

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-005014

08/04/2021

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
C. Ladden
Deputy

DANIEL COE

F ROBERT CONNELLY II

v.

MARICOPA MEADOWS HOMEOWNERS
ASSOCIATION

GARY L HUDSON JR.

JUDGE COOPER

RULING RE: MOTION TO DISMISS

The Court has reviewed the Motion to Dismiss filed May 19, 2021; Response filed June 8, 2021; and Reply filed June 21, 2021.

This case arises from a complaint letter sent October 27, 2020 by Defendant Maricopa Meadows Homeowners Association (“Association”) to the Investigations Division of the United States Military. The letter stated that Plaintiff Daniel Coe (“COE”), a member of the Arizona National Guard, was “in violation of numerous military laws relating to his off-base activities within the Association.” (Exh. 2 to Complaint.) Plaintiff has sued the Association for defamation. The Association asserts that the letter is privileged and, therefore, the Association has immunity from suit.

Dismissal is appropriate under Rule 12(b)(6) only if “as a matter of law []plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Coleman v. City of Mesa*, 230 Ariz. 352, 356 (2012) (citing *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224 ¶ 4 (1998)). In considering a motion to dismiss, the Court may consider a document that is central to the complaint without converting the motion to dismiss to a motion

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-005014

08/04/2021

for summary judgment. *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289, ¶ 7, 246 P.3d 938, 940 (App. 2010).

A claim for defamation requires proof that the defendant, without legal privilege to do so, made a false and defamatory statement of fact to a third person and was at least negligent as to the truth of the statement. *Desert Palm Surgical Groupe PLC v. Petta*, 236 Ariz. 568 (App. 2015). The existence of a legal privilege in a defamation case is a question of law for the trial court to resolve. *Green Acres Trust. London*, 141 Ariz. 609, 613 (1984). An affirmative defense, such as privilege, may be raised and determined on a motion to dismiss where the facts constituting the defense appear in the pleadings. *Drummond v. Stahl*, 127 Ariz. 122, 125 ((1980).

In Arizona, an absolute privilege attaches to certain statements by an attorney made to governing authorities. In *Drummond*, the Court of Appeals held that an absolute privilege applied to a lawyer's statements made in a complaint to the State Bar of Arizona alleging unethical conduct by an attorney. Similarly, in *Sobol v. Alarcon*, 212 Ariz. 315 (App. 2006), the appellate court applied the privilege to an attorney's complaint to the Arizona Board of Legal Document Preparers regarding a document preparer and affirmed the dismissal of Sobol's defamation action.

In affirming the existence of this privilege, the appellate courts rely on the Restatement (Second) of Torts 586 which provides an absolute privilege for defamatory statements made in a judicial proceeding. *Drummond*, 127 Ariz. at 126. Section 526 states:

An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding.

The privilege may apply to a statement that prompts a proceeding even when that proceeding is not actually underway when the statement is made. In *Drummond*, the court applied the privilege even though no investigation or proceedings had been instituted. *See also Ledvina v. Cerasani*, 213 Ariz. 569, 572, 574 (App. 2006) (“[a] communication concerning possible wrongdoing made to an official governmental agency such as a local police department and which communication is designed to prompt action by that entity is as much a part of an ‘official proceeding’ as a communication made after an official investigation has commenced.”)

Here, the Association's attorney sent a letter to a governing agency with authority over Plaintiff as a member of the military. The letter asked the Investigations Division of the United States Military to investigate Plaintiff for violating Department of Defense Directive 1325.6 and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-005014

08/04/2021

other provisions of the Uniform Code of Military Justice. The letter was “preliminary to a proposed judicial proceeding” as evidenced by counsel’s offer to provide witnesses to testify to a military tribunal regarding Plaintiff’s conduct. It was designed to prompt action by the Investigations Division.¹ Accordingly, the Court finds that the Association’s letter was privileged and that the Association has immunity from suit.

IT IS ORDERED granting Defendant’s Motion to Dismiss.

IT IS FURTHER ORDERED Defendant shall submit a proposed form of Judgment **no later than two weeks** from the date that this ruling is filed with the Clerk of the Court.

¹ The Court considers Plaintiff’s argument that there was no connection between the letter and a proceeding against him and the case relied on by Plaintiff, *Edwards v. Centex Real Estate Corp.*, 53 Ca. App. 4th 14-15 (Cal. Ct. App. 1997). *Edwards* is not controlling in the face of Arizona authority directly on point. As stated, an ongoing proceeding is not necessary for the privilege to apply.