

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
04/26/2001

04/24/2001

CLERK OF THE COURT
FORM V000A

HONORABLE COLLEEN MCNALLY

K. Ballard
Deputy

CV 2000-010467

FILED: _____

ALFRED WILLIAM BARTHEL

JOSEPH H WATSON

v.

DESERT MOUNTAIN MASTER
ASSOCIATION, et al.

TODD A RIGBY

ANGILA L GALLENSTEIN

CASE PARTIALLY DISMISSED

On April 20, 2001, the Court took Defendants' motion for summary judgment under advisement. The Court now rules as follows:

The Court read and considered Defendants Capital Management Corporation and Carol Paul's motion for summary judgment regarding no liability, Defendant Desert Mountain Master Association's Joinder, Plaintiff's response and Defendants Capital Management and Carol Paul's reply, as well as the oral arguments of counsel and the applicable law.

The Court finds that considering the facts to be true in the light most favorable to the Plaintiff, the Defendants are entitled to judgment as a matter of law.

The Court finds that the statements alleged by the Defendants do not support a claim of defamation per se. None of the statements were of the nature that would "prejudice the person in the profession, trade or business in which he is

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actually engaged." **Modla v. Parker**, 17 Ariz. App. 54, 495 P.2d 494 (1972).

The Court also finds that none of the statements alleged support a claim of defamation per quod. Defamation per quod is proven by evidence of a false statement of and concerning the Plaintiff; publication to a third party; and damages resulting from the statement. **Dombey v. Phoenix Newspaper, Inc.** 150, Ariz. 476, 481, 724 P.2d 562, 567 (1986).

Substantial truth is a defense to defamation. **Fendler v. Phoenix Newspapers, Inc.**, 130 Ariz. 475, 636 P.2d 1257 (1981). In the present case, the Plaintiff's affidavit and the police report submitted in support of Defendants' statement of facts show that all statements alleged to have been made by Carol Paul were substantially true. The discrepancies between her alleged statements and the final outcome of the incident are not so substantial as to defeat the finding of substantial truth.

The Court further finds that the facts taken in the light most favorable to the Plaintiff fail to show facts sufficient to maintain a claim under 42 U.S.C. § 1981. The Court finds that no contractual relationship existed between Plaintiff and any of the Defendants, nor does Plaintiff allege that his rights to contract with others were infringed in any way. Finally, the statements alleged to have been made by Defendants, although insensitive and rude, do not demonstrate disparate treatment of a class of people.

IT IS THEREFORE ORDERED granting Defendants' motion for summary judgment in full.

IT IS FURTHER ORDERED that Defendants Carol Paul and Capital Consultants Management Corporation are hereby dismissed with prejudice, each party to bear their own costs and attorneys' fees, in accordance with the formal written order signed by the Court on April 23, 2001.

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Mr. Rigby should submit a formal written dismissal order regarding Defendant Desert Mountain Master Association.