

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

RICHARD K. LEHAN,
P.O. Box 96
Prince Frederick, MD 20678

Plaintiff,

v.

FOX TELEVISION STATIONS, INC.
t/a WTTG - FOX 5

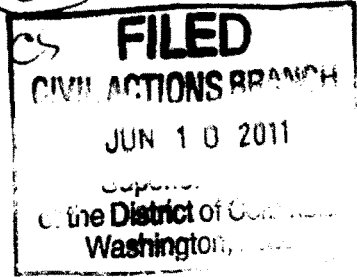
SERVE: CT Corporation System
1015 15th Street, N.W., Ste. 1100
Washington DC 20005

and

ROBY CHAVEZ, Individually and as an Agent
and Employee of Fox Television Stations, Inc.

SERVE: Roby Chavez
P.O. Box 14846
San Francisco, CA 94114

Defendants.



0004592-11
Case #:

COMPLAINT

COMES NOW, Plaintiff, RICHARD K. LEHAN, by counsel, and in and for his Complaint states as follows:

JURISDICTION

1. Jurisdiction of this court is invoked pursuant to §13-423 and §13-334 of the District of Columbia Code.

PARTIES

2. Plaintiff, Richard K. Lehan ("Lt. Lehan" or "the Plaintiff"), is a natural person and



a citizen of Maryland. At all times relevant herein, the Plaintiff was and still is employed as a firefighter for the District of Columbia and works within the District of Columbia to fulfill those duties. Prior to the events giving rise to this lawsuit, the Plaintiff enjoyed a distinguished reputation in the community at large as a firefighter for nearly 22 years. Lt. Lehan has received numerous recognitions and awards for his service to the community as a firefighter, including a Bronze Bar for Valor and a certificate of award for heroic duty, as a result of the September 11, 2001, terrorist attacks.

3. The Defendant, Fox Television Stations, Inc. t/a WTTG-Fox 5 ("Fox News"), is a Delaware company regularly doing business in the District of Columbia as a news distributor. The Defendant, Roby Chavez, Individually and as an Agent and Employee of Fox Television Stations, Inc. ("Chavez"), is a natural citizen residing in the State of California. During the times relevant herein, Chavez was a newspaper reporter employed by Fox News in the District of Columbia. Chavez is being sued both in his capacity as an individual and in his capacity as an agent and employee of Fox News. Fox News is being sued on the theories of both direct liability and *respondeat superior*. All acts by Chavez alleged herein were committed within the scope and course of his employment with Fox News.

4. Upon information and belief, Chavez is no longer employed by Fox News.

FACTS

5. Lt. Lehan is a private citizen, not a public figure. He is a career firefighter who, since 1989, has dedicated his work life to public service, fighting fires and maintaining public safety for the State of Maryland and District of Columbia. As such, he enjoyed a distinguished

reputation in the community at large. Lt. Lehan was and is always willing and able to take on any and all overtime offered by the department. Because of his reliability and willingness to work overtime, and due to special events and homeland security policies within the District of Columbia, he was frequently offered overtime, which he accepted. He worked every hour of overtime he accepted and was compensated appropriately for his hard work.

6. On January 3, 2011, Fox News ran a television news story and published an internet transcript of that story, authored by Chavez, attached as **Exhibit A** hereof ("the story"). The story, entitled "Allegations of Overtime Abuse in the D.C. Fire and EMS Department," specifically names and targets Lt. Lehan throughout. The story states, "FOX 5 has found one person, a commanding officer, who has earned overtime nearly every pay period in the last two years. The firefighter has earned nearly \$100,000 in overtime each year. At times, Lt. Richard Lehan has racked up 90 hours of overtime when others complain they are getting very little." It continues later, "However, documents show Lehan's overtime continues to exceed that amount even under the new law. In October, November and December, Lehan has again met or exceeded the overtime limits, working 153 overtime hours in the last three months of 2010, earning him nearly \$10,000." The story repeatedly and inaccurately details private information about the overtime hours Lt. Lehan worked and the amounts he was compensated for those hours worked - using language such as "racked up," "month after month" and "again met or exceeded the overtime limits" to intentionally place Lt. Lehan in a negative light. Lt. Lehan is singled out by Fox News and Chavez with inaccurate information. The story clearly is not "fair and balanced."

7. After accusing Lt. Lehan of abusing the overtime process, the story further defames him by stating falsely that he and his brother were actually in charge of the computerized Telestaff overtime scheduling system (giving them the control to abuse the process). The story states, "The only problem according to sources is that the person in charge of the computerized Telestaff scheduling of overtime is Richard Lehan and his firefighter brother, Eddie Lehan." This statement is not only completely false, but actually impossible. The department maintains a completely independent computerized system that manages the department's overtime. The result of the story, when read as a whole, is clear. The story targeted Lt. Lehan, a private citizen, published private and inaccurate facts about his salary, hours worked and amounts earned, accused him of abusing the overtime process with the District of Columbia, and stated falsely that his alleged abuse was made possible because he actually controlled the computerized system which disbursed overtime hours.

8. The Government of the District of Columbia has revealed in response to the Plaintiff's Freedom of Information Act Request that it has no records "showing that the Fire and Emergency Medical Services Department or its authorized employee or agent, released any personal information of Lt. Lehan to Fox News or any other news organization or to any individual or entity." **See DC FOIA Request Response attached as Exhibit B.** Thus, notwithstanding criteria for the release of certain information regarding government employees, it is unclear how Defendants obtained private information regarding Lt. Lehan's salary and hours worked while under the employ of the District of Columbia.

9. As a proximate result of the story airing on television and being published on the

internet, the Plaintiff suffered pecuniary loss and damage to his reputation and standing in the community, embarrassment, humiliation, and mental pain and suffering. The Plaintiff has sought medical treatment due to the false and malicious television story and has incurred medical expenses.

10. When Fox News and Chavez published the defamatory statements, they knew they would be read and heard by members of the general public. The statements were in fact read and heard by members of the general public as the direct, natural and probable consequence of the Defendants' original publication. The story has caused, is causing, and will cause the Plaintiff to be subjected to intense, widespread public disgrace and scorn. Further, the story has caused, is causing, and will continue to cause the Plaintiff to be subject to intense scorn and suspicion within the workplace, affecting his career, his ability to shift careers and his future income stream.

11. By composing and publishing the defamatory statements alleged herein, the Defendants, Fox News and Chavez, intended to, and did, cause the Plaintiff to be subjected to intense, widespread public disgrace and scorn. The defamatory statements permanently stigmatize the Plaintiff as being a dishonest employee who controlled and abused his employer's overtime system.

12. The defamatory statements detailed in this Complaint made of, and concerning the Plaintiff are false, were false when made and place Plaintiff in a false light. The Defendants failed to conduct a proper and thorough investigation before airing the story, failed to exercise the degree of care that reasonably prudent persons in the field of journalism

usually exercise under the circumstances, and were otherwise negligent in their investigation, ascertainment of the truth, and airing of the story.

13. The Defendants made the statements with knowledge that they were false or with reckless disregard to whether they were false or not. The Defendants had a high degree of awareness of probable falsity of the statements and intentionally made the statements out of context so as to make even true statements in the article highly misleading and defamatory. The statements were made with such gross indifference and recklessness as to amount to a malicious, wanton and willful disregard of the Plaintiff's reputation and rights and deliberate attempt to harm.

14. Chavez wrote the story with a predetermined slant in mind, rather than an attempt to portray the truth. Chavez wrote the story intending to impart the false innuendo that the Plaintiff intentionally controlled and abused the department's overtime system in an effort to create a sensational story. Plaintiff was defamed not only by what the Defendants actually said, but also by what the Defendants implied. The Defendants specifically intended to endorse the false implication of the story. Indeed, that was the purpose of the story.

15. Chavez's conduct in crafting the story as written was highly unreasonable constituting an extreme departure from accepted standards of investigation and reporting.

16. The Defendants lacked reasonable grounds for making the statements, implications, and insinuations complained of, and acted negligently in failing to attempt to ascertain the truth thereof.

17. Publication of such defamatory statements clearly and repeatedly referred to the

Plaintiff by name and were so understood to refer to the Plaintiff by those reading or hearing of such defamatory statements.

18. The defamatory statements alleged herein were authored and published by Chavez, both in his capacity as an individual and as an agent for Fox News, within the scope of his employment and his duties as a reporter for Fox News. The defamatory statements were published by both Defendants with the actual, and apparent approval, and ratification, of both Defendants, and the statements proximately caused special and general damages to the Plaintiff. Chavez and Fox News failed to exercise due care to prevent the publication or utterance of the statements contained in the broadcasts and other publications complained of. The statements proximately caused the Plaintiff embarrassment, humiliation, emotional distress, loss of career potential and future income.

COUNT I: LIBEL PER SE

19. The Plaintiff herein incorporates by reference into this count all of the allegations set forth in Paragraphs 1 through 18 as if fully set forth herein.

20. The Defendants' statements referred to herein are libelous *per se*, because they constitute the imputation of a criminal offense involving moral turpitude for which the Plaintiff could be indicted and punished.

COUNT II: LIBEL

21. The Plaintiff herein incorporates by reference into this count all of the allegations set forth in Paragraphs 1 through 20 as if fully set forth herein.

22. The Defendants, Fox News and Chavez's, statements referred to herein have

caused, are causing, and will cause the Plaintiff injury to his reputation, trade, profession, good name and community standing, and have held, and will hold, him up to the public scandal and/or ridicule, and have, are, and will cause him embarrassment, humiliation, mental suffering and loss of future income. The statements were calculated to, and do, hold Plaintiff up to the public scorn, hatred, and ridicule; by such publication, the Defendants did injure the Plaintiff's reputation in the community at large. The Plaintiff has been injured in reputation and good standing in the community in which the Plaintiff lives. The statements proximately caused the Plaintiff to lose future income.

WHEREFORE, Plaintiff moves this Court to enter judgment for the Plaintiff, RICHARD K. LEHAN, against the Defendants, FOX TELEVISION STATIONS, INC. t/a WTTG – FOX 5 and ROBY CHAVEZ, Individually and as an Agent and Employee of Fox Television Stations, Inc., jointly and severally, in the amount of FIVE MILLION & 00/100 DOLLARS (\$5,000,000.00) as compensatory damages, and ONE MILLION & 00/100 DOLLARS (\$1,000,000.00) as punitive damages, plus pre and post-judgment interest at the maximum rate allowed by law on all sums awarded, from the date of January 3, 2011 until paid.

DEMAND FOR A JURY TRIAL

PLAINTIFF HEREBY REQUEST A TRIAL BY JURY ON ALL ISSUES.

RICHARD K. LEHAN
By Counsel

BANCROFT, MCGAVIN, HORVATH & JUDKINS, P.C.



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