

Libel suit against BuzzFeed thrown out

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A federal judge ruled BuzzFeed adequately tied the Steele dossier to the ongoing federal investigation by linking to a CNN report on the briefings of Donald Trump and Barack Obama. | Drew Angerer/Getty Images

A federal judge has dismissed a libel suit brought against BuzzFeed by a Russian internet entrepreneur who claimed he was defamed by the online news site's publication of the so-called dossier on President Donald Trump's alleged ties to Russia.

Miami-based U.S. District Court Judge Ursula Ungaro ruled Wednesday that BuzzFeed's public release of the dossier was protected by the fair report privilege, a legal protection for news outlets presenting accurate reports on government activities.

In some states, the privilege covers only reports on public proceedings like a court hearing or a legislative debate. However, Ungaro previously held that New York law applies to the case brought by Russian businessman Aleksey Gubarev. New York law protects accurate reports on government investigations, whether they're public or private, the judge said.

“New York courts have extended the term ‘official proceeding’ to cover any official investigation, even if it is not open to the public,” wrote Ungaro, an appointee of President George W. Bush.

It is well-established that the dossier was discussed with Trump and President Barack Obama and was the subject of an FBI investigation. However, Gubarev’s lawyers argued that there was no evidence of a probe into the claims in the dossier about his alleged involvement in Russian-government-ordered hacking of Democratic Party officials in 2016.

But the judge said BuzzFeed didn’t need such granular information about the probe to be legally protected in publishing the document, which was compiled by former British intelligence officer Christopher Steele.

“To go line-by-line to determine if official action existed with respect to each statement in [the report about Gubarev] 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. Defamation law does not impose that requirement on the press,” Ungaro wrote.

“Such a line-by-line review would curtail the scope of the privilege and thus restrict the press’s ability to serve its basic function,” the judge added.

Ungaro also said BuzzFeed adequately tied the dossier to the ongoing federal investigation by linking to a CNN report on the briefings of Trump and Obama. The Russian entrepreneur’s lawyers had argued such a reference wasn’t enough to let BuzzFeed rely on CNN’s reporting, but the judge disagreed.

Attorneys for Gubarev immediately vowed an appeal to the Atlanta-based 11th Circuit Court of Appeals.

“Nothing in today’s ruling by the Court suggests in any way that the allegations concerning Mr. Gubarev, Webzilla, or XBT Holding were true,” lawyer Val Gurvits said in a statement, referring to two of Gubarev’s companies that joined in the suit. “When we started this case, we knew that it would be a marathon and not a sprint. 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.”

Gurvits said the appeal would specifically challenge the judge’s ruling that BuzzFeed’s hyperlink to the CNN web story was adequate to make the BuzzFeed publication a report on the federal probe.

BuzzFeed Editor-in-Chief Ben Smith, who was named personally as a defendant in the suit, hailed the ruling as a victory for the free flow of information to the public.

“When we published the Steele dossier in 2017, we were met with outrage from many corners — a major news anchor and President Trump both deemed it ‘fake news’; and several Russian businessmen sued for defamation. Today, almost two years later, a federal judge has vindicated our decision,” Smith wrote. “A key principle underlying the First Amendment is that the public has the right to know about actions taken by its government. 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.’”

A lawyer representing BuzzFeed in the suit, Roy Black, also praised the ruling.

“The ruling is a strong affirmation of the First Amendment. It’s more important that the public know what is being discussed at the highest levels of government than anything else,” Black said. “If BuzzFeed had not published, citizens would not understand the current conflict between the president and the other branches of government, as well as the conflict between the president and the special counsel.”

The win for BuzzFeed on Tuesday followed a setback for the publication Tuesday, when the judge ruled that Gubarev is not a public figure for purposes of the defamation suit he filed last year.

The decision meant that Gubarev might be able to prevail in the suit by showing mere negligence by BuzzFeed and wouldn’t have to meet the more demanding “actual malice”

standard typically applied in U.S. courts in controversies involving prominent individuals or those actively engaged in a public debate.

That ruling is moot in light of Ungaro's decision Wednesday dismissing the whole lawsuit, but the public-figure issue could be important if the appeals court ultimately revives the case.