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JUDGE
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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

SHIGENORI HIRAGA,)	CIVIL ACTION NO. 98-O 1 00A
)	
Plaintiff,)	DECISION AND ORDER
)	DENYING MOTION TO
v.)	DISMISS, SUMMARY
)	JUDGMENT, CROSS MOTION
SEKISUI HOUSE,)	FOR SUMMARY JUDGMENT
)	
Defendant.)	

I. INTRODUCTION

Defendant Sekisui House ("Sekisui") brings this motion to dismiss and in the alternative for summary judgment on the basis that the alleged defamatory statements plaintiff Shigenori Hiraga ("Hiraga") pleads in this action are true. Hiraga argues that the statements made by Sekisui imply that he committed further illegal acts for which he was not charged by the Attorney General, thereby making them defamatory. Hiraga cross-moves for partial summary judgment arguing that the statements made by Sekisui are per se defamatory and do not constitute an opinion within the meaning of the Restatement (Second) of Torts. The court, having reviewed all briefs, declarations, exhibits, and having heard and considered the arguments of counsel now renders its written decision.

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FOR PUBLICATION

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II. FACTS

In the course of another Superior Court action, C.D.C. Sainan. Ltd. v. Sekisui House, Ltd., Civil Action No. 95-830 (“Action”), a legal memorandum (“Memorandum”) was filed by Sekisui which discussed Hiraga. Subsequently, a press release with the Memorandum attached was provided to the media, dated March 12, 1997, which detailed items addressed in the Action. Particularly, the Memorandum contains the following statements:

The old saying about a “leopard not changing his spots” certainly applies to Mr. Hiraga. While Mr. Hiraga was on probation for his felony bribery conviction, he continued with his practice of paying substantial sums of money to government officials. Mr. Hiraga’s payments to CNMI government officials are undisputed because they are recorded in written documents prepared by Mr. Hiraga and stamped “confidential.” This document was discovered during the course of Sekisui House’s investigation of the Plaintiffs’ baseless claims at issue in this case. In his deposition, Mr. Hiraga was questioned regarding the “Confidential” list of payments, and Mr. Hiraga admitted to paying hundreds of thousands of dollars to CNMI officials. Mr. Hiraga, of course, says that some of the payments were “loans,” but he admits that the vast majority of the money has never been paid back, and he recalls no discussion about payment terms on the loans.

Perhaps, Mr. Hiraga thinks that his government connections make it unnecessary for him to cite case authority to this Court, because the so-called motion by the Plaintiffs fails to cite any case authorities whatsoever. Of course, it is a matter of public record that Mr. Hiraga does not have a very high opinion of the judges in the CNMI. In his deposition, Mr. Hiraga admitted writing a letter to a Sekisui House official wherein Mr. Hiraga stated that the judges in the CNMI were afflicted with AIDS of the brain. Apparently, Mr. Hiraga’s criminal propensities are exceeded only by his lack of taste and civility.

While it may come as a surprise to Mr. Hiraga, the courts in the CNMI customarily expect a litigant to cite case authority in a motion, even when the litigant has paid hundreds of thousands of dollars to government officials.

Hiraga was not subsequently prosecuted on further bribery counts, nor did he anywhere directly admit to bribery in any document provided.

III. ISSUES

6. Whether the Memorandum published to the media by Sekisui was capable of bearing a defamatory meaning such that dismissal is precluded.

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1 A cause of action for defamation by inference may be maintained. Restatement (Second)
2 of Torts, § 563 (1977). Whether a reasonable person would draw the inference that Hiraga
3 continued to commit the crime of bribery, and whether Sekisui's language meant that Hiraga was
4 continuing to bribe officials or was merely "influence peddling," remain questions of fact. Further,
5 if Sekisui's statements do imply that Hiraga was continuing to bribe officials, the deposition
6 evidence is not strong enough to show that Hiraga was truly bribing officials. As a result, the issue
7 of whether the statements made by Sekisui constitute defamation by inference is a question of fact
8 not subject to dismissal.

9 Next, Sekisui argues that the statements it made were protected opinions. An opinion can
10 be the subject of a defamation action "only if it implies the allegation of undisclosed defamatory
11 facts as the basis for the opinion." Restatement (Second) of Torts (1977) §566. Therefore, if an
12 opinion leads a reasonable person to believe it is supported by defamatory facts which are not
13 directly stated, it is not protected. Id., Cmt. c (4). If Sekisui's Memorandum implies that Hiraga
14 committed a subsequent felony, then undisclosed defamatory facts would necessarily be implied
15 because Sekisui does not explicitly state the actions Hiraga took in bribing or influence peddling.
16 As it would be possible for a reasonable person to infer from Sekisui's statements that Hiraga
17 continued to commit illegal bribery, and that inference would presuppose undisclosed defamatory
18 facts, this too is an issue for the fact finder.

19 Sekisui further argues that the statements it made could qualify as an accurate report of an
20 official proceeding, which is privileged under Restatement §611. Restatement (Second) of Torts
21 (1977). An official proceeding report is only privileged if "the report is accurate and complete or
22 a fair abridgement of the occurrence reported." Id., cmt. f. This publication of the statements made
23 by Sekisui is far from complete and its accuracy is questionable. Further, this privilege may not
24 be conferred upon the person who made the original defamatory publication. Id., cmt. c, illustration
25 2. The fact that a person makes a defamatory statement is not undone by its publication in an
26 official proceeding. Id. The Restatement specifically does not allow publication of preliminary
27 proceedings before a judicial action has been taken because of the concern that one party will
28 include defamatory statements for the sole purpose of establishing a privilege to publicize the

1 content before dropping the action, Id., cmt. e. Even though the outcome of the prior case is
2 known, Sekisui may not hide behind the official proceeding privilege when it failed to make a full
3 report, and only reported specific statements it made which may bear a defamatory meaning.

4 V. CONCLUSION

5 Accordingly, Sekisui's motion is denied. Hiraga's motion for summary judgment is granted
6 insofar as the court has already determined that it would be possible for a defamatory meaning to
7 arise out of the Memorandum statements and denied on all other grounds.

8 SO ORDERED this da/8 of February, 1999.

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10 
11 EDWARD MANIBUSAN, Presiding Judge