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April 23, 2024

VIA EMAIL ONLY

Shahidul Mannan
shahidul.mannan@gmail.com

Re: HopNews, Owner/Author Peter Thomas

Dear Mr. Mannan:

This firm represents HopNews and owner, Peter Thomas. You have defamed them by accusing them of being racist and you have engaged in unfair and deceptive practices, a violation of M.G.L. c. 93A, in that regard as well. Please understand that we will be left to pursue our clients' rights in court against you if we cannot resolve this matter as demanded below.

Background

As you know, you are not a popular Select Board member in Hopkinton at this time. There is a "recall" effort undertaken by the Town to remove you as a Select Board member, along with two others, Amy Ritterbusch and Mary Jo Lafreniere. And, because this letter refutes your unjustified claims of racism against you, I note the following critical fact: both Ms. Ritterbusch and Ms. Lafreniere are Caucasian. Thus, and relevant to this letter, the recall effort by citizens in the Town of Hopkinton cannot possibly be rationally said to be racially driven. Rather, as I understand it, the recall effort is driven by the fact that the Town does not believe you properly represent the Town's interest.

Your lack of popularity is tied both to your vote to terminated Sergeant Tim Brennan, and your general bullying behavior of other Select Board Members. In particular, townspeople have commented that your treatment of Board Chairwoman, Muriel Kramer, at public meetings is misogynistic. You talk over her, interrupt her, and belittle her. These are well known and well publicized facts, personally observed by all members of the public who attend those meetings.

On April 4, 2024, in an article in HopNews, titled, "Enough Mansplaining Already," your behavior toward Ms. Kramer was called out as improper in Mr. Thomas' piece. In fact, following that article, there were numerous comments from readers that they had noticed this behavior on your part as well, and they too were offended by it.

Instead of accepting that your behavior in this regard is offensive and improper and perhaps even trying to learn from it and become a better public official, you have gone on the offensive yourself. You claim that HopNews, and Mr. Thomas, as author of "Enough Mansplaining Already," are racist. You made this claim not in your personal capacity, but in the course of a speech at a Select Board Meeting on Tuesday April 16, 2024, and you confirmed you were referring to HopNews, as published by the Hopkinton Independent on Wednesday, April 17, 2024. In other words, you used your position in the Town as a Select Board Member as a bully-pulpit to harm my clients, an abuse of power.

More to the point of this letter, <u>there is no basis in fact for your opinion about HopNews or Mr. Thomas; none at all.</u> In fact, Peter Thomas, reached out to you by text, and other follow up efforts, and even published a follow up article in HopNews to headline that racism has no place in Hopkinton. You have been completely non-responsive and unwilling to engage in a dialogue with Mr. Thomas to put this matter to rest. To this day, you have hidden behind your cloak of being victimized, all the while leaving your unsubstantiated assertions to simmer and settle into the community. In no uncertain terms, your words have caused harm, and you have intended them to cause harm. The reason you have come forward with no factual support for your defamatory statement is, again, because there is none.

<u>**Legal Analysis**</u>

Where defamation alleged is slander (oral), as it is here, certain words are actionable *per se*, including words which prejudice plaintiff in its profession or business, and a plaintiff need not prove damages to prevail. *See Lyman v. New England Newspaper Pub. Co.*, 286 Mass. 258, 1909 N.E. 542 (1934). Here, this is such a case. Speaking in the course of your duties as a Town official, you have accused my clients of racism to prejudice their business and profession. That is improper.

We certainly recognize that there are various defenses to a claim of defamation, but here, none of them apply. As an example, while truth is a defense to a defamation claim, it is <u>your burden</u> to provide your comments are true. *See Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458 (1940). By refusing to even respond to Mr. Thomas, you acknowledge there is no basis for your accusations of racism and that you cannot meet your burden. As another example, while a statement of opinion is a defense to a defamation claim, it is not a defense where it implies undisclosed defamatory facts, as your statements do here. *See Shawsheen River Estates Assocs. P'ship v. Herman,* 1995 Mass. Super. LEXIS 483 (Mass. Super. April 11, 1995) (citing, *King v. Globe Newspaper Company,* 400 Mass. 705, 713 (1987)). Notably, the law is very clear that Mr. Thomas and HopNews have the right to express opinions in an Op-Ed piece, such as that on April 4, 2024. This is particularly so where the article is clearly labeled, "Opinion" on HopNews. *See King*, 400 Mass. at 714 ("Reasonable readers expect to read columnists' views and opinions as opposed to factual news stories on an op-ed page (citing *Aldoupolis v. Globe Newspaper Co.*, 398 Mass. 731, 735 (1986)). Where there is no basis in fact for an opinion like yours about my clients, and where the opinion is plainly defamatory, as it is here, the law steps in to rectify the wrong. *Cf. Boyle v. Cape Cod Times,* 2009 Mass. Super. LEXIS 418 (Mass. Super. Nov. 9, 2009) (statements made in newspaper were not defamatory because they were reporting facts).

Here, you have defamed Mr. Thomas and HopNews; you have caused Mr. Thomas and his family personal harm by these accusations, and you have violated his and his business' legal right.

Your defamation is not only wrongful, but also unfair and deceptive. Thus, please also consider this letter a demand under G.L. c. 93A, and I take this opportunity to educate you about the protections afforded to my clients under G.L. c. 93A, and the multiple damages and attorneys' fees that would be awarded thereunder upon proof of your wrongdoing.

"Chapter 93A…is a broad consumer protection statute that provides a private cause of action for a consumer who 'has been injured' by 'unfair or deceptive acts or practices in the conduct of any trade or commerce.'" *See* G.L. c. 93A, §§ 1, 2(a); *Shaulis v. Nordstrom, Inc.*, 865 F.3d 1, 6 (1st Cir. 2017). And, it is undisputed that defamatory statements are actionable under Chapter 93A. *See A.F.M. Corp. v. Corporate Aircraft Management*, 626 F. Supp. 1533, 1551 (D. Mass. 1985). To prevail on a Chapter 93A claim, a plaintiff need only show that (1) defendant committed an unfair or deceptive trade practice while engaged in trade or business; (2) plaintiff suffered an injury and (3) a causal connection between defendant's alleged act and plaintiff's injury. *See Keenan v. Wells Fargo Bank, N.A.*, 246 F. Supp. 3d 518, 526 (D. Mass. 2017). But proof of defamation is not my clients' only avenue for relief under Chapter 93A.

As a matter of course, "[a] determination that conduct is unfair or deceptive is not dependent on traditional tort or contract theories and represents a finding under a statute that creates new substantive rights. *Heller v. Silverbranch Constr. Corp.,* 376 Mass. 621, 626, 382 N.E.2d 1065 (1978); *Slaney v. Westwood Auto, Inc.,* 366 Mass. 688, 704, 322 N.E.2d 768 (1975). A practice is unfair if it is "within ... the penumbra of some common-law, statutory, or other established concept of unfairness; ... is immoral, unethical, oppressive, or unscrupulous; [and] ... causes substantial injury to [other businessmen]." *PMP Assocs., Inc. v. Globe Newspaper Co.,* 366 Mass. 593, 596, 321 N.E.2d 915 (1975). A practice is deceptive when it "could reasonably be found to have caused a person to act differently from the way he otherwise would have acted." *Lowell Gas Co. v. Attorney Gen.,* 377 Mass. 37, 51, 385 N.E.2d 240 (1979) (citation omitted).

A Chapter 93A claimant may recover his "actual damages"[1] or "nominal damages" whichever is greater. "Actual damages" under Chapter 93A are quite broad. "Actual damages for injuries under G.L. c. 93A comprehend all foreseeable and consequential damages arising out of conduct which violates the statute." *Brown v. LeClair*, 20 Mass. App. Ct. 976 (1985). And, Chapter 93A § 9 encompasses economic injuries, as well as those non-economic injuries that cause some harm to the consumer. *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492 (2013). For example, the types of injuries recognized by chapter 93A are "a readily quantifiable loss of money or property, measurable emotional distress[2], or an invasion of the consumer's personal privacy causing injury

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[1] "Actual" damages also include prejudgment interest. *See Makino, U.S.A., Inc. v. Metlife Capital Credit Corp.*, 25 Mass. App. Ct. 302, 320 (1988).

[2] To establish emotional distress damages under Chapter 93A, a plaintiff must establish: (1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of the conduct; (2) that the conduct was "extreme and outrageous"; (3) that the actions of the defendant were the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was "severe." *Haddad v. Gonzalez,* 410 Mass. 855 (1991); *Brown v. Bank of American, Nat., Ass'n*, 67 F. Supp. 3d 508, 514-15 (D. Mass. 2014).

or harm worth more than a penny." *Ferreira v. Sterling Jewelers, Inc.*, 130 F. Supp. 3d 471, 478 (D. Mass. 2015).

In addition to "actual" damages, Chapter 93A, § 9(3) also allows for the recovery of a multiple of damages, from two to three times actual damages for a willful or knowing violation. *See* G.L. c. 93A, § 9(3). The Supreme Judicial Court has said that "a finding of 'willful' conduct within the meaning of Chapter 93A is satisfied where [as here] the defendant has acted recklessly." *Kattar v. Demoulas*, 433 Mass. 1 (2000). Alternatively, courts equate knowing conduct "with intentional acts." *Id.* The Massachusetts Supreme Judicial Court has recognized that a knowing use of false information "establishes willfulness as a matter of law." *Anthony's Pier Four, Inc. v. HBC Associates*, 411 Mass. 451 (1991).

Finally, and perhaps most importantly, Chapter 93A provides for a mandatory award of attorneys' fees. *See* G.L. c. 93A, § 9(4) ("If the court finds in any action…that there has been a violation of c. 93A, § 2, the petitioner shall, in addition to the other relief provided…be awarded reasonable attorney's fees and costs incurred in connection with said action.").

For these reasons, should this matter proceed to court, we anticipate that after proving your violations of Chapter 93A, and my clients' damages, you will be ordered to pay double or triple those damages, as well as our clients' attorneys' fees.

Conclusion

The above should make things very clear to you about the path forward: you should immediately make a public statement retracting your accusations of racism toward Mr. Thomas and HopNews. Doing so at the Board Meeting on Tuesday April 30, 2024 would be particularly fitting. In our view, that is the only way to cure the improper harm that has been done and/or cut-off or limit damages to my clients as result of your statements. Please understand that if you allow pride or ego to interfere here, and if you fail to take the more mature path we urge by this letter, we will be forced to involve the courts to rectify your wrongs.

We think three (3) business days should be sufficient for you to digest the contents of this letter and decide on your best course of action. However, under Chapter 93A, you have 30 days to propose any other reasonable settlement offer you would like our clients to consider. That said, should I not hear from you or your counsel within 3 business days from delivery of this letter to you as to your initial intentions in light of our demands, we will assume you will only continue to maintain your false and defamatory positions and attempt to deceive the public for longer. In our view, that scenario will not present well in a court of law.

Thank you in advance for your attention.

Sincerely,

Jeffrey M. Rosin

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cc: File