

IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA

Eric W. Payne
9874 Highwater Court
Burke, VA 22015

Plaintiff,

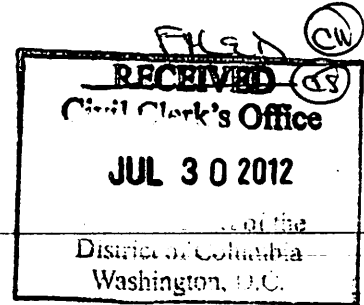
v.

District of Columbia
A Municipal Corporation
Serve: Vincent Gray
John A. Wilson Bldg.
1350 Pennsylvania Ave., NW
Washington D.C.

Office of the Attorney General
441 4th Street, NW
6th Floor
Washington D.C. 20001

Natwar Gandhi
Chief Financial Officer
District of Columbia
1350 Pennsylvania Ave., NW
Suite 203
Washington D.C. 20004

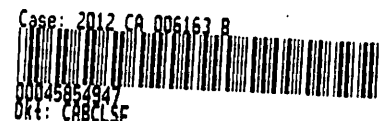
Defendants.



Civil Action No. 0006163-12

COMPLAINT

COMES NOW Plaintiff Eric W. Payne ("Payne"), by and through undersigned counsel, and respectfully files this Complaint against the above captioned Defendants for making false and defamatory statements about Plaintiff, as set forth herein, causing him to suffer personal and professional injury, the loss of career opportunities with the attendant loss of earnings and income, anxiety, stress and other emotional pain and suffering.



JURISDICTION AND VENUE

Jurisdiction in this case is based upon D.C. Code § 11-921, the actions complained of having taken place within the District of Columbia, which is the location of the Chief Financial Officer.

PARTIES

1. Plaintiff, Eric W. Payne (“Payne”), is a former District of Columbia (“D.C.”) Contracting Officer and served as Director of Contracts for the Office of the Chief Financial Officer (“OCFO”), an independent agency within the District of Columbia. Plaintiff, a resident of the State of Virginia, is also an attorney, licensed to practice law in multiple jurisdictions.

2. Defendant, District of Columbia (OCFO), is a municipal entity. OCFO is a District of Columbia agency that employs Defendant Natwar Gandhi. Plaintiff asserts *respondeat superior* where appropriate.

3. Defendant Natwar Gandhi (“Gandhi”) is the Chief Financial Officer (“CFO”) and the titular head of the OCFO. He is also a defendant, in his personal capacity, in a federal law suit filed by Eric W. Payne related to Payne’s termination by the D.C. government on January 9, 2009. Defendant Gandhi was twice deposed in said litigation and has made numerous sworn and material representations to the Plaintiff.

FACTS COMMON TO ALL COUNTS

4. The allegations set forth in paragraphs 1-3 are reincorporated by reference as fully set forth herein.

5. Plaintiff began his career with the OCFO as an Assistant General Counsel in or around August 2004. In this role, he was responsible for advising, reviewing and opining

on the legal sufficiency of all OCFO procurement related actions, including contracts submitted for D.C. Council review and approval. The Office of Contracts for the OCFO was responsible for all acquisition, procurement and termination activities within the OCFO.

6. Plaintiff played an integral and significant role in responding to major procurement flaws within the OCFO and audits. He was the OCFO representative and Executive Branch designee for the D.C. Procurement Reform Task Force¹, which found that “the problems in the procurement system were not its laws, regulations and implementing procedures, but rather in the commitment of the government to train its personnel and to follow existing rules and generally recognized best practices.”² Plaintiff also represented the interests of the OCFO in responding to procurement problems cited by the United States Government Accountability Office, and was directed to reform the deficient procurement practices of the OCFO.³

7. On May 11, 2006, Plaintiff became the Sixth Director of Contracts in two and one half years for the OCFO. Thereafter, through 2008 Payne received stellar evaluations. However, after awarding a contract to a new lottery vendor, significant efforts were made to coerce Payne to modify, cancel and or amend the contract award. He refused. Thereafter, Payne’s managers began to systematically alter their assessment of his performance, with the goal in mind of demotion and ultimately termination. In July 2008,

¹ This task force was created in 2005 to improve D.C. contracting, procurement laws and regulations. It made a number of recommendations to the Mayor and Council on December 4, 2006.

² See District of Columbia Contracting and Procurement Task Force Final Report, December 4, 2006.

³ See U.S. GAO report number GAO-07-159- District of Columbia: Procurement Needs Major Reform - <http://www.gao.gov/assets/260/255522.pdf>, which was released on February 14, 2007.

Payne was demoted and stripped of his professional duties as Director of Contracts without the benefit of any communication about his performance.

8. On January 9, 2009, Plaintiff was unceremoniously terminated. Under oath, Payne's supervisor, Paul Lundquist, confirmed that no single negative performance documentation exists in Payne's personnel file, nor were any negative written performance evaluations communicated to him prior to his termination. On April 30, 2010, Plaintiff filed a complaint in the United States District Court for the District of Columbia based on his wrongful termination against the District of Columbia and, individually, against Natwar Gandhi, alleging constitutional defamation, violation of the D.C. Whistle Blower Act and wrongful termination.

9. On November 30, 2011, Counsel for Payne deposed Gandhi relative to the above-referenced complaint. During that deposition and while under oath, Dr. Gandhi repeatedly and unequivocally stated that he played no part in the decision to terminate Payne.

Donald Temple (Counsel for Plaintiff): I asked you, did there come a time when you thought that Mr. Payne, for whatever reason, should be fired?

Dr. Gandhi: *Not in particular, no, because as I keep saying to you, sir, that it is not my decision to fire Mr. Payne.* (Gandhi Dep. 52.) (Emphasis added).

Donald Temple: And what were you told about Mr. Payne in that meeting?

Dr. Gandhi: That, basically, that Mr. Payne was beyond counseling and that he has let Mr. Payne go and that is - I said, that is your decision.

Donald Temple: You - that was not your decision then, you had nothing to do then with - well, let me rephrase the question. It was not your decision that Mr. Payne should be terminated; is that your testimony?

Dr. Gandhi: That is correct. (Gandhi Dep. 54).

Donald Temple: Now, Mr. Lundquist, according to Mr. Payne, states that it was, quote unquote, the will of Gandhi, and that being, that you - it was

your order, essentially, that he be removed; is that statement, it was the will of Gandhi, true?

Dr. Gandhi: No. (Gandhi Dep. 87-88).

Donald Temple: And I understand your answer. I'm attempting to elicit a very specific response from you. There was a decision made that Mr. Payne would be removed?

Dr. Gandhi: Right.

Donald Temple: Okay. And who made that decision?

Dr. Gandhi: His supervisor. (Gandhi Dep. 88).

10. In Gandhi's comprehensive supplemental answers to the Plaintiff's interrogatories, dated June 1, 2012 and signed by him six (6) months after his deposition, he consistently stated, again under oath, that he was not involved in Payne's firing.

INTERROGATORY NO. 2: Please identify each person involved in the decision to terminate Eric W. Payne. Your answer should include their full names, including present or last known address, and the extent, if any, to which you presently represent said individuals.

Gandhi's Sworn Response: I was not involved in the decision to terminate the plaintiff. I understand that the District of Columbia has determined that Paul Lundquist, Angell Jacobs and LaSharn Moreland were involved in the decision to terminate plaintiff. Each of these individuals can be contacted through defense counsel. I do not represent them.

INTERROGATORY NO. 3: Please describe in detail the circumstances leading to your decision to terminate Plaintiff, including any and all meetings in which the subject of his performance or termination was discussed, the dates of such meetings, attendees at each meeting, documents relied upon in support of said termination, and the specific reasons for your termination of Plaintiff.

Gandhi's Sworn Response: I did not decide to terminate the plaintiff's employment. I understand that the District of Columbia has provided documents that outline the circumstances of his termination from the OCFO.⁴

⁴ / Notably Plaintiff's counsel and the court relied upon the veracity of Dr. Gandhi's testimony and representations during the discovery process in the federal litigation.

11. On June 8, 2012 Washington Post reporter, Colbert I. King (“King”) published an article in which Gandhi’s reappointment was called into question; On June 11, 2012, in response to King’s article Gandhi stated to King that he decided to terminate Payne because of Payne’s poor performance. According to Gandhi, Payne was “terminated [from his position as Director of Contracts] because of his poor performance issues as manager of the OCFO Contracts Office.” Gandhi, Natwar. “My response to Colby King’s 6/9 WP column.” Email to Colbert King. 11 Jun. 2012.⁵ Gandhi’s statement that he fired and/or terminated Payne is not true and is blatantly inconsistent with Gandhi’s prior sworn testimony and representations. Nor is the statement that Dr. Gandhi fired Payne because of his poor performance true or supportable. According to his statements, it appears that Gandhi monitored and observed Payne’s performance over the years and directly and independently decided to terminate him. This is untrue and casts Payne in a false light. .

12. Gandhi’s false, derogatory and defamatory e-mail was disseminated locally, domestically and internationally, as per several known media, including the Washington Post, Washingtonian and Washington Times, and thus among countless prospective employers for Payne. Jeffrey Anderson, *Gandhi Makes Pre-Emptive Pitch to Stay Amid D.C. Political Turmoil*, Washington Times, June 12, 2012.⁶; Harry Jaffe, *Natwar Gandhi*

⁵ E-mail from Natwar Gandhi dated June 11, 2012 regarding “My response to Colby King’s 6/9 WP column.”

⁶ The Washington Times article, *Gandhi makes pre-emptive pitch to stay amid D.C. political turmoil* dated June 12, 2012 by Jeffrey Anderson.

Sends Angry E-mail to the Post's Colbert King, Washingtonian- Capital Comment, June 12, 2012.⁷

13. After adamantly testifying under oath in his deposition that he had nothing to do with the firing or the decision to fire Payne, Gandhi contradicted his sworn deposition testimony and sworn and/or affirmed interrogatory responses by stating to media sources, to wit, in an interview with Washington Post Reporter Mike DeBonis, that he (Gandhi) personally, made the decision to terminate Payne.

14. In this interview with Mike DeBonis, in addition to falsely stating that he directly and independently terminated Payne, Gandhi also defamed and impugned Payne's character and competency when, despite Payne's receipt of the highest performance evaluation scores as well as financial bonuses during 2005-2008, he stated that Payne was "a very poor manager." Mike DeBonis, *Gandhi Lashes out at Fired Deputy Now Suing Him*, Washington Post, July 3, 2012.⁸ Gandhi's aforementioned statements, as per his role in Payne's termination and as per Payne's performance on the OCFO, were knowingly false and further placed Payne in a false light.

15. At the time of his statements Gandhi knew that Payne was no longer a government employee. He also intentionally communicated statements to the media knowing that said statements would be further publicized and knowing that he gave prior contradictory sworn testimony throughout the pendency of the aforementioned litigation. Moreover, Gandhi was fully apprised about the effects of the present litigation on Payne's ability to obtain employment in this region and thus Payne's financial and

⁷ Washingtonian article "Natwar Gandhi Sends Angry E-mail to the Post's Colbert King" dated June 12, 2012 by Harry Jaffe.

⁸ Washington Post article "Gandhi lashes out at fired deputy now suing him" dated July 3, 2012 by Mike DeBonis.

economic vulnerability. He nevertheless published to one or more third parties statements that flatly contradicted his sworn deposition testimony and representations to the Court, under oath. Gandhi's statement(s) were untrue, mean spirited, ill-willed and malicious. Gandhi maintained the same position regarding the termination of Payne between November 2011 and June 2012.

COUNT I
DEFAMATION

16. Paragraphs 1 through 15 are incorporated by reference as if fully set forth herein.

17. Defendant Gandhi, between June 8, 2012 through July 6, 2012, knowingly, intentionally and maliciously libeled and slandered Payne. Gandhi knew all his statements to be false and injurious to Payne of his own respective personal knowledge.

18. The making and publication of these false and defamatory statements were intentional, willful, wanton, and malicious.

19. As a proximate result of Gandhi's publishing the false and defamatory statements, an already emotionally vulnerable and economically victimized Payne was further victimized. Defendant's comments caused Payne further personal and professional humiliation, damage to his personal and professional reputation, mental and emotional distress, and loss of professional and/or business opportunities.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment for him and against Defendants jointly and severally and;

(a) Award compensatory damages against Defendants in an amount in excess of \$1,000,000.00, plus interest thereon;

(b) Award punitive damages against Defendant Gandhi in an amount deemed appropriate; and

(c) Award such other and further relief against Defendants as this Court may deem just and proper.

COUNT II
FALSE LIGHT

20. Paragraphs 1 through 19 are incorporated by reference as if fully set forth herein.

21. Between June 8, and July 6, 2012, Defendant Gandhi falsely stated that he personally terminated Payne based upon poor performance and thus placed Payne in a false light, one that was highly offensive to a reasonable person.

22. In composing the statements and causing them to be published by several media outlets as noted above, Gandhi knew that his statements were false, and/or acted with reckless disregard for the false light in which Payne was being placed.

23. As a proximate cause of Gandhi's actions, an already vulnerable Payne's injuries were exacerbated, including but not limited to loss of reputation, emotional distress, embarrassment and personal humiliation.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment for him and against Defendants jointly and severally and;

(a) Award compensatory damages against Defendant Gandhi in an amount in excess of \$1,000,000.00, plus interest thereon;

(b) Award punitive damages against Defendant Gandhi in an amount deemed appropriate; and

(c) Award such other relief and further relief against the Defendant as this Court deems just and proper.

COUNT III
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

24. Paragraphs 1 through 23 are incorporated by reference as if fully set forth herein.

25. Between June 8, 2012 through July 6, 2012, Defendant Gandhi made false statements regarding Payne's performance at OCFO. In view of his prior sworn testimony, Gandhi's actions were intentional, extreme, and outrageous and were done with the intent to cause serious emotional distress or with reckless disregard of the probability of causing Payne serious emotional distress.

26. As a direct, legal and proximate result of Gandhi's intentional and outrageous acts, Payne suffered severe emotional distress, which caused him to sustain severe and serious injuries.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment for him and against Defendants, jointly and severally, and;

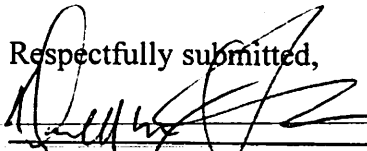
- (a) Award compensatory damages against Defendants in an amount in excess of \$1,000,000.00, plus interest thereon;
- (b) Award punitive damages against Defendant Gandhi in an amount deemed appropriate; and
- (c) Award such other relief and further relief against the Defendant as this Court deems just and proper.

JURY DEMAND

Plaintiff respectfully demands a trial by jury on all issues so triable.

Date: July 30, 2012

Respectfully submitted,



Donald M. Temple #408749

1101 15th Street, NW

Suite 910

Washington D.C. 20005

Tel: (202) 628-1101

Fax: (202) 628-1149

dtemplelaw@gmail.com

Attorney for Plaintiff