

The Order of the Court is stated below:

Dated: November 29, 2017
01:24:57 PM

/s/ KARA PETTIT
District Court Judge



Craig A. Hoggan (8202)
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**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SUMMIT COUNTY, STATE OF UTAH**

<p>AH Aero Service, LLC dba OK3 AIR, Plaintiff, v. Paul Boyer, an individual, Defendant.</p>	<p>ORDER ON DEFENDANT'S MOTION TO DISMISS AND ON PLAINTIFF'S MOTION FOR CONTINUANCE UNDER RULE 56(d)</p> <p>Civil No. 170500365</p> <p>Judge Kara Pettit</p> <p>Tier 3</p>
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Defendant's Motion to Dismiss and Plaintiff's Motion for Continuance under Rule 56(d) were heard by the Court on November 1, 2017, with attorney Ryan Springer presenting argument on behalf of Defendant and attorney Craig Hoggan presenting argument on behalf of Plaintiff. The Court, having reviewed the filings, having heard oral argument, and having considered the merits, hereby rules as follows:

1. The Court finds that Defendants' Motion to Dismiss should be reviewed under

Rule 12(b)(6) and not under Rule 56. Because of this, Plaintiff's Motion for a Continuance under Rule 56(d) is moot. The Court will only consider the allegations of the Complaint and the emails that are referenced in the Complaint, and will not consider any other evidence, in determining how to rule on Defendant's Motion to Dismiss. Specifically, the Court will not consider the declarations or the meeting minutes submitted by the parties in ruling on Defendant's Motion to Dismiss.

2. Defendant's motion to dismiss plaintiff's first cause of action for Defamation Per Se is GRANTED. The Court dismisses the count for Defamation Per Se under the Rule 12(b)(6) standard. The Court does not find that the statements contained in emails in question assert conduct incompatible with the exercise of the lawful business that would be required for defamation per see.

3. Defendant's motion to dismiss plaintiff's second cause of action for Defamation is GRANTED in part and DENIED in part based on the following:

- a. On the issue of whether or not some of the alleged statements are susceptible to defamatory meaning, there are two statements that the Court finds, as a matter of law, are not susceptible to defamatory meaning and cannot, in and of themselves, support a cause of action for defamation: The February 29, 2016 email, stating that the City Council is considering the application for the second FBO, and the February 20, 2017 email that forwards the OK3 AIR Complaint. These two emails are not susceptible to a

defamatory meaning, giving all reasonable inferences in the light favorable to Plaintiff. Therefore, the claims based on these two emails are dismissed.

- b. The Court finds that the rest of the emails include statements that, with all reasonable inferences going in favor of Plaintiff, are susceptible to a potentially defamatory meaning, as argued by Plaintiff.
- c. With respect to Defendant's arguments regarding the public interest privilege, the Court finds that the public interest privilege applies to some of the alleged defamatory statements, but not all of the alleged defamatory statements. The statements that are subject to the privilege are the ones that refer to the process with the City, participation in government with the City, and the solicitation of comments on the FBO's contract with the City. However, the emails that do not tie the statements to the City, for instance March 21, 2017 email (which concerns vehicles on the leasehold) do not appear to have anything to do with some conduct by the City. Additionally, the Court notes that the public interest privilege is a qualified privilege. There are sufficient allegations in the Complaint to defeat a Rule 12(b)(6) motion relating to whether or not that qualified

privilege applies because there are allegations of conduct that was done maliciously and allegations that the statements were made with malice. Thus, the Court will not dismiss the count for defamation on a Rule 12(b)(6) on the basis of the public interest privilege.

- d. With respect to Defendant's argument that Plaintiff has failed to plead special damages, the Court finds that there are sufficient allegations in the Complaint – particularly, paragraphs 61 and 62 – to meet what is required under Utah Rule of Civil Procedure 9(g).

IT IS SO ORDERED.

****END OF TEXT****

The signature of the Court appears at the top of the first page.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2017, a true and correct copy of the foregoing **ORDER ON DEFENDANT'S MOTION TO DISMISS AND PLAINTIFF'S MOTION FOR CONTINUANCE UNDER RULE 56(d)** was [] mailed, postage prepaid; [] via facsimile; [] via email; [X] via e-filing, to the following:

Joseph E. Wrona
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/s/ Meredith Baker _____

RULE 7(j) NOTICE FOR
**ORDER ON DEFENDANT'S MOTION TO DISMISS AND PLAINTIFF'S MOTION
FOR CONTINUANCE UNDER RULE 56(d)**

Pursuant to Rule 7(j) of the Utah Rules of Civil Procedure, on the 15th day of November, 2017, I caused to be sent via e-mail a true and correct copy of the original proposed **Order on Defendant's Motion to Dismiss and Plaintiff's Motion For Continuance Under Rule 56(D)**

to:

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Defendant was required to file any objection to the form of the proposed order within seven (7) days after this service, or by November 22, 2017. Therefore, in compliance with Rule 7(j), this Order is presented to the Court for entry and signature.

/s/ Joelle S. Kesler

