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New Jersey Court Rejects Discrimination Claims Based on Newspaper Columns

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A state trial court recently dismissed claims under New Jersey’s Law Against Discrimination arising from newspaper columns that were allegedly motivated by discriminatory animus. [The Arc Mercer, Inc. v. MediaNews Group](#), No. MER-L-000168-23 (N.J. Super. Aug. 30, 2023). The court construed the statute narrowly, avoiding the question of whether such claims could ever survive First Amendment scrutiny after the Supreme Court’s decision in *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023).

Background

In June 2020, the head chef and co-owner of a venue in Hamilton Township, New Jersey called the Stone Terrace published racist statements on social media. Among other things, he directed slurs toward the Black Lives Matter movement and called protestors of the murder of George Floyd “evil.” The statements led to a community backlash, including protests and a boycott of the Stone Terrace. The remaining co-owners of the venue issued a statement apologizing for the social media comments, making clear that the head chef no longer worked there.

In 2022, The Arc Mercer, a nonprofit organization serving people with developmental disabilities, selected the Stone Terrace as the venue for its annual fundraising gala. Journalist L.A. Parker wrote a series of opinion columns for *The Trentonian* newspaper, both before and after the gala took place, criticizing the Arc’s choice of venue. In the columns, Parker suggested that giving business to the Stone Terrace made the Arc “complicit” in the former head chef’s racism, and he encouraged three local mayors to reconsider their decision to attend the event. The organization’s mission was deserving of “admiration,” Parker wrote, but that did not absolve the Arc of its poor choice of venue.

Shortly after the Arc held its fundraising event as planned, it filed suit against MediaNews Group, the owner of *The Trentonian*, and Parker. Rather than pursuing defamation claims—which would have been unsuccessful because Parker’s columns did nothing more than express opinions based on fully disclosed, undisputed facts—the Arc instead asserted claims under New Jersey’s Law Against Discrimination. The Arc’s theory was that Parker and *The Trentonian* had singled it out for criticism, while ignoring that many other organizations had also held events at the Stone Terrace. According to the Arc, none of those other organizations primarily served people with developmental disabilities. Based solely on those alleged facts, the Arc contended that Parker and *The Trentonian* must have “targeted” the Arc because of its clients’ disabilities, in violation of two provisions of the Law Against Discrimination, N.J.S.A. §§ 10:5-12(l) and (n).

Motion to Dismiss

New Jersey’s Law Against Discrimination is unusually expansive, reaching beyond traditional places of public accommodation. Subsection (l) provides that it is unlawful discrimination “to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of” various protected categories, including disability. Subsection (n) further provides that it is unlawful discrimination “to aid, abet, incite, compel, coerce, or induce” a violation of subsection (l), “or to attempt, or to conspire to do so.” The Arc contended that Parker’s columns “targeted” the organization because of its customers’ disabilities and discouraged the public from “do[ing] business” with it in violation of these provisions.

There was no allegation that the defendants had knowledge of the other events at the Stone Terrace, and the columns clearly expressed Parker’s support for the Arc’s mission of helping developmentally disabled people. The court declined to dismiss the claims under the liberal pleading standards applied to discrimination claims, though it acknowledged “that discriminatory intent is difficult to discern” from the columns.

Second, the defendants argued that the plain language of subsection (l) applies only to refusals to transact business, and discouraging people from attending a charity gala does not qualify. The court agreed, relying on the canons of *ejusdem generis* and *noscitur a sociis* to conclude that the catch-all phrase “otherwise do business with” is limited to commercial transactions. On that basis alone, the court granted the defendants’ motion to dismiss with prejudice.

The Arc’s effort to circumvent the First Amendment protections built into defamation law by recharacterizing bad press as discrimination appears to be without precedent in New Jersey.

The court expressly avoided reaching a third argument advanced by *The Trentonian* and Parker: that the First Amendment does not permit application of the Law Against Discrimination under these circumstances. The defendants pointed to the Supreme Court’s recent decision in *303 Creative*, and the line of cases before it, addressing the conflicts that can arise between anti-discrimination laws and freedom of expression. In *303 Creative*, the Court invalidated the application of Colorado’s public accommodations law to a wedding website designer. The Court found that the wedding websites constituted “pure speech” by the designer, and that compelling her to design websites for same-sex marriages against her beliefs was unconstitutional. The Court recognized that “Colorado and other States are generally free to apply their public accommodations laws, including their provisions protecting gay persons, to a vast array of businesses,” but explained that states cannot use those laws “to deny speakers the right to choose the content of their own messages.” By the same logic, *The Trentonian* and Parker argued, imposing liability under the Law Against Discrimination based on the newspaper columns would violate the First Amendment.

The trial court made “no finding as to the constitutionality of” the Law Against Discrimination post-*303 Creative* but suggested that this case might be distinguishable because the newspaper columns were commercial speech that Parker “was paid to produce.” The parties did not brief, and the court did not address, the many First Amendment cases holding or implying that publishing for profit does not render speech commercial.

Conclusion

As the trial court recognized, “this case follows a traditional defamation fact pattern.” The Arc’s effort to circumvent the First Amendment protections built into defamation law by recharacterizing bad press as discrimination appears to be without precedent in New Jersey. To the extent that the dismissal of the Arc’s case is not deterrent enough to others who might be tempted to pursue the same theory, would-be plaintiffs should also take note of New Jersey’s new anti-SLAPP statute that was just signed into law this September. The law, which takes effect on October 7, will provide additional safeguards for news organizations and journalists faced with similar claims, including the ability to recover attorneys’ fees.

Elizabeth Seidlin-Bernstein of Ballard Spahr LLP represented the defendants. Stephen E. Trimboli of Trimboli & Prusinowski, LLC represented the plaintiff.

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