IN THE CIRCUIT COURT OF THE 17TH FUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA
CIVIL DIVISION

DAVID L. ROSENTHAL

Case No. CACE 16-021357

Plaintiff,

vs.

COUNCIL ON AMERICAN-ISLAMIC RELATIONS, FLORIDA, INC., HASSAN SHIBLY, WILFREDO A. RUIZ, and NEZAR HAMZE,

Defendants.
_____/

ORDER ON DEFENDANTS' MOTION TO DISMISS/SUMMARY JUDGMENT PURSUANT TO §768.295, FLA, STAT. (Strategic Lawsuits Against Public Participation (SLAPP))

THIS CAUSE before the Court upon Defendants COUNCIL ON AMERICAN-ISLAMIC RELATIONS, FLORIDA, INC. (herein CAIRFL), HASSAN SHIBLY, WILFREDO A. RUIZ, and NEZAR HAMZE, (collectively herein "Defendants") motion to dismiss and/or enter summary judgment with respect to the Complaint for violation of §768.295, Fla.Stat. (herein Anti-SLAPP) filed on March 23, 2017. The motion has been fully briefed by both sides and the Court heard oral argument on the Motion on October 6, 2017. The Court has reviewed the documents in the case file and is fully advised in the premises.

Plaintiff, David L. Rosenthal sued the Defendants for a single count defamation based upon statement from two articles posted on the website of the corporate Defendant CAIRFL. In Defendants briefing and at the hearing on this matter, Defendants identified that the proper identification of the corporate Defendant should have been CAIR FLORIDA, INC. and not COUNCIL ON AMERICAN-ISLAMIC RELATIONS, FLORIDA, INC. Plaintiff did not object to this clarification and therefore this Court sua-sponte substitutes the corrected corporate party.

In this case, we have a Plaintiff who stepped into the arena of public debate. Defendants moved to dismiss the case based upon Florida's Anti-SLAPP statute §768.295. A "SLAPP" is a strategic lawsuit against public participation, i.e. a lawsuit "without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue...." Fla Stat. §768.295(3). Defendants contend that this was the driving intent behind this lawsuit and argue that the case should be dismissed. The Court agree and grants the motion.

I. Background

On June 4, 2015, in a public Facebook post, which Mr. Rosenthal admitted to posting, he describes himself as an Islamophobe as evidenced by his own words: "I am an Islamophobe. I hate Islam. Islam is repulsive to me. Islam is a contradiction of the doctrine of Christ, a promotion of abominations, and a death cult." (Hearing Transcript 104:13-16; AntiSLAPP Hearing Defendants Exhibit 5, herein after "Defendants Exhibit __").

On January 10, 2016, Mr. Rosenthal then posted on his public Facebook page: "Someone remind me of why I should not burn every mosque in my geographical area. O right, I remember now. Let me think about it." (Hearing Transcript 25:13-18, 34:24-25, 36:1-2; Defendants Exhibit 1).

In response to Mr. Rosenthal's post, Defendant CAIRFL ran a news article on its website <cairfloirda.org> titled "Radical Anti-Muslim Activist with Ties to Congressional Candidate Threatens to Burn Down Mosques in South Florida. (Hearing Transcript 28-29; Defendants Exhibit 2, herein

"CAIRFL Article A"). The CAIRFL Article A quoted Mr. Rosenthal's January 10, 2016 Facebook post as part of the text of the article. CAIRFL Article A also included a still photo of Mr. Rosenthal, which was derived from a local WPLG Channel 10 news video from December 18, 2015. (Hearing Transcript 48:19-25, 106:11-14; Defendants Exhibit 2). During the hearing on this motion the Court viewed the WPLG video in its entirety and was provided a copy of the transcript (Defendants Exhibit 6).

A subsequent second article was posted by Defendant CAIRFL on its website titled "Radical Anti-Islam Activist with ties to Joe Kaufman Threatens to Burn Down Florida Mosques." (Defendants Exhibit 3, herein "CAIRFL Article B"). This CAIRFL Article B, had no written content other than the title. The CAIRFL Article B provided an embedded video link for viewers which consisted of a local CBS 12 news broadcast about Mr. Rosenthal's January 10 Facebook post and about the substance contained in the CAIRFL Article A.

During the hearing on this motion the Court viewed the CBS video in its entirety and was provided a copy of the transcript (Defendants Exhibit 4). This WPLG video clearly identified Mr. Rosenthal at a rally which he admittedly organized. (Hearing Transcript 107:1-12). This video, including the screenshot provided in CAIRFL Article A further showed Mr. Rosenthal wearing a t-shirt which reads "Americans Against Hate" while standing next to an individual identified as Joe Kaufman. (Hearing Transcript 107:5-14). Mr. Rosenthal acknowledges that Mr. Kaufman is the founder of the organization "American Against Hate." (Hearing Transcript 106:18-24). Despite these facts, Mr. Rosenthal refutes being a member of the organization "Americans Against Hate." (Complaint 22).

The Complaint alleges defamation in the (2) two CAIRFL articles. Mr. Rosenthal has filed suit against all Defendants based upon these two articles. The Complaint attributes all the alleged posts to CAIRFL, and then associates the individual Defendants into the allegations based upon their role with the corporate entity. CAIRFL is a non-profit organization established in 2001 to challenge stereotypes of Islam and Muslims and defend civil liberties. (Hearing Transcript 23:25, 24:1-3, 62:5-17). Individual

Defendant Wilfredo Ruiz is the Communications Director of CAIRFL and is a former officer, Judge Advocate General, and chaplain with the United States Navy. (Hearing Transcript 23:2-7). Individual Defendant Nezar Hamze is the Regional Operations Director of CAIRFL and concurrently serves as a Deputy Sherriff for the Broward County Sherriff's Office. (Hearing Transcript 74-75). Individual Defendant Hassan Shibly is the Chief Executive Director of CAIRFL. (Hearing Transcript 111:18-20).

At the hearing on this motion, Plaintiff was only able to identify three (3) distinct statements from these two CAIRFL Articles, which he categorized as defamatory. (Hearing Transcript 97:19-25, 98:1-4). However, Defendants AntiSLAPP motion attempts to further breakdown all the alleged defamatory statements as claimed in the Complaint. For completeness, Defendants have identified potentially seven (7) sentences/topics, as stated in the Complaint.

(1) "Radical Anti-Muslim Activist with Ties to Congressional Candidate Threatens to Burn Down Mosques in South Florida" Complaint ¶ 12

(2) "The Florida chapter of the Council on American-Islamic Relations (CAIR Florida) announced today that they have reported a threat posted on Facebook under the name of David L. Rosenthal. Complaint ¶ 13

(3) The threatening Facebook post read: 'Someone remind me of why I should not burn every mosque in my geographical area. Oh right, I remember now... Let me think about it.'" Complaint ¶ 23.

(4) "Rosenthal is a known islamophobe and frequently participates in rallies slandering Islam and bashing Muslims in America." Complaint ¶ 21.

(5) "To carry his hate agenda, Rosenthal participates as an active member of the anti-Muslim hate group 'Americans Against Hate', a hate group founded and run by Joe Kaufman. Kaufman is a defeated Republican congressional candidate who has promoted the views of the terrorist organizations "Kach" and "Kahane Chai" and praised the "Kahane" terror group and its founder Mier Kahane on a forum of the radical "Jewish Defense League" in Florida." Complaint ¶ 22.

(6) "Radical Anti-Islam Activist with ties to Joe Kaufman Threatens to Burn Down Florida Mosques" Complaint ¶ 16.

(7) Republication of CBS 12 News report. Complaint ¶ 16.

A. FLORIDA'S ANTI-SLAPP STATUTE

Florida Statute §768.295(1) expresses the "intent[ion] of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues." The statute expressly states that:

> It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. Therefore, the Legislature finds and declares that prohibiting such lawsuits as herein described will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

Fla. Stat. §768.295(1)

Like other state anti-SLAPP statutes, Fla. Stat. § 768.295(4) provides a substantive right to immunity from abusive lawsuits that suppress First Amendment rights. See, e.g., *Cal. Code. Civ. Proc.* § 425.16(a); *Nev. Rev. Stat.* 41.660 et. seq., *Or. Rev. Stat.* 31.150. These Anti-SLAPP statutes, upon which Florida's was based, all have a common function and effect –they permit a defendant to end a SLAPP suit early. The point of an anti-SLAPP statute is to have the right not to be dragged through the courts because of an exercise of constitutional rights. See *Varian Med. Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 193.

Anti-SLAPP statutes such as Florida's (and its predecessors) allow the Defendant to challenge a SLAPP suit through a special motion: "A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity." This has the effect of requiring a Plaintiff to demonstrate some merit to his suit before moving forward.

Similar to its predecessor statutes, Section 768.295(2)(a) defines "free speech in connection

with public issues" broadly. However, Florida's goes one bit further and specifically includes any protected statement made in a news report. *Id.*

The Court finds that the news articles based upon a threat to burn houses of worship qualify as "Speech on a Matter of Public Concern". Since these news articles are a matter of public interest, Defendants have met their initial burden. Therefore, the burden shifted to Plaintiff to demonstrate that he has the probability of prevailing on the merits of its claims. Plaintiff was unable to overcome that burden. Plaintiff failed to present any evidence or supportable testimony which would suggest a probability of prevailing on the merits. The statements at issue are clearly of public importance – namely bringing attention to threats of violence against houses of worship in the South Florida area. This Court finds that this is precisely the kind of case the Florida legislature had in mind when it amended §768.295.

Since the Anti-SLAPP statute permits this Court to dispel of the entire case by dismissing the action or granting final judgment, the standard of review is not limited to the four corners of the Complaint. The language of the Anti-SLAPP statute explicitly permits a "motion for summary judgment, together with supplemental affidavits." §768.295(4). The Statute also permits Plaintiff to provide its own written response and supplemental affidavits supporting its claims. §768.295(4).

C. DEFAMATION

Defamation requires (1) publication; (2) falsity; (3) knowledge or reckless disregard as to the falsity on a matter of public concern; (4) actual damages; and (5) statement must be defamatory. *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1214 n.8 (Fla. 2010). Publication is not in dispute. However, Defendants disputed the remaining elements.

With regard to falsity, it is not incumbent upon the defendant to prove the statements true – plaintiff bears the burden of proving them false. See *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986) ("the plaintiff [must] bear the burden of showing falsity, as well as [the defendant's]

fault, before recovering damages" whether or not P is a public figure); see also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19-20 (1990) (requiring plaintiff to prove statements false).

D. THE ARTICLES CONCERN A PUBLIC FIGURE AND PUBLIC CONTROVERSY

Public figure defamation plaintiffs are held to a heightened burden. See *New York Times v. Sullivan*, 376 U.S. 254, 280-282 (1964); *Silvester v. Am. Broad. Cos.*, 650 F. Supp. 766, 770 (S.D. Fla. 1986). A public figure cannot prevail in a defamation claim unless he proves that the statement was made with 'actual malice,' that is, with knowledge of its falsity or with reckless disregard for the truth. See *New York Times v. Sullivan*, 376 U.S. at 280. There must be sufficient evidence to permit the conclusion that the defendant actually had a "high degree of awareness of . . . probable falsity." *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964).

"[I]t is no answer to the assertion that one is a public figure to say, truthfully, that one doesn't choose to be. It is sufficient, . . . that '[the defendant] voluntarily engaged in a course that was bound to invite attention and comment.'" *Silvester v. Am. Broad. Cos.*, 839 F.2d 1491, 1496 (11th Cir. 1988), quoting *Rosanova v. Playboy Enterprises, Inc.*, 580 F.2d 859, 861 (5th Cir. 1978). Often, public figures are so without any voluntary behavior making them one. See *Silvester v. Am. Broad. Cos.*, 650 F. Supp. 773, citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351, 94 S. Ct. 2997, 3013, 41 L. Ed. 2d 789 (1974).

Plaintiff Rosenthal generally disputes his public figure classification by Defendants. However, during the hearing Mr. Rosenthal failed to deny his public figure status. (Trial Testimony 98:20-22) Rosenthal injected himself into this topic by starting the discussion through the Facebook post and engaging directly with the local media. At the hearing, Rosenthal admitted that his original Facebook post was done to provoke thought and start a conversation. (Trial Testimony 103:14-16) Mr. Rosenthal admitted that this Facebook post was public. (Trial Testimony 103:12-13) The Court finds that the nature of the voluntary statements made by Rosenthal, threats to burn down mosques, were such that he

engaged in a course that was bound to invite attention and comment. As a result, Rosenthal is a public figure, or at the least a limited purpose public figure for this topic.

Having entered the discussion of his own accord, Plaintiff is, at a minimum, a limited public figure. Florida has a two-step approach for determining whether this is the case. First, the Court determines whether the person is involved in a "public controversy," or a matter that reasonable people would expect to affect people beyond its immediate participants. *Gertz*, 418 U.S. at 323; *Mile Marker Incomorated v. Peterson Publishing. LLC*, 881 So. 2d 841, 845-46 (Fla. 4th DCA 2002). Second, the Court must further determine whether the person played a sufficiently central role in the controversy to be considered a public figure. *Gertz*, 418 U.S. at 323; *Mile Marker*, 881 So. 2d at 846; *Della-Donna v. Gore Newspapers Co.*, 480 So. 2d 72, 75 (Fla. 4th DCA 1986).

Even if his statements were somehow deemed not to be threats, Plaintiff should know that they would affect people beyond the immediate conversation. As the originator of this threatening statement, Mr. Rosenthal is at the center of the controversy that he created.

The "public controversy" nature of the matter is further supported by the CBS news segment discussing the threats by Plaintiff against local area mosques. See Complaint ¶16. (Defendants Exhibit 4) It is clear that non-party local Channel 12 CBS news believed it was worthy of a news segment. Additionally, non-party Local Channel 10 - WPLG news also ran a story about Plaintiff, one month prior to the Facebook post, which included an in-person interview of Plaintiff. Plaintiff voluntarily interjected himself into a wide public discussion. Plaintiff's own Complaint attempts to categorizes his threat to burn down mosques, as "merely outlining the subject for discussion." Complaint ¶17. For all of these reasons, the Court finds that Mr. Rosenthal is a public figure involved in a public controversy.

E. ACTUAL MALICE

Actual malice exists only where a speaker makes a false statement of fact with either knowledge of its falsity or reckless disregard for the truth. "[A]nyone claiming to be defamed by the communication must show actual malice or go remediless." *New York Times v. Sullivan*, 376 U.S. at 281. If Plaintiff is unable to show that CAIRFL's articles were false, then he most certainly cannot show that they were written with knowledge of its falsity. With regard to a knowing and reckless falsehood as alleged in the Complaint, it contains only conclusory boilerplate alleging that Defendants published the alleged articles "(a) with knowledge that the statements were false; (b) with reckless disregard for their truth or falsity; and/or (c) when CAIRFL, ... should have known, through the exercise of reasonable care, that the statements were false and made with ill-will." Complaint ¶ 28, 34, 40 and 45.

"Moreover, [the plaintiff] must prove actual malice with clear and convincing evidence." *Dockery v. Fla. Democratic Party*, 799 So. 2d 291, 294 (Fla. 2d DCA 2001). "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Based on the actual malice standard for public figure defamation claims, Plaintiff must prove that each and every Defendant acted with reckless disregard for the truth. At the hearing on this motion, Plaintiff failed to present any clear and convincing evidence that each of Defendants, published the news articles with "actual malice," meaning with "actual knowledge of the falsity or with reckless disregard for the truth." *Levesque v. Doocy*, 560 F.3d 82, 90 (1st Cir. 2009), citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

F. THE ALLEGED STATEMENTS

The Court finds that all of the statements from the two CAIRFL news articles are either true, or at a minimum are opinion.

F.1. "Radical Anti-Muslim Activist with Ties to Congressional Candidate Threatens to Burn Down Mosques in South Florida"

This first complained of statement is the title of the CAIRFL News Article A. Mr. Rosenthal presented no clear and convincing evidence that he is not a "radical anti-muslim activist." When asked on his own direct examination, Mr. Rosenthal was unable to even deny that he was a "radical anti-islam activist" and expressed confusion over what the Defendants even meant by the term radical. "Well, I'm not sure what they mean by radical. So, in order for me to agree with their statement I would need for them to explain it to me." (Trial Testimony 95:15-23) Mr. Rosenthal further failed to rebut or deny that he was an activist. Mr. Rosenthal was silent as to being anti-islamic. To the contrary, this Court finds that Mr. Rosenthal was explicitly against Islam. (Trial Testimony 96:6-15, 93:24-25, 94:1-18) The Court finds that based upon the totality of circumstances and evidence presented at the hearing, this statement is part of a larger article and is either factual or the clear opinion of CAIRFL. Mr. Rosenthal does not dispute that he had ties to a congressional candidate. As a result, this portion of the alleged defamatory statement is also true.

The last part of the article title regarding the threat, is disputed by Mr. Rosenthal and is apparently the crux of his Complaint. Mr. Rosenthal argues that no threat was made. This Court finds that a threat was indeed made through Mr. Rosenthal's January 2016 Facebook post. Both Defendant Ruiz and Defendant Hamze clearly an unambiguously testified that they determined and believed the Rosenthal Facebook post to be a threat. (Trial Testimony 53:3-11, 70:4-7, 79:20-24, 81:20-25, 82:8-11, 85:11-20) The Court is not making a finding as to legality or potential criminality of such a threat, as that is not a criminal proceeding and not the subject of the lawsuit.

F.2. "The Florida chapter of the Council on American-Islamic Relations (CAIR Florida) announced today that they have reported a threat posted on Facebook under the name of David L. Rosenthal."

Plaintiff complains about CAIRFL's statement "The Florida chapter of the Council on American-Islamic Relations (CAIR Florida) announced today that they have reported a threat posted on Facebook under the name of David L. Rosenthal." Complaint ¶ 13. In the Complaint, Plaintiff attempts to assign blame or perceived damage on CAIRFL for reporting this threat. Plaintiff's Complaint categorizes the reporting of the threat by CAIRFL, as false and reprehensible reports that are designed to cause Plaintiff to be prosecuted for acts not committed. Complaint ¶ 23. Plaintiff failed to present any testimony or evidence that such a statement caused any damages or harm. To the contrary, there is a strong public policy reason for the reporting of potential crimes to law enforcement.

The reporting of a possible crime is covered by a qualified privilege in the State of Florida, regardless of whether they were deemed defamatory. "[D]efamatory statements voluntarily made by private individuals to the police or the state's attorney prior to the institution of criminal charges are presumptively qualifiedly privileged." *Fridovich v. Fridovich*, 598 So. 2d 65, 69 (Fla. 1992). The Florida Supreme Court further explained "a qualified privilege 'is sufficiently protective of [those] wishing to report events concerning crime and balances society's interest in detecting and prosecuting crime with a defendant's interest not to be falsely accused.'" *Id.* Reporting a potential crime cannot be viewed as defamation. During the hearing on this motion Defendant Hamze testified about his actions in reporting the threat to law enforcement. (Hearing Transcript 78:22-25, 79:1-25, 80:1-2). Defendant Hamze further explained that he made this assessment based upon his training as a law enforcement officer, although it was not reported in his capacity as a law enforcement officer. (Hearing Transcript 78:22-25, 79:1-25, 80:1-2). Defendant Hamze testified this was his only role in connection with the two alleged CAIRFL news articles. Mr. Rosenthal did not present any contrary evidence or testimony

regarding Mr. Hamze's alleged role in these articles. Since Defendants enjoy a privilege to report potential crimes, and specifically in this case a threat to burn to mosques, such statements in a news report are not capable of being defamatory.

F.3 The threatening Facebook post read: 'Someone remind me of why I should not burn every mosque in my geographical area. Oh right, I remember now... Let me think about it.'" Complaint ¶ 23.

CAIRFL's Article A provided the actual quote from Rosenthal, which Plaintiff admits and does not refute as being an accurate or true quote. (Trial Testimony 91:15-22). Instead, Plaintiff's complaint is that CAIRFL did not print additional information. The Court finds that CAIRFL was under no obligation to print or report about additional future posts by Plaintiff nor to conduct additional investigative measures prior to their reporting. Mr. Rosenthal argued that he did not make a threat. However, Plaintiff's interpretation of whether the statement was a threat or not is irrelevant. CAIRFL's perception of the statement as a threat is the only relevant inquiry in analyzing the formation of CAIRFL's opinion.

At the hearing additional testimony about subsequent statements by Mr. Rosenthal on the specific feed in connection with the Facebook post in dispute, reveals that he made a retraction of his earlier threat. Mr. Rosenthal stated: "After some thought, I have concluded that I would not burn a mosque, since I do not want to risk causing loss of life." (Defense Exhibit 1)

The Court finds that Plaintiff's "walk back" statement regarding this threat means that at the time of his original post, Plaintiff did issue a threat. It was only after more than 24 hours of "thought" Plaintiff attempted to soften his threat. At the hearing Mr. Rosenthal disputes that his subsequent statement was a retraction. This further confirms the Court's finding. This establishes that CARIFL was a reasonable in its opinion to conclude that this was a threat.

Additionally, the Court has reviewed the comments in connection with this Facebook post and finds that Mr. Rosenthal was confronted with a question from one of the commenters about the threat. (Defense Exhibit 1) Specifically, the third comment from "Musaddiq Alam" asks "why u want to do this?" Mr. Rosenthal replied to this question as follows "**I want to ban Islam in America**". (Defense Exhibit 1) The Court finds that Mr. Rosenthal's failure to inform the commenters and readers about his alleged lack of intention to burn mosques, further supports CAIRFL's reasonable opinion that the original statement was indeed a threat.

For all these reasons, the statement that Plaintiff threatened to burn down mosques, cannot be defamation as a matter of law.

F.4 "Rosenthal is a known islamophobe and frequently participates in rallies slandering Islam and bashing Muslims in America."

Plaintiff argues that that he is not an ISLAMOPHOBE, based on his current understanding of the definition of such term. Complaint ¶21 (Hearing Transcript 105:3-6). This Court has reviewed the materials provided in the briefing and finds that Mr. Rosenthal's understanding of the definition is inadequate and irrelevant. Defendants' brief for this motion pointed out, the online Oxford Dictionary defines "islamophobia" as "Dislike of or prejudice against Islam or Muslims, especially as a political force." The Complaint states: "Plaintiff passionately critiques Islam, while encouraging Muslims to abandon the perversion within Islam in favor of peaceful alternatives." Complaint ¶21. It is apparent that Mr. Rosenthal has a dislike of Islam and/or Muslims.

More telling is Mr. Rosenthal's own admission, from a Facebook post from June 4, 2015, which was only six months prior to the Facebook post at issue in this case. (Defense Exhibit 5) In that June 2015 post, which was titled "ISLAMOPHOBE", Mr. Rosenthal begins with the following: "I am an Islamophobe. I hate Islam." (Defense Exhibit 5) (Trial Testimony 104:5-16). Since Plaintiff is a self-admitted Islamophobe, the Court finds this to be factually true and therefore not capable of being

defamatory.

F.5 "To carry his hate agenda, Rosenthal participates as an active member of the anti-Muslim hate group 'Americans Against Hate', a hate group founded and run by Joe Kaufman. Kaufman is a defeated Republican congressional candidate who has promoted the views of the terrorist organizations "Kach" and "Kahane Chai" and praised the "Kahane" terror group and its founder Mier Kahane on a forum of the radical "Jewish Defense League" in Florida."

Mr. Rosenthal argues that he was never a member of the Organization Americans Against Hate and that he was defamed by the alleged factual error. Factual inconsistencies do not convert a statement which "substance or gist conveys essentially the same meaning" into defamation; the court must consider "all the words used". See *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 705 (Fla. 3d DCA 1999); see also *Greenbelt Cooperative Pub. Ass'n v. Bresler*, 398 U.S. 6, 14 (U.S.1970) (establishing that rhetorical hyperbole is protected under the First Amendment); Restatement (Second) of Torts §558(a) (1977).

The CAIRFL News Article A prominently shows Mr. Rosenthal wearing a t-shirt bearing the name "Americans Against Hate" while he is standing next to Joe Kaufman, the apparent founder of the organization. (Defense Exhibit 2) Despite these clear facts, Mr. Rosenthal claims his is defamed by association and implication of such organization. Defendant Ruiz testified that he viewed the WPLG Channel 10 news report about the rally organized by Mr. Rosenthal. Defendant Ruiz testified that it was his opinion based upon those facts that Mr. Rosenthal was a part of the Organization Americans Against Hate.) (Trial Testimony 48:19-25, 49:16-25, 50:1-4). The Court finds that it was an entirely reasonable deduction and opinion by Ruiz.

Mr. Rosenthal seeks this Court's finding that the reference to Americans Against Hate would create a defamation by implication scenario, and cites to the case of *Jews for Jesus v. Rapp* 997 So. 2d 1098 (Fla. 2008). This Court recognizes that Mr. Rosenthal's claims fail when applying the standard set

by the Florida Supreme Court for this concept. Specifically, the Florida Supreme Court explained "Simply put, 'if the defendant juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts, he may be held responsible for the defamatory implication, **unless it qualifies as an opinion**, even though the particular facts are correct.'" *Id* at 1108. (emphasis added).

Opinions are not defamatory under the law of Florida. See *Town of Sewall's Point v. Rhodes*, 852 So. 2d 949, 951 (Fla. DCA 4th 2003). "An opinion is protected because it cannot, under *Gertz*, be 'false.' Because a statement must be false to be actionable defamation, an opinion is simply not actionable defamation. It makes no difference whether the plaintiff alleging the defamation is a private or a public person." See, e.g., *Town of Sewall's*, 852 So. 2d at 949 (describing an individual's property as a "Hillbilly Hellhole" was a statement of opinion, and not fact, and therefore not defamatory). see also *Greenbelt Cooperative Pub. Ass'n v. Bresler*, 398 U.S. 6, 14 (U.S.1970) (establishing that rhetorical hyperbole is protected under the First Amendment). For all these reasons, the Court finds that the CAIRFL Article A, referencing Americans Against Hate was a reasonable opinion and therefore not defamatory.

F.6 "Radical Anti-Islam Activist with ties to Joe Kaufman Threatens to Burn Down Florida Mosques"

The Court notes that the Complaint references this title of the CAIRFL Article B, as additional defamatory material. Since this second news article only contains a title and an embedded link to a non-party CBS Channel 12 news video content, the Court's prior analysis above applies here as well. This title relates to undisputed facts, or at a minimum are the opinions of CAIRFL. Therefore, this is also not defamatory as a matter of law.

F.7 Republication of CBS 12 News report.

During the hearing on this matter the court viewed and entered into evidence the CBS 12 News video, which was part of an embedded link on CAIRFL Article B. Non-party CBS news Channel 12, reported on the original content of CAIRFL Article A. Since this Court has already found that the content of CAIRFL Article A is not defamatory, then the subsequent reporting by a non-party is equally incapable of being defamatory. Moreover, CAIRFL's reposting of that non-party media report is clearly fair commentary of CAIRFL. Therefore, this is also not defamatory.

G. INDIVIDUAL DEFENDANTS

Plaintiff Rosenthal's Complaint based upon a single count of Defamation is generally plead against all Defendants, including the individuals. However, as the Complaint makes clear it is done based upon their specific role with CAIRFL. The Court finds that none of the individuals acted in their capacity outside of the obligations with the organization CAIRFL, so as to expose them to any liability. As stated earlier, Defendant Ruiz was acting in his direct capacity as Communications Director, which included the creation of press releases and news articles on topics such as those at issue herein. Defendant Hamze was not responsible for any of the content on either of the two CAIRFL news articles at issue. His only involvement was limited to reporting the threat to law enforcement, which was already discussed above. Lastly, Defendant Shibly testified that he had absolutely no role in the creation or publication of the two CAIRFL news articles at issue. Defendants Ruiz and Hamze corroborated this testimony. On cross examination Plaintiff did not ask any questions or present any contrary evidence of Mr. Shibly's alleged role in the two news articles. For all the reasons contained herein the Court finds that none of the individual Defendants are personally liable for any of the allegations contained in the Complaint.

H. Conclusion

For the foregoing reasons, it is hereby ORDERED AND ADJUDGED that Defendants Motion to Dismiss/Summary Judgment (Anti-SLAPP Motion) is GRANTED. This matter shall be dismissed with prejudice as to all Defendants. As a prevailing parties, Defendants are entitled to recover their attorney's fees and costs under the anti-SLAPP statute. Fla. Stat. §768.295(4). They may seek to recover their fees and costs by separate motion.

DONE and ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on 11/8, 2017

Michael L. Gates

Circuit Court Judge

MICHAEL L. GATES
Circuit Judge

NOV 08 2017

A TRUE COPY