from several damaged computers and enlisted Mac Isaac's help. Mac Isaac states he had Biden sign a repair authorization that acknowledged that "[e]quipment left with the Mac Shop after ninety days of notification of completed service will be treated as abandoned and you agree to hold the Mac Shop harmless

[1] D.I. 86, Second Amend. Compl. ("Compl.") ¶ 11.

for any damage or loss of property" (the "Repair Authorization").[2] Mac Isaac claims he asked Biden to provide Mac Isaac with an external hard drive to which Mac Isaac could transfer the recovered data from a damaged laptop computer, and that Biden did so on April 13.[3] Later that day, Mac Isaac called Biden and advised Biden that he had recovered the data.[4] On April 17, Mac Isaac sent an electronic invoice to Biden for his services in the amount of $85.00.[5] Biden did not pay the invoice or return to the Mac Shop to retrieve the hard drive.

Mac Isaac accessed Biden's personal data on his laptop. Mac Isaac claims that he needed to review the data to preserve it and became alarmed at some of the information he found. In late July 2019 through October 14, 2020, Mac Isaac had various interactions with the Federal Bureau of Investigation ("FBI"), U.S. Congressional staff members, and Robert Costello ("Costello"), an attorney for Rudolph Giuliani, who was an associate of then-president Donald J. Trump. In December 2019, in response to a federal grand jury subpoena, Mac Isaac turned over the laptop and hard drive to the FBI. Mac Isaac kept a copy of the hard drive for himself. In August 2020—after the contents of the hard drive, which Mac Isaac believed were relevant to then-president Trump's impeachment hearing, were not

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[2] *Id.*, Ex. A.
[3] *Id.* ¶ 18.
[4] *Id.* ¶ 19.
[5] *Id.* ¶ 20.

disclosed during the hearing—Mac Isaac provided a copy of the recovered data and the Repair Authorization to Costello. Mac Isaac claims he told Costello that he wished to remain anonymous. That request was not honored.

On October 14, 2020, the New York Post published an article titled, "Smoking-gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to VP Dad."[6] The article provides many details allegedly stemming from "a massive trove of data recovered from a laptop computer."[7] That article did not name Mac Isaac, but it initially published a photograph of the Repair Authorization that included the name of the Mac Shop.

Despite his request to remain anonymous, Mac Isaac did not remain quiet. Whether he was motivated to set the record straight or to benefit from his role in a political controversy, Mac Isaac gave several media interviews, including one with defendant CNN. He claims these interviews were done under duress because he was ambushed by the media and was so intimidated by them that he gave several interviews. Several weeks later, to share his side of the story, Mac Isaac's attorney submitted an article to the Washington Post and the Wall Street Journal, neither of

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[6] *Id.* ¶ 36; *see also* Emma-Jo Morris & Gabrielle Fonrouge, New York Post, *Smoking-gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to VP Dad* (Oct. 14, 2020), https://nypost.com/2020/10/14/email-reveals-how-hunter-biden-introduced-ukrainian-biz-man-to-dad/.

[7] *Id.*

which published the article. Mac Isaac eventually published it on a website, justthenews.com.

On October 19, 2020, in response to the disclosure of the contents of the laptop, over fifty former intelligence officials released a "Public Statement on the Hunter Biden Emails" that expressed their concern that the release of the emails "has all the classic earmarks of a Russian information operation."[8] Mac Isaac claims that the defendants' reporting and comments on this statement defamed him, by, among other things, suggesting that he was a Russian agent.

Mac Isaac initially filed his complaint on October 17, 2022 and named, in addition to the current defendants, United States Representative Adam Schiff. He filed a first amended complaint on January 20, 2023 and then filed a motion for leave to file a second amended complaint. Meanwhile, several of the defendants filed motions to dismiss. Before this court could act on those motions, the United States removed the case to federal court under the Westfall Act after certifying that Representative Schiff was acting in his official capacity as a member of Congress when he made the allegedly defamatory statements. In March 2023, the District Court for Delaware granted the United States' motion to dismiss and remanded the case to this court.

[8] Compl., Ex. F.

Mac Isaac filed his second amended complaint ("SAC") on August 2, 2023 alleging defamation, defamation per se, aiding and abetting, and conspiracy against all defendants. In response, CNN and Politico filed motions to dismiss. After conducting limited discovery, Biden filed a motion for summary judgment. This court conducted oral argument with defendants CNN, Politico, and Biden. The Biden for President Campaign Committee, Inc. ("BFPCC") was delayed in receiving and responding to the SAC, but eventually also filed a motion to dismiss. With the benefit of that oral argument, and the briefing of BFPCC's motion, further oral argument on BFPCC's motion to dismiss is not necessary.

STANDARDS OF REVIEW

A. Motions to Dismiss

Under Superior Court Civil Rule 12(b)(6), the court will dismiss a plaintiff's complaint if it fails to state a claim upon which relief can be granted.[9] "Dismissal is warranted only when 'under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.'"[10] The court, however, need not "accept every strained interpretation of the allegations proposed by the plaintiff."[11] For defamation claims specifically, early dismissal for failure to state a claim "not only protects against the costs of meritless litigation, but provides

[9] Del. Super. Ct. Civ. R. 12(b)(6).
[10] *Murray v. Mason*, 244 A.3d 187, 192 (Del. Super. Ct. 2020) (quoting *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006)).
[11] *Id.*

assurance to those exercising their First Amendment rights that doing so will not needlessly become prohibitively expensive."[12]

B. Motions for Summary Judgment

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[13] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[14] As such, "[t]he purpose of summary judgment is to avoid the delay and expense of a trial where the ultimate fact finder, whether judge or jury, has nothing to decide."[15] All facts are viewed in a light most favorable to the non-moving party. [16]

DISCUSSION

A plaintiff may recover damages when a media outlet or an individual makes a statement that tends to harm the plaintiff's "reputation, diminish [the plaintiff's] esteem, respect, goodwill, or confidence…"[17] A communication is defamatory if the

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[12] *Fairbanks v. Roller*, 314 F. Supp. 3d 85, 89 (D.D.C. 2018) (cited by *Owens v. Lead Stories, LLC*, 2021 WL 3076686, at *9 (Del. Super. Ct. July 20, 2021)).
[13] *Preston Hollow Cap. LLC v. Nuveen LLC*, 2022 WL 2276599, at *1 (Del. Super. Ct. June 14, 2022); *see also* Super. Ct. Civ. R. 56(c).
[14] *Id.*
[15] *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99 (Del. 1992).
[16] *Preston Hollow Cap. LLC*, 2022 WL 2276599, at *1.
[17] *Spence v. Funk*, 396 A.2d 967, 969 (Del. 1978).

statement would deter third persons from associating or dealing [with the plaintiff]."[18] To successfully bring a defamation claim under Delaware law:

> Plaintiff must plead and ultimately prove that: 1) the defendant made a defamatory statement; 2) concerning the plaintiff; 3) the statement was published; and 4) a third party would understand the character of the communication as defamatory.[19]

If the statement meets these elements of defamation, the court must decide whether the plaintiff is a public or private figure. If the plaintiff is a public figure, even for a limited purpose, the "plaintiff must [also] plead and prove that the statement is false, and that the defendant made the statement with actual malice."[20] When the plaintiff is a private figure, the plaintiff will recover if the publisher negligently publishes a libelous matter.[21] The question of whether a plaintiff is a public or private figure is one of law, not fact.[22] In considering the truthfulness of a publication, the court will consider whether "the 'gist' or 'sting' of the article was true."[23]

A. CNN's Motion to Dismiss

Mac Isaac alleges that CNN defamed him twice: (1) during an October 16, 2020 interview with Representative Adam Schiff on the CNN show, *The Situation*

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[18] *Id.*
[19] *Page v. Oath Inc.*, 270 A.3d 833, 842 (citing *Doe v. Cahill*, 884 A.2d 451, 463 (Del. 2005)).
[20] *Id.*
[21] *Gannett Co., Inc. v. Re*, 496 A.2d 553, 556–57 (Del. 1985).
[22] *Agar v. Judy*, 151 A.3d 456, 477 (Del. Ch. 2017) (citing Restatement (Second) of Torts § 580A cmt. c).
[23] *Gannett Co.*, 496 A.2d at 557 (citing *Williams v. WCAU–TV*, 555 F.Supp. 198, 202 (E.D. Pa. 1983)).

Room with Wolf Blitzer, and (2) in an online article.[24] During his appearance on *The Situation Room*, Blitzer asked Schiff, "Does it surprise you at all that this information that Rudy Giuliani is peddling very well could be connected to some sort of Russian Government disinformation campaign?" Schiff responded:

> **Well we know that this whole smear on Joe Biden comes from the Kremlin.** That's been clear for well over a year now that they've been pushing this false narrative about the Vice President and his son. And, you know, the idea that the President, that the White House Counsel, and others were made aware that Giuliani was being used by **Russian intelligence** and using **Russian intelligence** in the sense of meeting with **an agent of the Kremlin** and pushing out this **Kremlin false narrative. . . . But clearly, the origins of this whole smear are from the Kremlin.**[25]

And, later in the interview, after acknowledging that the intelligence community had not provided more information about these allegations, Schiff stated, "But we do know this: the Russians are once again actively involved in trying to denigrate the Vice President."[26] Mac Isaac argues that because he was well-known as the source of the laptop, Schiff's statements imputed that Mac Isaac was an agent of the Kremlin, and that CNN defamed him by publishing this interview.

The online article included a statement from the assistant FBI director, Jill C. Tyson ("Tyson"). On October 19, 2020, the then-director of national intelligence,

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[24] Marshall Cohen *et al.*, *US Authorities Investigating if Recently Published Emails are Tied to Russian Disinformation Effort Targeting Biden* (Oct. 16, 2020), CNN, https://www.cnn.com/2020/10/16/politics/russian-disinformation-investigation/index.html.
[25] Compl. ¶¶ 66, 67 (emphasis added in Compl. and reproduced here).
[26] *Id.* ¶ 69.

John Ratcliffe, stated on a national news program that there was no intelligence to support the claim that the contents of the laptop were part of a Russian disinformation campaign. The next day, Tyson wrote a letter stating that the FBI had nothing to add to that statement. When CNN published an article on these events, it mentioned "a computer repair store owner in Delaware" and wrote that "Tyson suggested that the review was continuing."[27] Mac Isaac points out that the letter did not say that the review was continuing, and argues that by publishing this statement, CNN defamed him.

CNN argues that the motion to dismiss should be granted because (1) these statements do not concern Mac Isaac, (2) they are protected by the Fair Report Privilege, and (3) because Mac Isaac does not plead facts that show CNN acted with actual malice. CNN points out that the sentence about the continuing review immediately preceded a direct quotation from Tyson's letter that stated if additional intelligence is developed, the FBI would consider the need for further briefing.

A plaintiff must show that a publication, which tends to harm his reputation, was "concerning him."[28] These publications must mention the plaintiff either directly or indirectly.[29] A reader must be able to infer from the contents of the

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[27] D.I. 89, Def. Cable News Network, Inc.'s Mot. to Dismiss Pl.'s Second Am. Compl. ("CNN's Mot. to Dismiss"), Ex. 3.
[28] *Page*, 270 A.3d at 842.
[29] *See Helicopter Helmet, LLC v. Gentex Corp.*, 2018 WL 2023489, at *4 (D. Del. May 1, 2018).

publication that the statement is referring to the plaintiff.[30] In *Helicopter Helmet, LLC v. Gentex Corp.*, the Delaware District Court found that an advertisement using the phrase "Is your helmet a dangerous counterfeit?" was not actionable because the advertisement did not mention any helicopter helmet manufacturer by name.[31] In that case, the plaintiffs argued that only a small number of companies manufacture helicopter helmets and therefore the statement must be understood as referring to the plaintiffs. The court, however, dismissed these claims because the advertisement must mention the plaintiffs "either directly or obliquely."[32]

In the present case, Mac Isaac argues he was defamed by a statement that did not mention him. In the statement, neither he nor his business is named or referenced. While the statement mentions several people, none are Mac Isaac. There are no statements or descriptions that would direct or lead a listener to understand that Mac Isaac was somehow involved in the alleged Russian disinformation campaign. Without more information or context, no reasonable person would have reason to believe that Mac Isaac was involved in Russian disinformation. Nor can it be reasonably inferred that the statements actually defame Mac Isaac. Once he turned over the laptop to the FBI, members of Congress, and Costello, the controversy over the laptop took on a life of its own and Mac Isaac's identity faded into the

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[30] *See Williams v. Howe*, 2004 WL 2828058, at *4 (Del. Super. Ct. May 3, 2004).
[31] *Helicopter Helmet*, LLC, 2018 WL 2023489, at *4.
[32] *Id.*

background. Although a CNN viewer may be aware that Mac Isaac was the person who turned over Biden's laptop, neither CNN nor its guests state that he was part of the disinformation campaign. Therefore, Mac Isaac cannot meet the burden to show that CNN's statements concerned him or were defamatory towards him.

Even if this court finds the statements concerned Mac Isaac, his defamation claim must fail because Mac Isaac is a limited public figure and must therefore plead facts that show CNN acted with actual malice. To be considered a "limited public figure" a plaintiff must "thrust [himself] to the forefront of particular public controversies[33] in order to influence the resolution of the issues involved."[34] He must "invite attention and comment."[35] Here, Mac Isaac clearly thrust himself into this controversy. He now says that he wished to remain anonymous, but he put events into motion that he surely knew would spin out of control. He argues in his briefs that the two initial interviews he gave to the media—one of which was nearly an hour long—shortly after the New York Post published the article were coerced and not voluntary because he was ambushed by the reporters. But he took many other acts that put himself into the controversy. He tried to get his version of events

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[33] *See* 50 Am. Jur. 2d Libel and Slander § 72 ("A public controversy is not simply a matter of interest to the public; rather, it must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way.").
[34] *Gertz*, 418 U.S. at 345; *see also Page*, 270 A.3d at 843 ("The Court extended this high bar to public figures in *Curtis Publishing Co. v. Butts*, and to what are generally known as limited purpose public figures in *Gertz v. Robert Welch.*").
[35] *Gertz*, 418 U.S. at 345.

published by the Wall Street Journal and the Washington Post, and then later published the article online. He claims his motivations for getting his statement published was to "set the record straight" and to "get the true story out to people."[36] He also admits that he was frustrated that then-president Trump did not have access to the laptop's data during his impeachment trial.[37] As to his ongoing public involvement—including publishing a book about the laptop controversy and attending conferences where he sells copies of the information from the laptop—he claims he is only doing so because he needs to earn a living to replace the income he lost when he closed the Mac Shop. But, regardless of his motivations, Mac Isaac voluntarily thrust himself into the controversy, thereby making himself a limited public figure.

For a limited public figure to maintain an action for defamation, he or she must plead actual malice. Although Mac Isaac uses the term "actual malice" in his SAC, those words in and of themselves are not sufficient to meet the pleading burden. As the Delaware Supreme Court noted, "[i]n a case where the defendant is an institution, the state of mind must be 'brought home' to the person or persons in the 'organization having responsibility for the publication....'"[38] Here, Mac Isaac

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[36] D.I. 121, Pl.'s Ans. Br. in Opp'n to Def. Politico LLC's Mot. to Dismiss Pl.'s Second Am. Compl. ("Pl.'s Ans. Br. to Politico's Mot. to Dismiss") at 26.
[37] Compl., Ex. D.
[38] *Page*, 270 A.3d at 844 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 287 (1964)).

does not name any person or persons at CNN who were responsible for any false statements; his general allegations of a wide-ranging conspiracy are insufficient to demonstrate actual malice. For these reasons, CNN's motion to dismiss is GRANTED.

B. Politico's Motion to Dismiss

Mac Isaac claims the following headline Politico published on October 19, 2020 defamed him: "Hunter Biden story is Russian disinfo, dozens of former intel officials say."[39] In the body of the article, the only reference to Mac Isaac is to a "Mac shop owner in Delaware."[40] Mac Isaac admits in his briefing that the Politico article is substantially true, but takes issue with the headline, and argues that many readers browse headlines only.[41] He points out that the headline is false because it states that the story *is* Russian disinformation, while the letter signed by the national security experts only states that they *suspected* disinformation. Mac Isaac claims that the headline is "propaganda" and is used to "deliberately spread false allegations for the purpose of injuring a cause…or a person (Plaintiff and others)."[42] Further, Mac

[39] Pl.'s Ans. Br. to Politico's Mot. to Dismiss at 13.
[40] Compl. ¶ 108.
[41] Pl.'s Ans. Br. to Politico's Mot. to Dismiss at 11–12.
[42] *Id.* at 15.

Isaac admits if the court deems the headline as non-defamatory, he does not have a claim.[43]

Regardless of whether the headline is true or false, it does not mention Mac Isaac, either directly or indirectly. Furthermore, the sub-headline states, "More than 50 former intelligence officials signed a letter casting doubt on the provenance of a New York Post story on the former vice president's son," which clarifies the headline. As with CNN's motion to dismiss, even if the statements were defamatory or concerned Mac Isaac, he is a limited public figure and he has not adequately pled actual malice. Therefore, Politico's motion to dismiss is GRANTED.

C. BFPCC's Motion to Dismiss

Mac Isaac claims that he was defamed by BFPCC officials and by candidate-Joseph Biden himself in five separate statements, each of which is quoted in the SAC. The statements all claim the contents of the laptop are Russian disinformation but do not mention Mac Isaac or his business. The SAC provides a date for only one of these statements, October 14, 2020, but it also provides hyperlinks to various articles that supposedly include the defamatory statements. These hyperlinks are problematic. The one paragraph with a date in this count alleging defamation by BFPCC, Paragraph 136, has a link to a lengthy Politico article dated October 14,

[43] *Id.* ("Had Politico used a different (accurate) headline or if they had changed it once it came to light that the headline clearly did not match the message of the Article, Plaintiff may not have a valid claim against them.").

2020 that contains a quotation from a Biden campaign official. The court will *assume* the statement was made the same day the article was published, since that was the date of the New York Post article. Paragraphs 136 and 137 provide a link to an article dated November 12, 2020 on Substack written by Glenn Greenwald that mentions the two supposedly defamatory statements, but does not say when they were made. Paragraph 139 contains a link to an article on the National Review website titled, "Sure Seems Joe Biden Knowingly Lied about the Hunter Biden Laptop Story." When the court visited that website, it displayed a date of March 17, 2022. The article contains the quotation cited in the SAC, but it only says that Joseph Biden made that statement in 2020. Finally, the link in Paragraph 140 does not work, and Paragraph 140 does not otherwise provide the date the statement was supposedly made. Simply put, the SAC—and the initial complaint and first amended complaint—does not set forth the exact dates these statements were made. And, to the extent Mac Isaac relies on the hyperlinks to advance substantive claims, they do not provide further clarity.

Clarifying the specific dates when the allegedly defamatory statements were made is important because one of arguments BFPCC raises in its motion to dismiss is that the claims were filed outside the two-year statute of limitations. In their briefing, the parties seem to agree all five statements were made between October 14, 2020 and October 24, 2020. Mac Isaac filed the initial complaint on October 17,

2022, which was more than two years after the only date mentioned in the count against BFPCC. That complaint, however, did not name BFPCC in the caption, but did claim defamation and defamation per se against BFPCC in the body of the complaint in Count 5. BFPCC was not served with that complaint. Mac Isaac concedes he made a clerical error by omitting BFPCC in the caption. Mac Isaac filed a first amended complaint on January 20, 2023 and the SAC on August 2, 2023, both of which properly named BFPCC in the caption.

The court is well within its purview to grant BFPCC's motion to dismiss because Mac Isaac filed the initial complaint—the one that does not properly name BFPCC in the caption—two years after the only date alleged in the initial complaint, October 14, 2020. But, the motion to dismiss should also be granted because Mac Isaac filed the first amended complaint—that fixed the "clerical" problem that omitted BFPCC from the caption—on January 20, 2023, well more than two years after the last defamatory statement (as agreed to by the parties in their briefing) on October 25, 2020. Mac Isaac argues that Superior Court Civil Rule 15(c) allows him to relate back to the initial complaint. This Rule allows an amendment if three criteria are met. In this case, Mac Isaac cannot meet the third requirement in 15(c)(3) because he cannot establish that BFPCC knew or should have known of his clerical error. This situation was not one where there was a mistake as to the identity of the party—Mac Isaac's initial complaint sets out a claim against BFPCC in the body, so

he clearly knew the party he intended to sue. He also failed to request a praecipe to issue a summons to BFPCC of the flawed initial complaint, which would have put BFPCC on notice that it was intended to be included in this litigation.

Finally, even if the claim against BFPCC were decided on the merits, this court would grant the motion to dismiss because—consistent with the rulings on the other defendants' motions to dismiss—the statements, even considered in the light most favorable to Mac Isaac, are not defamatory and are not about Mac Isaac. And Mac Isaac, as a limited public figure, has not shown actual malice. Therefore, BFPCC's motion to dismiss is GRANTED.

D. Mac Isaac's Motion to Dismiss Biden's Counterclaims

Biden initially filed counterclaims against Mac Isaac on March 17, 2023 while this case was briefly in federal court. After the federal court remanded this case to this court, Biden filed six counterclaims against Mac Isaac: (1) invasion of privacy by intrusion, (2) invasion of privacy by publication of private facts/matters, (3) conspiracy to invade privacy by intrusion, (4) conspiracy to invade privacy by publication of private facts/matters, (5) aiding and abetting an invasion of privacy by intrusion, and (6) aiding and abetting an invasion of privacy by publication of private facts/matters.

Biden claims that Mac Isaac invaded his privacy when Mac Isaac accessed the laptop's data and that he published that private data when he gave it to several

people, and that he continues to do so. Biden points out that while some contents were shared in 2019 and 2020, Mac Isaac continued to share more information later in 2022 and 2023. For example, Mac Isaac's initial disclosures contained details about Biden's financial matters and ties to Ukraine. But in later articles and interviews, Mac Isaac disclosed additional content, including videos of Biden engaging in sexual acts while allegedly under the influence of drugs.[44]

Mac Isaac filed a motion to dismiss Biden's counterclaims arguing that Biden is outside the statute of limitations for these types of claims. Mac Isaac argues that the statute of limitations for the invasion of privacy by intrusion and related claims ran on either April 12, 2021—two years after he first accessed the laptop's contents—or, in the alternative, on August 28, 2022—two years after Mac Isaac gave the data to Costello. For the invasion of privacy by publication and related claims, Mac Isaac argues the statute of limitations expired on October 14, 2022—two years after the New York Post published the article about the laptop.

Biden responds that he was "blamelessly unaware of the particularity with which Mac Isaac handled his private data, including the scale and scope of Mac Isaac's repeated strategic and intentional disclosures of his most intimate information" until Mac Isaac published a book on November 22, 2022 that provided

[44] D.I. 88, Def. Robert Hunter Biden's Ans. to Pl.'s Second Am. Compl. ("Biden's Ans. and Countercl.") ¶ 55.

additional details of how he accessed the laptop.[45] Biden also points out that Mac Isaac continues to publish and re-publish private facts about him.[46] Therefore, Biden argues, his counterclaims are not barred by the statute of limitations.

The statute of limitations for each of the above referenced causes of actions is two years.[47] Delaware follows the "time of discovery rule" which states that the statute of limitations does not start until a plaintiff has reason to know that a wrong has been committed.[48] If a plaintiff could have discovered the alleged wrong with due diligence, the statute of limitations will continue to run. [49]

The statute of limitations is not tolled when a defendant continues to publish and republish. In the present case, Biden knew that information on his laptop was revealed on October 14, 2020, following the publication of the New York Post article. At that moment, Biden knew his privacy had been invaded and was on notice that the data on his laptop had been compromised and disseminated. As such, the statute of limitations expired on October 14, 2022—that is, Biden was well outside the statute of limitations when he filed his counterclaims in federal court on March

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[45] D.I. 124, Def./Countercl. Pl. Robert Hunter Biden's Ans. Br. in Opp'n to Pl./Countercl.-Def. John Paul Mac Isaac's Mot. to Dismiss Countercls. ("Biden's Ans. to Pl's. Mot. to Dismiss Countercls.") at 1.
[46] *Id.* at 12.
[47] *Clark v. Delaware Psychiatric Ctr.*, 2011 WL 3762038, at *1 (Del. Super. Ct. Aug. 9, 2011); *see also* 10 *Del. C.* § 8119.
[48] *Pack & Process, Inc. v. Celotex Corp.*, 503 A.2d 646, 651 (Del. Super. Ct. 1985).
[49] *Shockley v. Dyer*, 456 A.2d 798, 799 (Del. 1983).

17, 2023. For these reasons, Mac Isaac's motion to dismiss Biden's counterclaims is GRANTED.

E. Biden's Motion for Summary Judgment

Mac Isaac alleges Biden defamed him during a CBS interview on April 4, 2021. During this interview, Biden said:

> There could be a laptop out there that was stolen from me. It could be that I was hacked. It could be that it was the—that it was Russian intelligence. It could be that it was stolen from me. Or that there was a laptop stolen from me.

Mac Isaac claims that this statement was defamatory, and that the defamation continued when CNN later published an article containing a video with clips of the CBS interview, cited above, and a second CBS interview.[50] Mac Isaac argues that Biden's statements were slander per se because they maligned Mac Isaac's business and profession, and that they fall into the category of defamation-by-implication. He claims that through discovery he can prove that Biden was lying because Biden knew the laptop they were discussing was indeed the one Biden left with Mac Isaac.

[50] D.I. 171, Pl./Countercl. Def. John Paul Mac Isaac's Ans. Br. in Opp'n to Def./Countercl. Pl. Robert Hunter Biden's Mot. for Summ. J. ("Pl.'s Ans. Br. to Biden's Mot. for Summ. J.") at 6; Paragraph 155 of the Compl. includes Biden's statement, but it also contains—prefaced by a "*See*"—a website link to a CNN article about the interview that also contains a video of excerpts of similar statements made by Biden. Until argument and briefing, it was not obvious to the court that the linked interviews were intended to be part of his defamation claim. Whether information contained in the link is part of Mac Isaac's claim does not affect this court's analysis.

Biden argues the above statement is not defamatory because it is a protected expression of opinion incapable of being defamatory.[51] Biden focuses on the use of "could" throughout his statement, arguing that the usage shows that he was making a statement of possibilities. [52]

First—as with the rulings on the other defendants' motions to dismiss—these statements cannot be understood to be defamatory by a reasonable listener. The above statement and similar statements made by Biden do not name or reference Mac Isaac or his business directly or indirectly. A reader must be able to infer from the contents of the publication that the publication is referring to the plaintiff.[53] A reasonable listener would need additional information to link Mac Isaac to the laptop and its contents. If Biden had said that Mac Isaac was the one who stole or hacked the laptop, or was acting as a Russian agent, the statements might be defamatory, but that is far from what Biden said. Biden's statements to CBS News and repeated by CNN are not defamatory towards Mac Isaac, even by implication. Furthermore, as

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[51] For this argument, Biden relies on the Delaware Supreme Court ruling in *Riley v. Moyed*, 529 A.2d 248 (Del. 1987). More recently, however, in *Cousins v. Goodier*, 283 A.2d 1140, 1158 (Del. 2022), the Court acknowledged that there are occasions where an opinion can be defamatory. In *Cousins*, unlike the facts of this case, the Court found that the defendant's statements defamed the plaintiff.

[52] In his briefs, Biden also argues that because he had other laptops that he lost track of, he could have been referring to one of those laptops, not the one he left with Mac Isaac. He quotes extensively from Mac Isaac's deposition to show that even Mac Isaac was confused about what other computers to which Biden could have been referring. From the context of the entire interview, however, it was clear he was being asked about the laptop he left at the Mac Shop, so this argument is unavailing.

[53] *See Howe*, 2004 WL 2828058, at *4.

discussed above, Mac Isaac is a limited public figure, and he cannot show that Biden's statement was malicious. Therefore, Biden's motion for summary judgment is GRANTED.

F. The Aiding and Abetting and Conspiracy Claims Against All Defendants

In the SAC, Mac Isaac alleges that all defendants conspired to hide information obtained from the laptop because they supported the election of now-President Joseph Biden and to oppose the re-election of President Trump. Mac Isaac asserts that if voters had known more about the laptop, Donald Trump would have won the election. At oral argument, Mac Isaac asserted that the discovery process will allow him to expose the conspiracy between the defendants. Because Mac Isaac's defamation claims against all the defendants fail, the derivative claims he raises of civil conspiracy to defame (count 5) and aiding and abetting defamation (count 6) cannot survive.

G. Biden's Motion to Strike Subpoenas

While these motions were pending, Mac Isaac filed numerous subpoenas directed at non-parties. Those receiving the subpoenas included members of Biden's family (including his father, uncle, and daughters), numerous government officials (including the Secretary of State of the United States, advisors to President Biden, and the former Acting Director of the CIA), and various business associates of Biden. The subpoenas requested extensive information. For example, the subpoenas

typically sought all communications between the non-parties and Biden, and any documents or communications about Biden from January 1, 2019 to present. Because of the broad and burdensome nature of the subpoenas, and because of the dispositive nature of the pending motions, the court stayed the subpoenas until these motions could be decided. Because this decision terminates this litigation, the motion to strike is MOOT.

CONCLUSION

As explained above, CNN, Politico, and BFPCC's motions to dismiss are GRANTED. Biden's motion for summary judgment is also GRANTED. Mac Isaac's motion to dismiss Biden's counterclaims is GRANTED. Because these rulings terminate this litigation, Biden's motion to strike the subpoenas is MOOT.

IT IS SO ORDERED.