



Judge Terms Letter's Accusations 'Hyperbole' Rather Than Libel

BY ANDREW KESHNER

A 2004 LETTER from Long Island homeowners that accused a neighboring farm of illegal dumping and bribing public officials was "an impassioned plea for help" that did not cross the line into libel, a Suffolk County judge has ruled.

Supreme Court Justice Paul J. Baisley Jr. ruled in *Liere v. Paini*, 6579/2005, that the letter from Yaphank residents Audrey and Louis Paini criticizing the business of the adjacent 110-acre farm should be viewed as "mere rhetorical hyperbole" borne of longstanding frustration and anger and not as a statement of fact.

The Painis had written to pub-

lic officials, ranging from then-Senator Hillary Clinton to a local councilman, decrying what they said was constant noise and smell at Liere Farm—along with the lax governmental oversight and suspected political ties they said explained the conditions.

As part of its business, the farm accepts brush, trees and grass to make topsoil and mulch. The Painis called the operation "an illegal dump" subjecting neighbors to the sounds of large earth-moving equipment and a "horrible unbarbible (sic) smell." But if the Town of Brookhaven shut down the business, the letter argued, the farm's owner, Robert Liere, would turn in



Justice Baisley

all the officials he "had to pay off" to get the bush-removal business of the town's highway department.

"Trust me when I tell you this is definitely illegal and people who are responsible will one day be brought to justice, and I will not stop until I see this happen," the letter stated.

Mr. Liere responded with a 2005 defamation suit seeking \$12 million in damages.

Robert J. Cava, the West Babylon attorney who represented Mr. Liere, said he would appeal Justice Baisley's ruling to the Appellate Division, Second Department.

"The judge could have ruled the other way just as easily," said Mr. Cava, who argued that certain statements in the letter could be shown to be factual assertions instead of subjective opinion.

Victor A. Kovner of Davis Wright Tremaine in Manhattan represented the Painis pro bono. He applauded

the decision, saying Liere Farm was trying to silence the couple.

Mr. Kovner said he was "sorry" the plaintiffs are continuing "this vendetta against the Painis but we are optimistic Justice Baisley will be affirmed if the plaintiff does, in fact, appeal."

The Liere's, farmers for at least four generations, have operated the farm at issue for over 50 years, also growing things such as pumpkins, rye and crops for animal feed.

The Painis moved next door in the mid-1990s and eventually started objecting to the operation's noise, dust and smoke, said Mr. Cava. He called the couple "chronic complainers" who have lodged more than 100 grievances with officials about conditions at the farm and other issues.

After Mr. Liere sued the Painis in 2005, their attorneys at the time made a counterclaim that the lawsuit violated New York

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Online

★ The Suffolk Supreme Court decision is posted at nylj.com.

Libel

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State's Strategic Lawsuit Against Public Participation (SLAPP) statute, pursuant to Civil Rights Law §§70-a and 76-a. Mr. Liere sought dismissal of the counterclaim, plus attorney's fees and costs.

In a 2007 ruling, Justice Baisley sided with Mr. Liere but denied his request for fees and ordered discovery. The Painis appealed, but the Second Department unanimously upheld the decision and let the defamation lawsuit proceed, 54 A.D.3d 824.

In his most recent decision, dated Oct. 20, Justice Baisley noted that Mr. Liere merely republished the Painis' entire letter in his complaint instead of pinpointing specific defamatory statements.

Justice Baisley said much of the letter is not defamatory on its face but, "in its broadest terms," it could be read as alleging the illegal use

(if false)," the decision states.

But considering the letter's tone, its audience, the authors' status as next-door neighbors and their long-term "heated opposition" to the farm's activities, Justice Baisley held that the letter had to be seen as "rhetorical hyperbole."

"A reasonable reader of the defendants' letter would understand defendants to be conveying their subjective opinion, and not objective facts, about plaintiff's activities," he concluded.

As discovery started for the case, Mr. Kovner said the Painis could no longer afford legal representation. They sought the help of the New York City Bar, which referred the case to Mr. Kovner, who picked it up this past April.

"I read the facts. I was outraged about what happened to these people. I practice in this area, I felt it my duty to take the case," said Mr. Kovner.

Davis Wright Tremaine associate Monica Pa also helped represent

according to Mr. Kovner. He is not representing them on the possible foreclosure.

Meanwhile, litigation stemming from the activities of the farm continues on two other fronts.

In 1999, the town sued the farm, alleging, among other things, that it lacked permits and approvals for its tree-cutting and wood-chipping operations. That case is still pending before Justice Jeffrey A. Spigner, *Town of Brookhaven v. Liere*, 9456/1999.

The state Department of Environmental Conservation unsuccessfully brought criminal charges against the farm and then imposed a civil penalty of \$142,500 for violating the state solid waste regulations. However, the Second Department ruling in *Liere v. Sheehan*, 54 A.D.3d 862, vacated the state's determination, saying it was not supported by substantial evidence.

Mr. Liere has a suit pending in the Court of Claims seeking dam-