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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In Re:) Bankruptcy Case
12) No. 04-37154-elp11
13 ROMAN CATHOLIC ARCHBISHOP OF)
14 PORTLAND IN OREGON, AND SUCCESSORS,)
15 A CORPORATION SOLE, dba the) REPORT AND RECOMMENDATION RE:
ARCHDIOCESE OF PORTLAND IN OREGON,) CLAIM # 836
Debtor.)
_____)

16 Debtor filed a motion for summary judgment seeking disallowance of
17 Claim # 836, which is a \$2,000,000 claim for defamation. Having read the
18 submissions of the parties, I recommend to the United States District
19 Court for the District of Oregon¹ pursuant to 28 U.S.C. § 157(c)(1) that
20 the motion for summary judgment be GRANTED and the claim DISALLOWED for
21 the reasons discussed below.

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24 ¹ Defamation is a personal injury tort claim, which is a non-core
25 proceeding. The bankruptcy court cannot liquidate such a claim for
26 purposes of distribution in a case under Title 11. 28 U.S.C.
§ 157(b)(2)(b); § 157(b)(5); Control Center, LLC v. Lauer, 288 B.R. 269,
286 (Bankr. M.D. Fla. 2002).

1 that Caldwell speak to other individuals affiliated with Catholic
2 nonprofits who were familiar with Claimant's work. Caldwell Affidavit at
3 ¶ 4. One of these "other individuals" suggested that Caldwell speak with
4 Father J, who had been at St. Mary's Cathedral when Claimant had directed
5 a major fundraising campaign for the restoration of the Cathedral.
6 Caldwell Affidavit at ¶ 4.

7 Mr. Caldwell knew Father J personally, and felt that Father J would
8 give an accurate and honest assessment of Claimant's performance as a
9 fundraiser. Caldwell Affidavit at ¶ 5. Mr. Caldwell telephoned Father J
10 to solicit his opinion of Claimant's work. Caldwell Affidavit at ¶ 6.
11 Father J told Caldwell that Claimant had headed a major fundraising
12 campaign for St. Mary's Cathedral that was never completed, and the goals
13 of the campaign were never reached. Caldwell Affidavit at ¶ 6-7. Upon
14 learning this information, Mr. Caldwell recommended to the Board of
15 Directors that they discontinue plans to hire Claimant. Caldwell
16 Affidavit ¶ 7.

17 Claimant learned through a letter from Ms. Yandle dated March 18,
18 2005 that he did not receive the position because of poor references.
19 Harris Affidavit, Exhibit 1 at 15. Ms. Yandle later explained to
20 Claimant in an email dated April 15, 2005, that the reference, a
21 clergyman, had said "he [Claimant] is not all that he says he is."
22 Harris Affidavit, Exhibit 1 at 16. Claimant's defamation claim is based
23 on this alleged statement by Father J. Memorandum in Support of
24 Claimant's Response to Debtor's Motion for Summary Judgment at 1:8.

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1 LEGAL STANDARD

2 The court shall grant summary judgment on a claim "if the pleadings,
3 depositions, answers to interrogatories, and admissions on file, together
4 with the affidavits, if any, show that there is no genuine issue as to
5 any material fact and that the moving party is entitled to a judgment as
6 a matter of law." Fed. R. Civ. P. 56(c), made applicable to this
7 contested matter by Fed. R. Bankr. P. 9014(c) and 7056. In making that
8 determination, the court should view the evidence in the light most
9 favorable to the non-moving party. Horphag Research Ltd. v. Pellegrini,
10 337 F.3d 1036, 1040 (9th Cir. 2003).

11 To establish a claim for defamation, a plaintiff must show three
12 things. First, the plaintiff must establish that the defendant made a
13 defamatory statement about plaintiff. Wallulis v. Dymowski, 323 Or. 337,
14 342-343 (1996). To be defamatory, the statement must be one that would
15 "tend to diminish the esteem, respect, goodwill or confidence in which
16 [the plaintiff] is held" Reesman v. Highfill, 327 Or. 597, 603
17 (1998)(quoting King v. Menolascino, 276 Or. 501, 504 (1976)). Also, "a
18 statement falsely ascribing to a person characteristics or conduct that
19 would adversely affect his fitness for his occupation or profession is
20 capable of having a defamatory meaning." Greenfield v. Ollikala, 85 Or.
21 App. 357, 360 (1987)(quoting Bock v. Zittenfield, 66 Or. App. 97, 100
22 (1983)). Second, the statement must be false. Reesman, 327 Or. at 603.
23 Third, the defendant must have published the defamatory statement to a
24 third party. Wallulis, 323 Or. at 343. A statement is published when it
25 is simply communicated to a third party. Id.

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1 DISCUSSION

2 In order for Claimant to establish a claim for defamation, there
3 must be evidence in the record that Father J actually made a defamatory
4 statement about Claimant to Mr. Caldwell. Although Claimant asserts in
5 his submissions that Father J said the words "he is not all that he says
6 he is," there is no evidence in the record that Father J ever uttered
7 those words. Claimant was not party to the conversation between Mr.
8 Caldwell and Father J. Ms. Yandle testified that Mr. Caldwell had told
9 her that Father J had said "he is not what he appears to be" regarding
10 Claimant. Harris Affidavit, Exhibit 2, Deposition of Maureen Yandle at
11 24:24-25:1. However, this is evidence of a conversation between Ms.
12 Yandle and Mr. Caldwell, not of the conversation between Mr. Caldwell and
13 Father J. Ms. Yandle was not present during the conversation between Mr.
14 Caldwell and Father J. There is no affidavit or deposition of Father J
15 in the record. The only evidence in the record from a person who was
16 present during the conversation between Father J and Mr. Caldwell is the
17 affidavit of Mr. Caldwell.

18 According to Mr. Caldwell's affidavit, Father J told Mr. Caldwell
19 that, "while [Claimant] headed the Cathedral's restoration campaign, the
20 Cathedral's capital fundraising campaign was never completed and the
21 goals of the campaign were never reached." Caldwell Affidavit at ¶ 6.
22 It was this statement that caused Mr. Caldwell to decide not to hire
23 Claimant. Caldwell Affidavit at ¶ 7. This statement "diminish[ed] the
24 esteem, respect, goodwill or confidence in which [Claimant] was held" in
25 the eyes of Mr. Caldwell. Thus, Father J's statement to Mr. Caldwell as
26 reported by Mr. Caldwell establishes the first element of Claimant's

1 defamation claim.

2 However, in order to be actionable, Claimant must also show that
3 Father J's statement was false. The evidence in the record indicates
4 that Father J's statement was true. Father J's statement that Claimant
5 headed an unsuccessful fundraising campaign is supported by the
6 Declaration of Leonard Vuylsteke, who stated that, although the goal of
7 the St. Mary's Cathedral fundraising campaign was to raise \$6.5 million,
8 by the time Claimant left the employ of the Archdiocese, "the campaign
9 had only raised a total of approximately \$2.6 million." Vuylsteke
10 Declaration at ¶ 3.

11 As the non-moving party on summary judgment, Claimant "may not rest
12 upon the mere allegations or denials of the adverse party's pleading, but
13 the adverse party's response, by affidavits or as otherwise provided in
14 this rule, must set forth specific facts showing that there is a genuine
15 issue for trial." Fed. R. Civ. P. 56(e). In order to establish a claim
16 for defamation, Claimant had to provide evidence showing that Father J's
17 statement was false. Because there is no such evidence on the record,
18 Claimant has not established an essential element of his defamation
19 claim. "[A] complete failure of proof concerning an essential element of
20 [Claimant's] case necessarily renders all other facts immaterial."
21 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Therefore, there is
22 no genuine issue of material fact, and debtor is entitled to judgment as
23 a matter of law.

24 Even if I assume for the sake of analysis that Father J said that
25 Claimant "is not what he appears to be," as reported in Ms. Yandle's
26 testimony, the statement, taken alone, is vague and subjective and

1 therefore not defamatory for the reasons stated in Debtor's Reply in
2 Support of Supplemental Motion for Summary Judgment at 5-9.

3 Also, the possibility that Mr. Caldwell may have later
4 mischaracterized Father J's report does not establish Claimant's
5 defamation claim. Taken in the context of the conversation as reported
6 by Mr. Caldwell, the statement "he is not what he appears to be" can be
7 understood to mean that Claimant did not lead a successful capital
8 campaign. There is no evidence in the record that such a statement is
9 false.

10 CONCLUSION

11 I recommend that debtor's motion for summary judgment be GRANTED and
12 that Claim # 836 be DISALLOWED, because there is no evidence in the
13 record that Father J's statements to Mr. Caldwell were false. In the
14 alternative, even if Father J had said "[Claimant] is not what he appears
15 to be," such a statement is vague, subjective, and therefore not
16 defamatory. Under either version of the facts, Claimant has not
17 established a claim for defamation.

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20 _____ /s/

21 ELIZABETH L. PERRIS
22 Bankruptcy Judge

23 cc: Tiffany Harris
24 Robert Giacobelli

25 NOTE: Attached hereto is a copy of Fed. R. Bankr. P. 9033, regarding
26 the procedure for filing objections to this Report and Recommendation.

Rule 9032

EFFECT OF AMENDMENT OF FEDERAL RULES OF CIVIL PROCEDURE

The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment or by these rules.

Rule 9033

REVIEW OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN NON-CORE PROCEEDINGS

(a) **Service.** In non-core proceedings heard pursuant to 28 U.S.C. § 157(c)(1), the bankruptcy judge shall file proposed findings of fact and conclusions of law. The clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket.

(b) **Objections: Time for Filing.** Within 10 days after being served with a copy of the proposed findings of fact and conclusions of law a party may serve and file with the clerk written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection. A party may respond to another party's objections within 10 days after being served with a copy thereof. A party objecting to the bankruptcy judge's proposed findings or conclusions shall arrange promptly for the transcription of the record, or such portions of it as all parties may agree upon or the bankruptcy judge deems sufficient, unless the district judge otherwise directs.

(c) **Extension of Time.** The bankruptcy judge may for cause extend the time for filing objections by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing objections must be made before the time for filing objections has expired, except that a request made no more than 20 days after the expiration of the time for filing objections may be granted upon a showing of excusable neglect.

(d) **Standard of Review.** The district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.

Rule 9034

TRANSMITTAL OF PLEADINGS, MOTION PAPERS, OBJECTIONS, AND OTHER PAPERS TO THE UNITED STATES TRUSTEE

Unless the United States trustee requests otherwise or the case is a chapter 9 municipality case, any entity that files a pleading, motion, objection, or similar paper relating to any of the following matters shall transmit a copy thereof to the United States trustee within the time required by these rules for service of the paper:

- (a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business;
- (b) the approval of a compromise or settlement of a controversy;
- (c) the dismissal or conversion of a case to another chapter;
- (d) the employment of professional persons;
- (e) an application for compensation or reimbursement of expenses;
- (f) a motion for, or approval of an agreement relating to, the use of cash collateral or authority to obtain credit;