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IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN PAUL MAC ISSAC, 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 On Cross-Appeal from the Superior Court of the State of Delaware in C.A. No. S22C-10-012 RHR

APPELLEE ROBERT HUNTER BIDEN'S ANSWERING BRIEF

OF COUNSEL:

WINSTON & STRAWN LLP

Abbe David Lowell, Esq.
David A. Kolansky, Esq.
1901 L Street, NW
Washington, D.C. 20036
(202) 282-5000 (ph)
(202) 282-5100 (fax)
AbbeLowellPublicOutreach@winston.com
DKolansky@winston.com

DALTON & ASSOCIATES, P.A.

Bartholomew J. Dalton, Esq. (#808)
Connor C. Dalton, Esq. (#7037)
Jessica L. Needles, Esq. (#6884)
1106 West 10th Street
Wilmington, DE 19806
(302) 652-2050 (ph)
(302) 652-0687 (fax)
BDalton@dalton.law
CDalton@dalton.law
JNeedles@dalton.law

Counsel for Robert Hunter Biden, Defendant/Counterclaim Plaintiff Below, Appellee/Cross-Appellant

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NATURE OF THE PROCEEDINGS

This appeal arises out of a now-dismissed defamation claim filed by Plaintiff-below John Paul Mac Isaac against Cable News Network, Inc. ("CNN"), Politico LLC, Robert Hunter Biden ("Mr. Biden"), and the Biden for President Campaign Committee, Inc ("BFPCC"). On August 8, 2023, Mr. Biden answered the Second Amended Complaint in Delaware Superior Court and counter-sued Mac Isaac. CNN, Politico, and BFPCC each filed motions to dismiss. Mac Isaac also moved to dismiss Mr. Biden's six counterclaims. On November 17, 2023, Mr. Biden filed a Motion for Summary Judgment on Mac Isaac's defamation claim. On September 30, 2024, the Superior Court granted CNN, Politico, BFPCC, and Mac Isaac's motions to dismiss, and granted Mr. Biden's motion for summary judgment. Mac Isaac appealed the Superior Court's dismissal of his complaint against Politico, BFPCC, and Mr. Biden. Subsequently, Mr. Biden cross-appealed the lower court's dismissal of his counterclaims against Mac Isaac (*the subject of the other appeal in this matter*).

SUMMARY OF THE ARGUMENT

1. The Superior Court correctly determined that Mr. Biden's statement could not be defamatory because it did not "directly or indirectly" identify Mac Isaac. The statement that forms the basis of Mac Isaac's entire defamation claim—"Of course, certainly. There could be a laptop out there that was stolen from me. There could be that I was hacked. It could be that it was Russian intelligence. It could be that it was stolen from me, the laptop"—does not mention Mac Isaac or his business; nor does it even remotely suggest that such a person as Mac Isaac or his business even existed. A reader must be able to infer from the contents of the publication that the publication is referring to the plaintiff. A reasonable listener would need additional information to link Mac Isaac to the laptop and its contents. As such, Mr. Biden's statement could not be defamatory.

2. The Superior Court correctly classified Mac Isaac as a limited purpose public figure, so that, even if Mr. Biden's statements did refer to him, his claims are subject to the actual malice standard which also defeat his case. Mac Isaac's actions clearly demonstrate that he "'thrust [himself] to the forefront of particular public controversies in order to influence the resolution of the issues involved.'" Among other things, Mac Isaac participated in a one-hour-long interview with numerous national media outlets and subsequently published a book about the controversy. The Superior Court correctly determined that Mac Isaac is a limited purpose public

figure. Accordingly, even in the remote possibility that Mr. Biden's statements could be defamatory as to him, Mac Isaac's claims are subject to the actual malice standard, which he cannot meet.

STATEMENT OF FACTS

Mac Isaac, by whatever means (either, as he claims, by a person entering his shop, or by some other potentially method), came into possession of certain electronic data, at least some of which belonged to Mr. Biden, in or before April 2019.[1] (B028). Mac Isaac claims that he obtained lawful possession of data belonging to Mr. Biden because it was contained on a laptop left at his repair shop (The Mac Shop) in Delaware. On October 14, 2020, mere weeks before the presidential election, the New York Post published the article, "Smoking-gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to VP Dad." (A115). Prior to the publication, Mac Isaac was in communication with the *New York Post* regarding the article. (A018). In fact, the contents of the article all trace back to Mac Isaac. Following the publication of the article, Mac Isaac proceeded to give interviews to various reporters, from media outlets including the Daily Beast and CNN, about his role in spreading Mr. Biden's data. (A019, A026). Mac Isaac's counsel also approached various media outlets with a statement written at Mac Isaac's request that was published on October 30, 2020. (A019, A021).

[1] As explained in the trial court, this is not an admission by Mr. Biden that Mac Isaac (or others) in fact possessed any particular "laptop" containing electronically stored data belonging to Mr. Biden. Rather, Mr. Biden acknowledges that at some point, Mac Isaac obtained electronically stored data, some of which belonged to Mr. Biden. (B028).

Mac Isaac then generated further press, on December 28, 2020, by suing Twitter, claiming that company's ban of the *New York Post* article defamed Mac Isaac as someone who engaged in "hacking." The case was later dismissed, with prejudice. *Mac Isaac v. Twitter, Inc.*, 2020 WL 7711662 (S.D. Fla. Dec. 29, 2020). Thereafter, Mac Isaac filed a substantively identical suit on February 18, 2021, which was also dismissed with prejudice. *Mac Isaac v. Twitter, Inc.*, 557 F. Supp. 3d 1251 (S.D. Fla. 2021). On January 21, 2021, Mac Isaac made a press appearance on Sean Hannity's Fox News show to discuss his role in publicizing Mr. Biden's data. (B031). Following these forays into the public eye, Mac Isaac proceeded to make an additional 54 public appearances and interviews between 2021 and early 2023, including on Fox Nation, Fox and Friends, Newsmax, Tucker Carlson Tonight, and various right-wing podcasts. *Id.* Some of these media appearances were specifically intended to promote his new book, published on November 22, 2022, which detailed all the steps he took in reviewing and circulating Mr. Biden's data.

Mr. Biden's 2021 conjecture was not without any basis. On October 19, 2020, more than 50 former U.S. intelligence officials issued a public letter warning that the published data had "all the classic earmarks of a Russian information operation." (A020). The former officials, who included a former Director of National Intelligence, former directors of the Central Intelligence Agency, and a former Secretary of Defense, signed the letter stating they do not know whether the released

data was "genuine or not and that [they] do not have evidence of Russian involvement." but that their experience "makes [them] deeply suspicious that the Russian government played a significant role in this case." (B002). The factors pointing to Russian involvement included the U.S. intelligence community publicly identifying Russia's intent to undermine Joe Biden's candidacy, Russia's access of Burisma's emails in 2019, and the reported warnings issued to the Trump White House that Rudy Giuliani was the "target of an influence operation by Russian intelligence." (B002). There was widespread reporting of the letter due to the upcoming presidential election and the suggestion that Russian interference in the election could be a motivation for the release and manipulation of Mr. Biden's data.

Following the publication of his memoir, which details his struggles with drug and alcohol abuse, Tracy Smith of CBS News interviewed Mr. Biden on April 4, 2021 in a video profile. Their conversation briefly addressed his data, two sentences of which became the basis for Mac Isaac's claim in this case:

> SMITH (in narration): In October, 2020, a New York Post article said that emails purportedly showing shady dealings in Ukraine by Hunter Biden were found on a laptop computer that he supposedly left in a Delaware repair shop in 2019. The details were sketchy at best. Last month, a declassified intelligence report said that before the election the Russians had launched a smear campaign against Joe Biden and his family.
> SMITH (to Mr. Biden): It does not specifically talk about your laptop. Was that your laptop?
> BIDEN: For real, I don't know. . . I really don't know what the answer is. That's the truthful answer.
> SMITH: Okay. You don't know yes or no if the laptop was yours?
> BIDEN: I don't have any idea. I've no idea whether or not.

SMITH: So it could have been yours?
BIDEN: **Of course, certainly. There could be a laptop out there that was stolen from me. There could be that I was hacked. It could be that it was Russian intelligence. It could be that it was stolen from me, the laptop**.[2]

During that interview, Mr. Biden *did not once* mention or identify, or make any possible reference to, Mac Isaac or Mac Isaac's business in the interview (and did not identify any person at all) and, as described above, made a statement of general conjecture, not fact.

Mr. Biden's statement ("Of course, certainly. There could be a laptop out there that was stolen from me. There could be that I was hacked. It could be that it was Russian intelligence. It could be that it was stolen from me, the laptop") became the basis of Mac Isaac's defamation lawsuit.[3]

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[2] B016–B017, Transcript of Interview admitted as Ex. 8 during the Deposition of Robert Hunter Biden, June 29, 2023.

[3] In his Opening Brief, Mac Isaac claimed that Mr. Biden "appeared on CBS twice, not just once making defamatory statements about Plaintiff." However, Mac Isaac only included the one allegedly defamatory statement in his Second Amended Complaint (A042 ¶ 155), but included a link that supposedly contained a similar statement. Regardless, such claim is immaterial, as the Superior Court noted that "[u]ntil argument and briefing, it was not obvious to the court that the linked interviews were intended to be part of [Mac Isaac's] defamation claim. Whether information contained in the link is part of Mac Isaac's claim does not affect this court's analysis." (A073).

ARGUMENT

I. The Superior Court correctly determined that Mr. Biden's statement could not be defamatory because it did not "directly or indirectly" identify Mac Isaac.

A. Question Presented

Whether the Superior Court erred in determining that Mr. Biden's statement could not be understood to be defamatory by a reasonable listener because they did not "directly or indirectly" identify Mac Isaac.

B. Standard of Review

A trial court's decision to grant or deny a motion for summary judgment is reviewed de novo. *AeroGlobal Cap. Mgmt., LLC, v. Cirrus Indus., Inc.*, 871 A.2d 428, 443 (Del. 2005); *ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 68 (Del. 2011).

C. Merits of the Argument

The Superior Court correctly determined that Mr. Biden's statement could not be defamatory because it did not name, allude to, identify, or suggest anything about Mac Isaac or his business. It therefore cannot harm his reputation or estimation in the community and thus cannot be defamatory.

> To state a claim for defamation under Delaware law, the plaintiff must plead and ultimately prove that: 1) the defendant made a defamatory

> statement; 2) concerning the plaintiff; 3) the statement was published;[4] and 4) a third party would understand the character of the communication as defamatory. If the plaintiff is a public figure, even for a limited purpose, the public figure defamation plaintiff must [also] plead and prove that 5) the statement is false and 6) that the defendant made the statement with actual malice.

Page v. Oath Inc., 270 A.3d 833, 842 (Del. 2022) (citing *Doe v. Cahill*, 884 A.2d 451, 463 (Del. 2005)), *cert. denied*, 142 S. Ct. 2717 (2022). For an oral statement, Plaintiff must also make a showing of either defamation per se or of special damages, such as monetary loss. *See Preston Hollow Cap. LLC v. Nuveen LLC*, 2022 WL 2276599, at *7 (Del. Super. Ct. June 14, 2022).

The Superior Court correctly determined that Mr. Biden's remarks (set out above) could not satisfy the second element because they "do not name or reference Mac Isaac or his business directly or indirectly." (A074). That "the allegedly defamatory statement concerns the plaintiff" tends to be "apparent from the face of the statement." *Doe*, 884 A.2d at 463–64.

Mr. Biden's statement does not mention Mac Isaac or his business, nor does it even remotely suggest that such a person as Mac Isaac or his business even existed; nor does it have any words (e.g., "some computer repairman could have…") from which Mac Isaac could be discovered or identified. It therefore cannot be read to allude to either. As the Superior Court explained, "[a] reader must be able to infer

[4] Mr. Biden does not contest that his statement was published. (B035).

from the contents of the publication that the publication is referring to the plaintiff. A reasonable listener would need additional information to link Mac Isaac to the laptop and its contents." (A074).

The Superior Court correctly ended their inquiry into whether the statement is defamatory here. *See Helicopter Helmet, LLC v. Gentex Corp.*, 2018 WL 2023489, at *4 (D. Del. May 1, 2018), *aff'd*, 774 F. App'x 96 (3d Cir. 2019) (dismissing plaintiffs' defamation claims for failing to show that certain publications referred to plaintiffs because, even though there were only a limited number of manufacturers in the market to which defendant could be referring, no publication referenced plaintiffs directly or indirectly and no reasonable person could find that the publications "could plausibly be understood to refer to" plaintiffs); *see also Williams*, 2004 WL 2828058 at *4 (granting defendant's motion for summary judgment where plaintiff failed to establish the elements necessary to prove defamation, including that the statement concerned plaintiff where it did "not specifically refer to [plaintiff] by name, nor [could] be reasonably infer[red] from its contents" to be referring to plaintiff); *see also Mac Isaac v. Twitter, Inc.*, 557 F. Supp. 3d 1251, 1260 (S.D. Fla. 2021) (where Mac Isaac attempted to bring a similar claim for defamation against Twitter, the court granted defendant's motion to dismiss for failure to state a claim as a matter of law because the publications did "not name

Plaintiff or his business or even permit an ascertainable implication that they were about Plaintiff") (internal citations omitted).

The case law cited by Mac Isaac is unpersuasive. He cites a D.C. Circuit case that stated, "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). However, Mr. Biden's statement does not even mention a "person[]," let alone a person that is "ascertainable." Nor are the other cases cited by Mac Isaac at all factually analogous. *Miller v. Sawant*, 18 F.4th 328 (9th Cir. 2021) (statement made by city council member ("Che Taylor was murdered by the police") was "of and concerning" the plaintiff police officer who killed Che Taylor while attempting to make an arrest); *Cheney v. Daily News L.P.*, 654 F. App'x 578, 581 (3d Cir. 2016) (referencing *Peck v. Tribune Co.*, 214 U.S. 185 (1909) (advertisement featuring plaintiff's photograph was "of and concerning" the plaintiff); *Smartmatic USA Co. v. Newsmax Media, Inc.*, 2024 WL 4165101, at *19 (Del. Super. Ct. Sept. 12, 2024) (statement that did not mention plaintiff by name was "of and concerning" plaintiff "because the Election coverage in whole," including mentioning plaintiff by name numerous times previously, "made it clear that Smartmatic was being accused of 'rigging' the Election.") Accordingly, the Superior Court correctly concluded that Mr. Biden's remarks could not be defamatory because they do not identify Mac Isaac, either directly or indirectly.

II. The Superior Court correctly classified Mac Isaac as a limited purpose public figure, so that his claims are subject to the actual malice standard, which he cannot meet.

A. Question Presented

Whether the Superior Court erred by classifying Mac Isaac as a limited purpose public figure, so that his claims are subject to the actual malice standard, which he cannot meet.

B. Standard of Review

A trial court's decision to grant or deny a motion for summary judgment is reviewed *de novo*. *AeroGlobal Cap. Mgmt., LLC, v. Cirrus Indus., Inc.*, 871 A.2d 428, 443 (Del. 2005); *ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 68 (Del. 2011).

C. Merits of the Argument

Because Mac Isaac "'thrust [himself] to the forefront of particular public controversies in order to influence the resolution of the issues involved'" and "'invite[d] attention and comment'" the Superior Court correctly determined that Mac Isaac is a limited public figure. (A064) (citing *Gertz v. Robert Welch*, 418 U.S. 323, 345 (1974)). As such, Mac Isaac's defamation claim is subject to the actual malice standard, the Superior Court determined he cannot meet. (A100 ("Mac Isaac is a limited public figure, and he cannot show that Biden's statement was malicious.")).

Mac Isaac's main argument against the Superior Court's finding that he is a limited public figure is that he "did not seek public attention and was drawn into the controversy against his will." (Appellant's Opening Brief at 2). However, as the Superior Court noted, Mac Isaac took numerous actions that placed himself into the controversy: (1) "two initial interview he gave to the media—one of which was nearly an hour long," (2) "tried to get his version of events published by the Wall Street Journal and the Washington Post, and then later published the article online," and (3) "publishing a book about the laptop controversy and attending conferences where he sells copies of the information from the laptop." (A064–A065). In his opening brief, Mac Isaac made similar excuses for his actions as the Superior Court rejected below, such as that "[t]here were not several interview, it was one painful interview with several journalists (including, apparently, CNN), against Plaintiff's will." (Appellant's Opening Brief at 12). However, as the Superior Court held, "regardless of his motivations, Mac Isaac voluntarily thrust himself into the controversy, thereby making himself a limited public figure." (A065).

Even assuming *arguendo* that Mac Isaac was "drawn into the controversy against his will" (Appellant's Opening Brief at 2), as he claims, "[a] person becomes a limited purpose public figure when he 'voluntarily injects himself or is *drawn into a particular public controversy*[.]'" *Page v. Oath Inc.*, 270 A.3d 833, 843 (Del. 2022) (quoting *Gertz*, 418 U.S. at 351) (emphasis added); *see also Smartmatic USA Co. v.*

Newsmax Media, Inc., 2023 WL 1525024 at *12 (Del. Super. Ct. Feb. 3, 2023) (finding that plaintiff was a limited public figure who was "drawn into" the controversy, despite "not (1) invit[ing] public attention, (2) voluntarily inject[ing] itself into public controversy related to this litigation, (3) assum[ing] a position of prominence in the controversy, or (4) maintain[ing] regular or continuing access to the media."). In admitting that he was "drawn into the controversy," By admitting, in his own words, that he was "drawn into the controversy" (Appellant's Opening Brief at 2), Mac Isaac has effectively conceded his that he is a limited purpose public figure, raising the standard for his claim to actual malice, which he cannot meet.

The numerous of out-of-circuit, misattributed case law cited by Mac Isaac gets him no further. Mac Isaac cites Justice Thomas's dissent from the denial of certiorari in *Berisha v. Lawson*, attributing the quote to "the Supreme Court" (Appellant's Opening Brief at 12, 13), which obviously it not controlling law. Mac Isaac also quotes the Second Circuit's opinion in *La Liberte v. Reid*, 966 F.3d 79 (2d Cir. 2020), which he attributes to "the Ninth Circuit" (Appellant's Opening Brief at 14), for the proposition that "media access that becomes available only 'after and in response to' damaging publicity does not make someone a public figure." 966 F.3d at 92. However, unlike in *La Liberte*, the interview Mac Isaac participated in occurred months *before* the Mr. Biden made the allegedly defamatory statement, not "after and in response to" it.

Mac Isaac quotes extensively from the Eastern District of Pennsylvania's decision in *Mzamane v.Winfrey,* 693 F. Supp. 2d 442 (E.D. Pa. 2010) for the Third Circuit's test for 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." *Id.* at 499. This test has not been adopted by the Delaware courts and would not change the outcome of the Court's analysis. The nature and extent of Mac Isaac's involvement is clearly evidenced by him subsequently publishing a book about the laptop controversy, "American Injustice: *My Battle* to Expose the Truth" (emphasis added). Accordingly, the Superior Court correctly determined that Mac Isaac was a limited purpose public figure so that his claims are subject to the actual malice standard.

Mac Isaac rehashes a similar argument the Superior Court rejected below to attempt to prove Mr. Biden acted with actual malice: "[t]he 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." (Appellant's Opening Brief at 20–21). This attempt to show actual malice is nothing more than Mac Isaac's own conjecture, combined with numerous unreasonable logical leaps, and completely unsupported by the record and is its own reason to affirm the lower court decision even if Mr. Biden's statement did satisfy the "refer to" requirement of defamation law. The

Superior Court correctly concluded that Mac Isaac "cannot show that Biden's statement was malicious."

CONCLUSION

For the foregoing reasons, the Superior Court did not err in granting Mr. Biden's Motion for Summary Judgment.

Dated: March 6, 2025

Respectfully submitted,

/s/ *Bartholomew J. Dalton*
Bartholomew J. Dalton, Esq. (#808)
Connor C. Dalton, Esq. (#7037)
Jessica L. Needles, Esq. (#6884)
DALTON & ASSOCIATES, P.A.
1106 West 10th Street
Wilmington, DE 19806
(302) 652-2050 (ph)
(302) 652-0687 (fax)
BDalton@dalton.law
CDalton@dalton.law
JNeedles@dalton.law

Of Counsel:

Abbe David Lowell, Esq.
David A. Kolansky, Esq.
WINSTON & STRAWN LLP
1901 L Street, NW
Washington, D.C. 20036
(202) 282-5000 (ph)
(202) 282-5100 (fax)
AbbeLowellPublicOutreach@winston.com
DKolansky@winston.com

Counsel for Robert Hunter Biden, Defendant/Counterclaim Plaintiff Below, Appellee/Cross-Appellant

CERTIFICATE OF SERVICE

I, Jessica L. Needles, Esq., hereby certify that on this 6th day of March 2025, I caused to be served *Appellee Robert Hunter Biden's Answering Brief*, the supporting documents, and this Certificate of Service via File & Serve*Xpress* upon all counsel of record.

Of Counsel:

Abbe David Lowell, Esq.
David A. Kolansky, Esq.
WINSTON & STRAWN LLP
1901 L Street, NW
Washington, D.C. 20036
(202) 282-5000 (ph)
(202) 282-5100 (fax)
AbbeLowellPublicOutreach@winston.com
DKolansky@winston.com

/s/ *Jessica L. Needles*
Bartholomew J. Dalton, Esq. (#808)
Connor C. Dalton, Esq. (#7037)
Jessica L. Needles, Esq. (#6884)
DALTON & ASSOCIATES, P.A.
1106 West 10th Street
Wilmington, DE 19806
(302) 652-2050 (ph)
(302) 652-0687 (fax)
BDalton@dalton.law
CDalton@dalton.law
JNeedles@dalton.law

Counsel for Robert Hunter Biden, Defendant/Counterclaim Plaintiff Below, Appellee/Cross-Appellant