

BuzzFeed Beats Back Defamation Suit Over Trump Dossier

By Carolina Bolado

Law360 (December 19, 2018, 5:50 PM EST) -- A Florida federal judge on Wednesday ended Russian tech executive Aleksey Gubarev's defamation suit against BuzzFeed, ruling the website's publication of a dossier alleging ties between Russia and President Donald Trump is protected by the fair reporting privilege.

U.S. District Judge Ursula Ungaro granted BuzzFeed's request for summary judgment after concluding that the publication had satisfied its burden under the fair reporting privilege — which protects journalists reporting on official proceedings — of showing that the dossier was subject to official action by the government.

In this case, the official action was the classified intelligence briefings given to then-President Barack Obama and Trump on the dossier's allegations of Russian interference in the 2016 election.



A federal judge said Wednesday that BuzzFeed had done enough to show its publication of a dossier alleging ties between Russia and President Donald Trump was shielded by the fair reporting privilege, which protects journalists reporting on official proceedings. (Getty)

The ruling ends the defamation case, which was set to go to trial in late January.

Gubarev had argued that in order to prevail on the fair reporting privilege defense, BuzzFeed needed to show the particular statements about him and his companies — included in Report 166, the last of the 17 memoranda that make up the dossier — were subject to the official proceedings. But the judge agreed with BuzzFeed that New York law, which applies in this case, does not require that level of granularity.

"To go line-by-line to determine if official action existed with respect to each statement in Report 166 would not impose on BuzzFeed a duty to faithfully recount official proceedings, but instead, would impose on BuzzFeed a duty to investigate extensively the allegations of the dossier and to determine whether the government was investigating each separate allegation," Judge Ungaro said. "Defamation law does not impose that requirement on the press."

The judge added that this type of line-by-line review would curtail the scope of the privilege and restrict the press' ability to serve its basic function.

She also found that the average reader would have concluded that the dossier was subject to official action because the BuzzFeed story about the dossier included a blue hyperlink to a CNN article that described the intelligence briefings to the outgoing and incoming presidents.

Evan Fray-Witzer, who represents Gubarev, said his client disagrees that the hyperlink was enough for the average reader to believe that BuzzFeed was reporting on an official action. He said nothing in the court's ruling suggests that the allegations against Gubarev or his companies were true.

"When we started this case, we knew that it would be a marathon and not a sprint," Fray-Witzer said. "We remain convinced that, after appeal, this matter will be presented to a jury and that we will succeed in vindicating the plaintiffs' good names."

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 on a portion at the end of the dossier asserting that XBT and Florida-based subsidiary Webzilla 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.

BuzzFeed attorney Roy Black called Judge Ungaro's ruling "a strong affirmation of the First Amendment," and said it is important that the public know what is being discussed at the highest levels of government.

BuzzFeed said in an official statement that the company is "thrilled" by the decision.

"As we have said from the start, a document that had been circulating at the highest levels of government, under active investigation by the FBI, and briefed to two successive presidents, is clearly the subject of 'official action,'" BuzzFeed said. "Moreover, its publication has contributed to the American people's understanding of what is happening in their country and their government."

Judge Ungaro's decision came one day after she ruled that Gubarev is not a public figure for the purposes of the defamation suit.

Gubarev and his companies 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 Breda Lund.