



## Bar BuzzFeed From Public Figure Defense, Russian Exec Says

By Carolina Bolado

Law360 (September 18, 2018, 5:27 PM EDT) -- Russian technology executive Aleksey Gubarev asked a Florida federal court Monday to block BuzzFeed from using the public figure defense to fend off his defamation suit over the website's publication of a dossier alleging ties between Russia and President Donald Trump.

Gubarev, whose technology companies are mentioned in the dossier, asked the Southern District of Florida for summary judgment on BuzzFeed's plans to defend itself in his defamation suit by arguing that he is a public figure.

In a defamation suit, in order to prevail, a public figure must prove that the publication acted with actual malice, while the burden of proof is lower for ordinary citizens.

Gubarev says BuzzFeed intends to argue that he is a public figure by pointing to evidence of his attempts in 2015 and 2016 to get more media coverage of his companies' products and service offerings through public relations companies. But those efforts were largely unsuccessful, he said.

He says there is no way he can be considered either a general public figure, like a celebrity, or a limited-purpose public figure in the context of the alleged meddling of the Russian government in the U.S. elections.

"Prior to BuzzFeed's publication of the Dec. 13, 2016 memo ... plaintiffs were hardly known outside of small technology circles, despite some (largely unsuccessful) efforts made to publicize the companies' technological offerings and Mr. Gubarev's experience as a successful technology entrepreneur," he said.

Gubarev, who is the CEO of XBT Holding SA, an internet hosting and web development company based in Luxembourg, filed the defamation suit against BuzzFeed and Editor-in-Chief Ben Smith in February 2017, shortly after the publication of the 35-page dossier authored by former British intelligence officer Christopher Steele.

His complaint centers around a portion at the end of the dossier asserting that XBT and Florida-based subsidiary Webzilla Inc. had been transmitting viruses, planting bugs, stealing data and generally conducting "altering operations" against the Democratic Party's leadership. According to the complaint, the dossier mentioned Gubarev specifically, calling him one of the "significant players" in the operations.

Gubarev, however, says none of these statements has “any basis in fact whatsoever.”

In June, U.S. District Judge Ursula Ungaro said BuzzFeed could employ the fair reporting privilege defense, which protects journalists who are reporting on official proceedings, to defend itself in the suit. The judge concluded that a classified intelligence briefing — such as those received by then-President Barack Obama and Trump on the dossier’s allegations — qualifies as an official proceeding in the context of the fair reporting privilege.

“The court agrees with defendants that the term ‘official proceeding’ should be broadly interpreted to apply to any official action,” Judge Ungaro said. “A confidential briefing to the president and the president-elect by the four most senior intelligence directors in the country is official action taken by those empowered to do so. So too is an FBI investigation into the truth of the dossier’s allegations.”

The judge declined, however, to allow BuzzFeed to use the neutral report privilege, which applies when the press publishes a report of serious charges against a public figure by a responsible prominent organization and does not espouse or endorse the organization’s statement.

The plaintiffs are represented by Evan Fray-Witzer of Ciampa Fray-Witzer LLP, Brady J. Cobb of Cobb Eddy PLLC and Valentin D. Gurvits and Matthew Shayefar of Boston Law Group PC.

BuzzFeed is represented by Katherine M. Bolger, Adam Lazier and Nathan Siegel of Davis Wright Tremaine LLP and Roy Black and Jared Lopez of Black Srebnick Kornspan & Stumpf PA.

The case is Gubarev et al. v. BuzzFeed Inc. et al., case number 0:17-cv-60426, in the U.S. District Court for the Southern District of Florida.

--Editing by DIpti Coorg.