

tacopina seigel trial lawyers

TACOPINA SEIGEL & DEOREO

JOSEPH TACOPINA

EMAIL: jtacopina@tacopinalaw.com

www.tacopinalaw.com

275 Madison Avenue, 35th Floor

New York, NY 10016

Telephone (212) 227-8877

Facsimile (212) 619-1028

January 23, 2023

By FedEx and Email: info@freeandfairlitigation.org

Mark Pomerantz
Free and Fair Litigation Group, Inc.
c/o Carter Ledyard & Milburn LLP
28 Liberty Street
New York, New York 10005

Re: Your Defamation of President Trump

Dear Mr. Pomerantz:

I represent President Donald J. Trump and the Trump Organization with regard to their claims against you for defamation arising from the leaking of your resignation letter, previously submitted to the New York County District Attorney's Office, to the New York Times – a letter in which you falsely accuse my clients of being “guilty of numerous felony violations” and also falsely state that it was “a grave failure of justice” not to hold my clients accountable by way of criminal prosecution. I also understand from media reports that you are in the process of publishing a book within which you intend to repeat such defamatory statements.

I strongly admonish you to take these next words seriously: If you publish such a book and continue making defamatory statements against my clients, my office will aggressively pursue all legal remedies against you and your book publisher, Simon & Schuster. Trust me, I will zealously use every possible legal resource to punish you and your publisher for the incredible financial harm that you have caused my clients to suffer.

As an attorney practicing since 1977, you are undoubtedly familiar with the law pertaining to defamation, which makes your self-serving conduct at the expense of my clients all the more egregious. Nonetheless, lest there be some feigned claim of ignorance on your part later, take note of the following:

Mark Pomerantz
January 23, 2023
Page Two

“[A]n opinion that implies that it is based upon facts which justify the opinion but are unknown to those reading or hearing it, is a mixed opinion and is actionable.” *Davis v. Boehem*, 24 N.Y.3d 262, 269 (2014) (alterations and internal quotation marks omitted). Notably, such statements constitute defamation “because a reasonable listener or reader would infer that the speaker knows certain facts, unknown to [the] audience, which support [the] opinion and are detrimental to the person [toward] whom [the communication is directed].” *Gross v. New York Times Co.*, 82 N.Y.2d 146, 153-154 (1993), quoting *Steinhilber v. Alphonse*, 68 N.Y.2d 283, 290 (1986).

Here, your opinion which was disseminated to the public – that President Trump is “guilty of numerous violations of the Penal Law,” that “he did” commit crimes, and that he should “be held fully accountable for his crimes” – in the context of the entire leaked resignation letter, can only be reasonably understood as implying they were based on undisclosed facts. Indeed, you stated as much, claiming that you have seen “evidence” to establish his guilt beyond a reasonable doubt and acknowledging that not all of the purported facts upon which you rely have “been made public.” Under the circumstances, couching your opinion as a belief by no means insulates you from liability.

Furthermore, your attribution to my clients of terms which falsely brand them as dishonest and fraudulent criminals constitutes actionable defamation *per se*. See, e.g., *Four Star Stage Lighting, Inc. v. Merrick*, 56 A.D.2d 767 (1st Dept. 1977) (defamation *per se* will occur when words affect a person “in his profession, trade, or business, by imputing to him any kind of fraud, dishonesty, misconduct, incapacity, unfitness, or want of any necessary qualifications in the exercise thereof.”); *Suarez v. Angelet*, 90 A.D.3d 906 (2d Dept. 2011) (email stating two people “are thieves” was considered defamation *per se*); *Cedeno v. Pacelli*, No. 452016/2018, 2019 WL 4239257 (Sup. Ct. New York County Sep. 5, 2019), *aff’d* 192 A.D.3d 533 (1st Dept. 2021) (calling a lawyer, *inter alia* a “cheater,” “liar,” “fraud,” and “unethical” sufficient to state a claim for defamation *per se*.)

In addition, it is beyond cavil that your defamatory statements were made with actual malice. As a former prosecutor, you know full well that it is unlawful and unethical to disclose information obtained in violation of grand jury secrecy laws. For that matter, as Manhattan District Attorney Alvin Bragg’s general counsel Leslie Dubeck conveyed by letter to Simon & Schuster, you were “under an obligation to receive prior written permission from the DA’s Office before making any disclosures relating to the ‘existence, nature, or content’ of any communications or records or documents that relate in any manner to the investigation [you] participated in as a Special Assistant.” Moreover, Ms. Dubeck expressed concern in that letter you were “not capable of making any assessment of whether disclosures [you] intend[ed] to disseminate in [your] publication” might prejudice the case and warned you “not to take any *further* steps that would damage an ongoing criminal investigation.” (Emphasis added). In other words, even the District Attorney’s Office, to which you owed an ethical obligation as a Special Assistant, is worried about your willingness to engage in immoral conduct to advance your own interests.

TACOPINA SEIGEL & DEOREO

Mark Pomerantz
January 23, 2023
Page Three

Here, it is abundantly clear that, despite the fact the District Attorney's Office has seen fit not to pursue criminal charges against my clients, you have deliberately undermined that stance for financial gain. In fact, Simon & Schuster characterizes your book as an "inside account of the attempt to prosecute former president Donald Trump," meaning you wrote it, in violation of your ethical duties, with secret, non-public information that could have only been garnered in your position as a Special Assistant. Worse still, in an effort to generate book sales, it is clear from your statements that you took a false position in that publication contrary to the findings of the District Attorney's office. Simply put, you have maliciously made defamatory statements about my clients' purported guilt based on your reference to undisclosed "evidence" secured by the District Attorney, despite the fact the District Attorney determined that such evidence did not form the basis for a criminal prosecution.

Unfortunately, your willingness to engage in unethical conduct to advance your own agenda is not a new phenomenon, particularly with respect to President Trump. To that end, you aligned yourself previously as a partner with Paul, Weiss, which has touted itself as a staunch supporter of, and fundraiser for, the Democratic Party, and was spearheaded by Robert B. Schumer, who is not only the brother of Senator Charles Schumer but serves on his Judicial Selection Committee. As you know, while you were a partner with Paul, Weiss, associated attorneys urged the District Attorney's Office to prosecute President Trump on baseless allegations, in order to benefit his political opponent, Hillary Clinton, whom the firm represented. To be clear, it is extraordinarily unusual for a lawyer representing clients (here, Hillary Clinton, the DNC, and the Democratic Party) to leave his firm and go to the Manhattan District Attorney's office, so that such lawyer and his law firm may seek to unjustifiably prosecute and imprison an individual who is not only those clients' primary political opponent but leading in all of the polls, both Republican and Democratic. According to our research, nothing like this has ever occurred previously. The fact that you seemingly took on such an assignment on a pro bono basis demonstrates the agenda of you and your law firm, Paul, Weiss. Accordingly, we hold you and that law firm responsible, as such deplorable conduct was unprecedented.

Yet, here you are currently, once again attacking President Trump with groundless falsehoods in order to advance your own agenda. To aggravate matters, doing so by disclosing secret grand jury information, particularly during an open investigation, is a criminal act. Whatever legacy you intended has been disgraced and destroyed. That being said, while your reputation is beyond repair, there is still hope that you may salvage your financial well-being by heeding the contents of this letter. If you fail to do so and continue to make defamatory remarks about President Trump and/or his business interests, either within your intended publication or elsewhere, you will sorely regret that decision. In short, my office will aggressively pursue all legal remedies against you and Simon & Schuster, including commencing a defamation action against you both, wherein we will seek substantial compensatory damages, punitive damages, sanctions and attorney's fees.

TACOPINA SEIGEL & DEOREO

Mark Pomerantz
January 23, 2023
Page Four

Consider yourself sufficiently warned.

Very truly yours,



Joseph Tacopina