



BuzzFeed Defends Press Privilege In Dossier Defamation Suit

By Nathan Hale

Law360 (February 12, 2018, 10:26 PM EST) -- BuzzFeed has urged a Florida federal court to deny a Russian tech executive's bid for a partial judgment in his defamation suit over the website's publication of a dossier alleging ties between Russia and President Donald Trump, saying he wrongly argued it had to independently “verify” all of the contents.

In his Jan. 18 motion, plaintiff Aleksey Gubarev asked the court to strike BuzzFeed Inc.'s defenses that it is shielded by exceptions in defamation law known as the fair reporting privilege and the neutral report privilege. The news outlet's assertion that the so-called Steele dossier, which alleges Gubarev's tech companies participated in operations against the Democratic Party, is an official government document and part of government activity that qualifies BuzzFeed's coverage for those protections is a “gross mischaracterization,” he said.

But the website argued in its response Friday that Gubarev is the one making mischaracterizations — of both the facts and the applicable law.

BuzzFeed pointed to thousands of published reports on the dossier since it published the full 35-page document authored by former British intelligence officer Christopher Steele in January 2017, saying these reports show the it is central to government officials' investigation and debate over the controversy of Russian interference in the 2016 presidential election.

“The dossier’s role in controversy over government conduct exemplifies why the law recognizes the fair report privilege, and BuzzFeed’s emphasis that the dossier was unverified was also protected, neutral reporting,” the news outlet argued.

The principle in defamation law that someone can be held liable for republishing a defamatory statement from someone else, known as the “republication rule,” created serious issues for the functioning of the press and gave rise to the need for an exception in the form of the fair report privilege, BuzzFeed said.

“It grants the press (and others) the right to republish allegedly defamatory statements by someone else, as long as they were made within the context of government activities,” BuzzFeed

said, adding that the privilege also protects the publication of government documents.

“Importantly, if a document is protected by the privilege, the press 'has no duty to determine the accuracy of the information contained' in the document,” BuzzFeed argued, quoting from New York state case law.

In terms of factual mischaracterizations, Gubarev's motion errs in asserting that none of the official actions involving the Steele dossier, including the ongoing FBI investigation, qualifies as an “official proceeding” under applicable New York state law because they are nonpublic, BuzzFeed argued.

BuzzFeed also rebutted Gubarev's claim that the fair reporting privilege cannot apply because its story never reported about any actual ties between the dossier and official activity.

“Here, the article and its hyperlinked sources [to stories by CNN and Mother Jones] plainly 'indicate' that the dossier is a 'document' that was a 'part of' at least a half-dozen different official actions undertaken by all three branches of government,” BuzzFeed said. “After reading the article and its linked-to sources, it is far from 'impossible' for readers to understand that the dossier was the subject of government activity.”

Similarly, BuzzFeed argued that, contrary to Gubarev's assertion about ambiguity regarding the neutral report privilege's recognition under Florida law, “the privilege protects 'disinterested and neutral reporting' by the media about newsworthy matters.”

As an alternative to denial of Gubarev's motion, BuzzFeed suggested the court find that it is really a premature argument for summary judgment and defer consideration until discovery has been completed.

“If nothing else, plaintiffs’ motion makes it obvious that the merit of these affirmative defenses cannot be resolved on the pleadings in this case, at least in their present form,” BuzzFeed said. “While the parties agree that the fair and neutral report privileges will ultimately present questions for the court, both questions require the application of legal principles to a specific factual record.”

Gubarev, who is the CEO of XBT Holding SA, an internet hosting and web development company based in Luxembourg, originally filed suit in Broward County court in February 2017, accusing BuzzFeed and Editor-in-Chief Ben Smith of defamation.

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.

However, Gubarev alleges, none of these statements have "any basis in fact whatsoever."

Counsel for the plaintiffs did not immediately respond to a request for comment late Monday.

The plaintiffs are represented in the U.K. by Steven Loble of W Legal Ltd. and in the U.S. 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.

--Additional reporting by Carolina Bolado. Editing by Breda Lund.

Correction: An earlier version of this story misstated Gubarev's financial situation. The error has been corrected.