

IN THE SUPERIOR COURT  
FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

THE WASHINGTON TRAVEL CLINIC,  
PLLC, *et al.*,

Plaintiffs,

v.

JOHN KANDRAC,

Defendant.

Case No.: 2013 CA003233 B

Judge Laura A. Cordero

Next Court Date: April 4, 2014

Event: Initial Scheduling Conference

**DEFENDANT'S RESPONSE TO PLAINTIFFS' SUPPLEMENT  
TO OPPOSITION TO MOTION FOR RECONSIDERATION**

Defendant John Kandrac respectfully submits this brief Response to Plaintiffs' Supplement in Opposition to Defendant's Motion for Reconsideration, and states as follows:

1. In their Supplement ("Supp."), Plaintiffs bring to this Court's attention the recent decision in *Mann v. Nat'l Review, Inc., et al.*, CA 2012 8263 (D.C. Super. Jan. 22, 2014) (Weisberg, J.),<sup>1</sup> contending that it supports their argument "that words are actionable *per se* when they prejudice someone in their trade or profession." Supp. at 2.

2. They base this conclusion on a passing phrase that purports to recite that the plaintiff there satisfied the elements of a defamation claim. However, unlike the briefing in *this* case or the opinion in *this* case (in which this Court has already determined that plaintiffs failed to adduce *any* evidence of damages), the *Mann* Court did not analyze in any way the substantial body of appellate authority expressly limiting defamation *per se* to statements that impute to a plaintiff a crime of moral turpitude.

---

<sup>1</sup> As an initial matter, Plaintiffs do not explain why they did not include this decision in their Surreply filed on January 28, 2014.

3. In that regard, none of the cases cited in the passage quoted from *Mann* addresses defamation *per se* or presumed damages. Rather those authorities variously discuss *other* elements of the defamation tort, including the separate elements (a) that the challenged statement convey a **defamatory meaning**, (b) that it be published **without privilege**, (c) that it is **false**, including that it is not an opinion incapable of being proven true or false, and (d) that it is made with **fault**, including the requirement that a public figure prove actual malice by clear and convincing evidence to establish liability. See *Payne v. Clark*, 25 A.3d 918, 924 (D.C. 2011) (defamatory meaning, privilege and malice); *Guilford Transp. Indus., Inc. v. Wilner*, 760 A.2d 580, 597 (D.C. 2000) (defamatory meaning and opinion); *Foretich v. CBS, Inc.*, 619 A.2d 48, 59 (D.C. 1993) (defamatory meaning under Virginia law and actual malice); *Nader v. de Toledano*, 408 A.2d 31, 40 (D.C. 1979) (actual malice).

4. Indeed, *Payne*, *Foretich* and *Nader* contain no discussion whatsoever of defamation *per se*, and *Wilner* actually **confirms** the rule *Kandrac* advances. Specifically, while principally discussing whether the challenged statement was defamatory, the D.C. Court of Appeals also noted that:

[I]t is a well settled general rule, supported by both modern and older cases, both British and American, that a publication . . . that charges the present plaintiff with a crime or criminal conduct or activity . . . is libelous per se.

760 A.2d at 600 n.19 (citation omitted). Although the plaintiff (a railroad) was accused of violating a federal railroad statute, which included both civil penalties and elsewhere “provide[d] for criminal penalties for certain violations,” the Court clarified that the plaintiff had no claim for libel *per se* because “[n]one of the prohibitions which carry criminal penalties . . . is even remotely applicable to the issues in this case.” *Id.* Thus, even though an allegation of violating a

statute can be defamatory and injurious to the trade of a railroad, it cannot constitute libel *per se* in the absence of an allegation that the railroad had violated the statute's *criminal* provisions. *Id.*

5. Accordingly, the brief passage from *Mann* does not purport to overrule the substantial body of governing appellate authority that actually (a) limits defamation *per se* and presumed damages in the District of Columbia to crimes of moral turpitude and (b) in any event would, under settled Supreme Court authority, require proof of actual malice to recover presumed damages *even if* such damages were otherwise available.

### CONCLUSION

For the foregoing reasons, Kandrac respectfully requests that the Court grant his motion for reconsideration as to the one remaining statement, and dismiss this action with prejudice.

Dated: February 12, 2014

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: /s/ Shaina Jones Ward  
Seth D. Berlin (D.C. Bar No. 433611)  
Shaina Jones Ward (D.C. Bar No. 1002801)

1899 L Street, NW  
Suite 200  
Washington, D.C. 20036-5514  
Telephone: (202) 508-1100  
Facsimile: (202) 861-9888  
E-mail: [sberlin@lskslaw.com](mailto:sberlin@lskslaw.com)  
[sward@lskslaw.com](mailto:sward@lskslaw.com)

*Counsel for Defendant John Kandrac*