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Blackwater Founder Erik Prince's Claims Against The Intercept Dismissed for Lack of Actual Malice

By Margaret N. Strouse

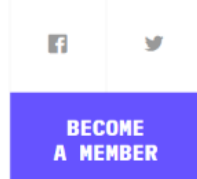
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A New York federal district court this month dismissed a case against The Intercept finding no actual malice in its reporting about Erik Prince and his security company. [Prince v. The Intercept](#), No. 21-CV-10075 (LAP), 2023 U.S. Dist. LEXIS 119974 (S.D.N.Y. July 12, 2023).

Background

Erik Prince, founder of the Blackwater security company, sued the publisher of *The Intercept* and two of its then-reporters after it published an article alleging Prince offered specific assistance to the infamous Wagner Group. Prince sought money damages for a news article about his efforts, as a founder of companies specializing in security services in high conflict zones, to secure a contract from a Russian entity with interests in Africa, where Prince already was performing work in connection with his Chinese government-backed firm.

The April 2020 article, titled *Erik Prince Offered Lethal Services to Sanctioned Russian Mercenary Firm Wagner*, reports that, “according to three people with knowledge of the efforts,” Prince—described as a former Navy SEAL, prominent founder of Blackwater, brother of U.S. Secretary of Education Betsy DeVos, and vocal supporter of President Trump, for whose administration he has served as “an unofficial adviser on military and foreign policy issues in Africa, the Middle East, and Afghanistan”—has sought to provide military services to a Russian entity called the Wagner Group, a “mercenary firm” subject to U.S. sanctions. Specifically, Prince proposed to support Wagner’s operations in two African conflicts, in Libya and Mozambique, although Wagner declined the offer. The Article reports that Prince’s attorney “denied that his client met anyone from Wagner.”



**ERIK PRINCE OFFERED LETHAL SERVICES
TO SANCTIONED RUSSIAN MERCENARY
FIRM WAGNER**

Article raises the possibility that, “[i]n attempting to do business with Wagner,” given its status as a sanctioned entity, “Prince may also have exposed himself to legal liability.”

Procedural Posture

Initially, Prince filed suit in Wyoming, which the court dismissed for lack of personal jurisdiction, rejecting Prince’s request to transfer the case, in part because, it observed in its opinion, it believed his claims potentially lacked merit. Prince then filed a complaint for defamation in the Southern District of New York against First Look Media Works, Inc. n/k/a First Look Institute, Inc., which at the time published *The Intercept*, reporter Matthew Cole, and former-reporter Alex Emmons.

Defendants filed two motions to dismiss: (1) on behalf of *The Intercept* and Cole for lack of defamatory meaning and failure to plausibly plead actual malice, and to recover fees under New York’s anti-SLAPP statute; and (2) on behalf of Emmons, by then a law student living outside New York, for lack of personal jurisdiction. Prince opposed both motions and, in the alternative, requested leave to amend his complaint. Judge Loretta A. Preska concluded that Prince was a limited purpose public figure who had failed to allege facts demonstrating a plausible claim but granted Prince’s request for leave to amend regarding actual malice and defamatory meaning. The Court also dismissed defendant Emmons, without leave to amend, because Prince “cannot offer additional substantive information to cure the deficiencies” regarding the lack of personal jurisdiction over him.

Amended Complaint and Motion to Dismiss

Prince’s amended complaint alleged that *The Intercept* is biased, relied on anonymous sources, and had prior “journalistic failures” that purportedly gave rise to a plausible inference of actual malice. Prince specifically relied on [McDougal v. Fox News Network, LLC](#), 489 F. Supp. 3d 174 (S.D.N.Y. 2020), and [Celle v. Filipino Reporter Enters.](#), 209 F.3d 163 (2d Cir. 2000), to assert that *The Intercept*’s “left-wing” stance and personal bias against him constitutes actual malice.

Defendants argued that Prince’s amended complaint failed to plead to actual malice because taking an adversarial stance and using confidential sources are not indicative of actual malice. Defendants further argued that Prince’s own denials regarding the particular incident involving Wagner (which were included in the article) and *The Intercept*’s past critical reporting on Prince are not evidence of actual malice. Further, they pointed out that there is nothing “inherently improbable” in the article that could establish actual malice.

Opinion

The court dismissed Prince’s amended complaint with prejudice, finding that he had failed to plausibly plead actual malice. Judge Preska referenced the actual malice standard under New York’s anti-SLAPP statute but, because actual malice already was required of Prince as a public figure, she did not decide which source of the actual malice standard should govern.

Judge Preska noted that the *McDougal* court had refused to find actual malice on the basis of similarly “conclusory” allegations, where *McDougal* posited that Tucker Carlson’s personal relationship with Donald Trump provided a basis for actual malice in Carlson’s reporting about *McDougal* and Trump’s affair and *McDougal*’s alleged extortion of Trump.

Judge Preska further distinguished *Celle* and *Palin*, in which New York’s highest court and the Second Circuit each had found actual malice was plausibly pleaded because those plaintiffs purportedly had, as it was put in *Celle*, “personal relationships with defendants that fueled the defendants’ bias” and there was other evidence that defendants had “knowledge of the falsity of their statements” or “entertain[ed] serious doubts as to the truth of the statements.” Here, the court found Prince had failed to allege a personal relationship with reporter Cole and that Cole’s past articles about Prince and alleged “disdain” for Prince could not raise an inference of actual malice because there was no evidence Cole believed his reporting to be false.

Moreover, the court held that it was not “inherently improbable” that Prince had met with the Wagner Group even in light of Prince’s statement four years earlier that he would not work with Russia, because significant time had passed and the political context at the time of the reported meeting was different. The court also held that allegations regarding the Article’s sourcing, including use of confidential sources, were insufficient to plead actual malice plausibly.

separate state court action.

Defendants are represented by Jay Ward Brown, Ballard Spahr LLP and David Bralow, General Counsel, The Intercept. Erik Prince is represented by Brian Schiller, Fluor LLP.
Margaret N. Strouse is an associate at Ballard Spahr in Washington, D.C.