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Recent Developments: Le Marc's Management Corp. v. Valentin: Actual Knowledge of a False Statement Is Required for an Award of Punitive Damages in Defamation Action

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Le Marc's Management Corp. v. Valentin

The Court of Appeals of Maryland held that punitive damages were not recoverable in a defamation action where the plaintiff could not prove that the defendant acted with actual knowledge that a particular defamatory statement was false. *Le Marc's Management Corp. v. Valentin*, 359 Md. 645, 709 A.2d 1222 (1998). In prior defamation actions, the court generally allowed punitive damages based on defamatory statements made with actual malice or conscious, deliberate, or reckless disregard for the truth. The court modeled the new standard for punitive damages in defamation cases after the standard applied in other tort actions.

In late 1987, Francisco Valentin ("Valentin") moved from Puerto Rico to New York City and became employed as a stock room clerk at Le Marc's Fifth Avenue Cards, Inc. ("Le Marc's"). In May 1988, upon learning of thefts at the store, Le Marc's administered polygraph tests to its Hispanic employees, including Valentin. Valentin's test was judged inconclusive due in part to the language barrier. However, the examiner also reported to Robert Sauer, Le Marc's corporate administrator, that he believed Valentin was withholding information. Shortly thereafter, Valentin decided to leave Le Marc's. Valentin submitted a letter of resignation to his manager

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and, in return, received a letter of recommendation. Valentin relocated to Maryland where he was hired as a teller-trainee for Sovran Bank. The bank sought references from Valentin's past employers, including Le Marc's. Upon receiving the bank's request, Sauer consulted his records and returned a reference documenting that Valentin had been terminated from Le Marc's due to pilferage. The bank suspended Valentin and gave him four days to clear his reference from Le Marc's or he would be terminated.

Valentin immediately contacted Sauer who promised to investigate Valentin's employment record. In a private meeting with Valentin, Sauer agreed that the information contained in the reference letter was inaccurate and that Valentin had not been terminated for pilferage. Nevertheless, the second version of the reference the bank received

from Sauer did not clear Valentin's name, but instead undermined his overall credibility. The letter implied that Valentin had been engaged in "covering something up." As a result of this report, the bank terminated Valentin for "falsifying" his employment application. This action rendered him ineligible for future employment with the bank.

Valentin filed a defamation action against Le Marc's in the Circuit Court for Montgomery County. A jury awarded Valentin \$25,000 in compensatory damages and \$130,000 in punitive damages. The trial court granted Le Marc's motion for remittitur which reduced the punitive damage award to \$75,000. The Court of Special Appeals of Maryland affirmed the compensatory damage award but held that the punitive damage award should have been vacated because the jury was not instructed as to the proper standard of proof for punitive damages. The case was retried on the sole issue of punitive damages and an award was returned for Valentin in the amount of \$700,000. Le Marc's motions for a new trial, judgment notwithstanding the verdict and remittitur were all denied by the trial court. Le Marc's appealed and the Court of Appeals of Maryland issued a writ of certiorari.

In justifying the new standard set forth in *Le Marc's*, the court reviewed a series of defamation

actions decided shortly after the United States Supreme Court's 1964 landmark decision, *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). *Le Marc's*, 359 Md. at 650, 709 A.2d at 1225. In *Sullivan*, the Court explained that a public figure must first establish "that the defendant acted with actual malice, defined as knowledge that [the defamatory statement] was false or with reckless disregard of whether it was false or not." *Id.* (citing *New York Times Co.*, 376 U.S. 254).

In *Marchesi v. Franchino*, 283 Md. 131, 387 A.2d 1129 (1978), a defamation action decided after *Sullivan*, the Maryland common law standard set forth allowed punitive damages where the plaintiff could prove that the defamatory statement was made with knowledge of its falsity or with reckless disregard for the truth. *Le Marc's*, 359 Md. at 651, 709 A.2d at 1225. However, actual malice, including ill-will, spite, hatred or intent to injure, was not sufficient to support such a claim. *Id.* (citing *Marchesi*, 283 Md. 131, 387 A.2d 1129).

The court then reviewed the Maryland standard for allowing punitive damages in tort actions other than defamation. In *Owens-Illinois v. Zenobia*, 325 Md. 420, 601 A.2d 633 (1992), a products liability action addressing the recovery of punitive damages, the court held that punitive damages were appropriate where the plaintiff could prove by clear and convincing evidence that the defendant's actions were

motivated by actual malice. *Le Marc's*, 359 Md. at 651-52, 709 A.2d at 1225-26. Moreover, the court held that the plaintiff must prove the defendant had actual knowledge of a particular defect and that "armed with this actual knowledge, the defendant consciously or deliberately disregarded the potential harm to consumers." *Id.* at 651-52, 709 A.2d at 1226 (citing *Zenobia*, 325 Md. at 463, 601 A.2d 633).

Following *Zenobia*, the court of appeals required that with respect to tort actions, punitive damage awards were to be based upon knowing and deliberate wrongdoing where the defendant had actual knowledge of the falsity of a particular defamatory statement. *Id.* at 652, 709 A.2d at 1226. Applying the same standard to defamation actions, the court further clarified and refined the decisions following *Zenobia* by requiring that an award for punitive damages be based upon proof that a defamatory statement was made with the requisite mens rea or actual knowledge of its falsity. *Id.* at 652-53, 709 A.2d at 1226. Subsequent decisions then limited the recovery of punitive damages to only those situations when the defendant had actual knowledge that a particular defamatory statement was false.

In the court's most recent opinion similar to the instant case, *Ellerin v. Fairfax Savings*, 337 Md. 216, 652 A.2d 1117 (1995), a fraud and deceit action, the court held that reckless indifference for the truth was not the same thing as

having actual knowledge of the falsity. *Le Marc's*, 359 Md. at 654, 709 A.2d at 1227. Furthermore, while reckless indifference does "encompass a level of actual knowledge," it does not rise to the level "sufficient to satisfy the actual knowledge of falsity required for punitive damages." *Id.* The *Le Marc's* court concluded that the holding in *Ellerin* reinforced the notion that actual knowledge of the falsity was the appropriate standard for awarding punitive damages in defamation cases. *Id.* As a matter of law, reckless disregard was rejected as the standard for the award of punitive damages. *Id.* (citing *Ellerin*, 337 Md. at 235, 652 A.2d 1117).

In dissent, Judge Bell disagreed with the majority's new ruling, which altered the previous common law standard articulated in *Marchesi*. *Id.* at 656, 709 A.2d at 1228. Judge Bell argued that the decision might have the effect to "insulate certain reprehensible conduct from proper punishment." *Id.* Conduct in which the defendant acts with "reckless indifference" is no better than similar conduct in which the defendant acts with "actual knowledge." *Id.* at 658, 709 A.2d at 1229. Furthermore, Judge Bell suggested that the damage to the person wronged is not less reproachable simply because a defendant knows that what he is saying is false than if made without that certainty of the truth. *Id.* Lastly, Judge Bell stated that what disturbed him most about the

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majority's decision was that "it simply will not be important to ensure that what is communicated about another person is true." *Id.*

In *Le Marc's Management Corp. v. Valentin*, the court of appeals articulated a new standard for punitive damage awards in defamation actions. In order to recover punitive damages, a plaintiff must prove by clear and convincing evidence that the defamer knew that the statement was false. Judge Bell argued that perhaps the majority drew too fine a distinction between actual knowledge and reckless indifference. Nevertheless, considering the public outrage in recent years over the exorbitant jury awards in tort actions, the majority's decision to tighten the standard by which plaintiffs can seek monetary damage claims in defamation actions will likely be viewed as a positive public policy choice. Perhaps the legislature might seriously consider adopting the court's new common-law standard.