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6	IN THE SUPERIOR COURT
7	FOR THE
8	COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
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10	SHIGENORI HIRAGA, CIVIL ACTION NO. 98-0 1 00A
11	Plaintiff, DECISION AND ORDER
12	v. ) DENYING MOTION TO DISMISS, SUMMARY
13	SEKISUI HOUSE, ) JUDGMENT, CROSS MOTION FOR SUMMARY JUDGMENT
14	Defendant.
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16	I. INTRODUCTION
17	Defendant Sekisui House ("Sekisui") brings this motion to dismiss and in the alternative for
18	summary judgment on the basis that the alleged defamatory statements plaintiff Shigenori Hiraga
19	("Hiraga") pleads in this action are true. Hiraga argues that the statements made by Sekisui imply
20	that he committed further illegal acts for which he was not charged by the Attorney General,
21	thereby making them defamatory. Hiraga cross-moves for partial summary judgment arguing that
22	the statements made by Sekisui are per se defamatory and do not constitute an opinion within the
23	meaning of the Restatement (Second) of Torts. The court, having reviewed all briefs, declarations,
24	exhibits, and having heard and considered the arguments of counsel now renders its written
25	decision.
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28	FOR PUBLICATION

Mair Pierce

1	II. FACTS
2	In the course of another Superior Court action, C.D.C. Sainan. Ltd. v. Sekisui House, Ltd.,
3	Civil Action No. 95-830 ("Action"), a legal memorandum ("Memorandum") was filed by Sekisui
4	which discussed Hiraga. Subsequently, a press release with the Memorandum attached was
5	provided to the media, dated March 12, 1997, which detailed items addressed in the Action.
6	Particularly, the Memorandum contains the following statements:
7	The old saying about a "leopard not changing his spots" certainly applies to Mr. Hiraga. While Mr. Hiraga was on probation for his
8	felony bribery conviction, he continued with his practice of paying substantial sums of money to government officials. Mr. Hiraga's
9	payments to CNMI government officials are undisputed because they are recorded in written documents prepared by Mr. Hiraga and
10	stamped "confidential." This document was discovered during the course of Sekisui House's investigation of the Plaintiffs' baseless
11	claims at issue in this case. In his deposition, Mr. Hiraga was questioned regarding the "Confidential" list of payments, and Mr.
12	Hiraga admitted to paying hundreds of thousands of dollars to CNMI officials. Mr. Hiraga, of course, says that some of the
13	payments were "loans," but he admits that the vast majority of the money has never been paid back, and he recalls no discussion about
14	payment terms on the loans.
15	Perhaps, Mr. Hiraga thinks that his government connections make it unnecessary for him to cite case authority to this Court, because
16	the so-called motion by the Plaintiffs fails to cite any case authorities whatsoever. Of course, it is a matter of public record that
17	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
18	Sekisui House official wherein Mr. Hiraga stated that the judges in the CNMI were afflicted with AIDS of the brain. Apparently, Mr.
19	Hiraga's criminal propensities are exceeded only by his lack of taste and civility.
20	While it may come as a surprise to Mr. Hiraga, the courts in the
21	CNMI customarily expect a litigant to cite case authority in a motion, even when the litigant has paid hundreds of thousands of
22	dollars to government officials.
23	Hiraga was not subsequently prosecuted on further bribery counts, nor did he anywhere
24	directly admit to bribery in any document provided.
25	III. ISSUES
26	6. Whether the Memorandum published to the media by Sekisui was capable of
27	bearing a defamatory meaning such that dismissal is precluded.
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1	7. Whether there is a factual dispute over the implications of Sekisui's statements
2	such that summary judgment is precluded.
3	8. Whether Sekisui's statements are privileged as a report of an official proceeding.
4	IV. ANÄLYSIS
5	When considering a motion to dismiss for failure to state a claim for which relief may be
6	granted under Corn. R. Civ. P. 12(b)(6), the complaint is construed in the light most favorable to
7	the plaintiff and its allegations are assumed to be true. Bolalin v. Guam Publications, Inc., 4 N.M.I.
8	176 (1994). Dismissal is improper unless the court is absolutely certain that the plaintiff can prove
9	no set of facts in support of his claim which would entitle him to relief. Govendo v. Micronesian
10	Garment Mfg., Inc., No. 90-013 (N.M.I. Sept. 10, 1991).
11	When looking at a summary judgment motion, the court's role lies in issue finding, not
12	issue determination. Rachel Concencion v. American International Knitters, 2 CR 940 (1986). In
13	addition, the court will view the facts in a light most favorable to the nonmoving party. Cabrera
14	v. Heirs of De Castro, 1 N.M.I. 172 (1990). Only if the moving party meets its initial burden to
15	show that no genuine issue of material fact exists and as a matter of law it is entitled to the relief
16	requested, will the burden shift to the nonmoving party to show a genuine dispute of material fact.
17	Cabrera, sup-a, at 176.
18	Sekisui argues that because the statements it made were substantially true, there can be no
19	action for defamation. True statements are exempted from defamation claims. Restatement
20	(Second) of Torts (1977) §58 1 A. Therefore, Sekisui argues that the statements it made, being true,
21	are not capable of defaming Hiraga and the action must be dismissed. However, there is a
22	suggestion implicit in Sekisui's press release attachment, the Memorandum, which could lead a
23	reasonable person to believe that Hiraga has and will continue to commit felonious acts even after
24	his felony conviction. The language about a "leopard not changing his spots," when used in
25	conjunction with Hiraga's prior bribery conviction and the allegation that he continued to pay
26	"substantial sums of money to government officials" could lead a reasonable person to infer from
27	Sekisui's statements that Hiraga was continuing to bribe CNMI officials.
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A cause of action for defamation by inference may be maintained. Restatement (Second) of Torts, § 563 (1977). Whether a reasonable person would draw the inference that Hiraga continued to commit the crime of bribery, and whether Sekisui's language meant that Hiraga was continuing to bribe officials or was merely "influence peddling," remain questions of fact. Further, if Sekisui's statements do imply that Hiraga was continuing to bribe officials, the deposition evidence is not strong enough to show that Hiraga was truly bribing officials. As a result, the issue ofwhether the statements made by Sekisui constitute defamation by inference is a question of fact not subject to dismissal.

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Next, Sekisui argues that the statements it made were protected opinions. An opinion can 9 10 be the subject of a defamation action "only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion." Restatement (Second) of Torts (1977) §566. Therefore, if an 11 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. As it would be possible for a reasonable person to infer from Sekisui's statements that Hiraga 16 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 official proceeding, which is privileged under Restatement \$611. Restatement (Second) of Torts 2021 (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 be conferred upon the person who made the original defamatory publication. Id., cmt. c, illustration 24 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 <u>day</u> Sof February, 1999.
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10	EDWARD MANIBUSAN, Presiding Judge
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