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**IN THE SUPERIOR COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

WILLIE TAN,

 Plaintiff,

 v.
YOUNIS ART STUDIO, INC., d/b/a
MARIANAS VARIETY,

 Defendant/Third Party Plaintiff,

 v.
STANLEY T. TORRES,

 Third-Party Defendant.

BENIGNO R. FITIAL,

 Plaintiff,

 v.
YOUNIS ART STUDIO, INC., d/b/a
MARIANAS VARIETY,

 Defendant/Third-Party Plaintiff,

 v.
STANLEY T. TORRES, personally and in his
official capacity,

 Third-Party Defendant.

**CIVIL ACTION NO. 01-0624A
CIVIL ACTION NO. 03-0116B**

**ORDER GRANTING YOUNIS ART
STUDIO, INC.’S MOTION FOR
SUMMARY JUDGMENT**

I. INTRODUCTION

THIS MATTER came before the Court on January 30, 2004, at 9:00 a.m. for a hearing on Defendant Younis Art Studio, Inc., d/b/a Marianas Variety’s (“Marianas Variety”) Motion for Summary Judgment. G. Anthony Long, Esq. appeared on behalf of Defendant Marianas Variety; Robert T. Torres, Esq. appeared on behalf of Third-Party Defendant Stanley T. Torres; and Steven Pixley, Esq., and Matthew Gregory, Esq. appeared on behalf of Plaintiffs Willie Tan and Benigno

1 Fitial.

2 **II. FACTS**

3 Plaintiffs Willie Tan (“Tan”) and Benigno R. Fitial (“Fitial”) each filed separate lawsuits
4 against Marianas Variety for defamation. Marianas Variety is a newspaper publication circulated
5 in the Commonwealth and in Guam. The primary bases of the Plaintiffs’ defamation lawsuit is the
6 Marianas Variety’s publication of political advertisements placed by the Third-Party Defendant
7 Stanley T. Torres (“Torres”) concerning Torres’s October 19, 2001, letter (“Letter”) to then Speaker
8 of the House of Representatives and Covenant Party Gubernatorial candidate Fitial.
9

10 Torres wrote the Letter as an elected Representative and delivered it to Fitial during a House
11 Legislative Session on October 19, 2001. He was also running for reelection as a Republican
12 member of the CNMI House of Representatives from Precinct Three in Saipan. The Letter was
13 formally entered into the House Legislative record by the House Clerk, and distributed to other
14 House Members. In the Letter, Torres questions Fitial about an alleged smuggling of \$100,000 from
15 the Philippines back in 1985 when Fitial was Vice-Speaker of the House of Representatives. He also
16 questions whether the \$100,000 was from “Mr. Tan” for repealing a statute and for the commercial
17 success of Mr. Tan in the CNMI. The Letter states in relevant part:
18

19 Dear Speaker Fitial:

20 I am writing this letter because I think it is important that the voters knows [sic] who
21 they are voting for.

22

23 Pues, if you are going to be elected the Governor of the CNMI, and like many of
24 your supporters are telling us about your sincere, honesty, and trustworthy [sic], you
25 owe the people of the CNMI to tell the TRUTH about the over One Hundred
26 Thousand Dollars you received in CASH, that you said you got from your friend, Mr.
27 Tan, the money you smuggled out of the Philippines while you were Vice Speaker
28 of the House of Representatives in 1985?

Was the money Mr. Tan paid you for repealing the Foreign Investment Act? Was
the money you received from Mr. Tan for L&T Garment and Poker machines which

1 flowed into the CNMI? Was it that money which let Mr. Tan walk into the Lower
2 Base government buildings and public lands to become the largest garment factory
3 in the CNMI, thanks to very cheap rental fees, and isn't that the TRUTH?

4 [Letter continues to page two].

5 Ben, tell the people the TRUTH. How many poker machines do you have or how
6 many machines did Mr. Tan give you to operate and share the profits? Please tell the
7 people the TRUTH why Mr. Tan designated you to be the Director of the Bank of
8 Saipan where Mr. Tan owns 30% of the Bank? And at some time ago you were the
9 Chairman of the Board of the Bank too? Tell the people of the CNMI that you are
10 also sitting on the Board of Directors of the MARIANAS CABLE VISION (MCV),
11 representing Mr. Tan's \$400,000.00 controlling interest. Please tell the people the
12 TRUTH that you are the President of the Saipan Tribune Newspaper which is wholly
13 owned by Mr. Tan.

14 I understand that the Tan's Holding Company is also one of the Bidders to buy-out
15 the VERIZON Telephone System in the CNMI. I wonder if you are and I wouldn't
16 be surprised if you are also a player in this venture and if it will become a reality.
17 Are we going to repeal again the Commonwealth Telecommunications Commission
18 (CTC) to the new owners favor? Just wondering.

19 Ben, tell the CNMI people the TRUTH that Mr. JERRY TAN, the brother of MR.
20 WILLIE TAN, once said that the people of the CNMI are all crooks, that the
21 Saipanese are accessible to BRIBERY, everybody is or are related to the Governor
22 and are coming to us to trade favors for money.

23 While everyone has heard the rumors of your "VOTE BUYING", I know of personal
24 loan pay offs on behalf of the Committee to Elect Benigno R. Fitial. .

25 Ben, didn't the Tans pay their way into the CNMI through you receiving that money?
26 If you think (in your favorite term) that I am a hypocrite, think twice. You know that
27 I know all the facts.

28 Sincerely,
/s/
REP. STANLEY T. TORRES
xc: House Members
House Clerk
File

29 Three days later, on October 22, 2001, the Marianas Variety printed a front-page story about
30 the Letter, with the headline: "**Torres accuses Fitial of accepting bribe.**" That headline was
31 followed by the caption: "*Fitial calls allegation 'absurd.'*" The story was reported by Marianas

1 Variety reporter Ulysses Sabuco, who referenced and republished excerpts from Fitial’s media
2 release in his story. The article identifies Plaintiff Tan as the party from whom Fitial accepted the
3 alleged bribe. The article also includes statements from Congressman Oscar M. Babauta and
4 Congresswoman Malua Peter. The article does not contain any comments from Tan. However,
5 Sabuco did contact Tan’s legal counsel to obtain a statement, but he did not receive any statement
6 before the article was published. At the hearing, Plaintiffs’ counsel conceded that the October 22,
7 2001, article is not defamatory.
8

9 Although the Marianas Variety had printed articles about the Letter on October 22 and
10 October 24, Torres pursued its publication as a separate paid advertisement, and paid for the October
11 25 political ad. The October 25 advertisement contained the full text of the Letter, as well as a
12 photograph of Torres, printed alongside the additional statements, printed in large text: “I don’t hide
13 behind a legislative shield to tell LIES. I don’t go to daily Mass and receive Holy Communion and
14 tell LIES.” Prior to Marianas Variety publishing the political ad, the Variety’s advertising manager,
15 Jeanette Sarabia, approached Mr. Abed Younis, the owner and publisher of the Marianas Variety,
16 to request publication approval for Torres’ ad containing the Letter. Sarabia sought Younis’s
17 approval because she considered the ad “questionable.” Younis approved the publication of the
18 political ad without conducting any additional investigation beyond the fact-finding conducted by
19 reporter Sabuco over the course of drafting the previous article. In the days following the
20 publication of the October 25 advertisement, Torres placed similar political advertisements, which
21 were also directed at Fitial, and many of those ads contained references to the contents of the Letter.
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24 After the October 22 and 24 newspaper articles, Tan demanded (through counsel for Tan
25 Holdings) a retraction of the Letter from Torres. Torres responded by publishing another political
26 advertisement, which included the full Letter, excerpts of the retraction demand, and his response:
27 “RETRACTION? OVER MY DEAD BODY.”
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1 be granted only “if the pleadings, depositions, answers to interrogatories, and admissions on file,
2 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
3 that the moving party is entitled to judgment as a matter of law.” Com. R. Civ. P. 56(c); *see also*,
4 *In re Estate of Roberto*, 2002 MP 23 ¶ 14. Defendant Marianas Variety, as the moving party, bears
5 the “initial and the ultimate” burden of establishing its entitlement to summary judgment. *Santos*
6 *v. Santos*, 4 N.M.I. 206, 210 (1994). “If a movant is the defendant, he or she has the . . . duty of
7 showing that the undisputed facts establish every element of an asserted affirmative defense.” *Id.*
8 In deciding a summary judgment motion, a court will construe the evidence and inferences drawn
9 therefrom in favor of the non-moving party. *Id.* at 209. Once the moving party meets its initial
10 burden, the non-moving party must introduce facts, in the form of affidavits or other evidence, to
11 show that a genuine issue of material fact does exist. *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172,
12 176 (1990). In this case, because the “clear and convincing” evidence requirement, articulated in
13 *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), applies, this
14 Court’s summary judgment inquiry as to whether a genuine issue exists will be “whether the
15 evidence presented is such that a jury applying that evidentiary standard could reasonably find for
16 either the plaintiff or the defendant.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct.
17 2505, 2514, 91 L. Ed. 2d 202, 216 (1986).

21 Thus, where the factual dispute concerns actual malice, clearly a material issue in a
22 *New York Times* case, the appropriate summary judgment question will be whether
23 the evidence in the record could support a reasonable jury finding either that the
24 plaintiff has shown actual malice by clear and convince evidence or that the plaintiff
25 has not.

26 *Id.*, 477 U.S. at 255-56; 106 S. Ct. at 2514, 91 L. Ed. 2d at 216.

27 In this case, both Tan and Fitial filed a defamation claim against Marianas Variety. Although
28 defamation is a Commonwealth law cause of action, the First Amendment of the United States
Constitution also safeguards freedom of speech and freedom of the press. The United States

1 Supreme Court, in its landmark case of *New York Times Co. v. Sullivan*, found that state law is
2 constitutionally deficient “for failure to provide the safeguards for freedom of speech and of the
3 press that are required by the First and Fourteenth Amendments in a libel action brought by a public
4 official against critics of his official conduct.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 264,
5 84 S. Ct. 710, 717, 11 L. Ed. 2d 686, 697 (1964).¹ This Court finds that Marianas Variety
6 established, through legally admissible evidence, that Tan is a public figure and Fitial is a public
7 official for purposes of this defamation lawsuit, and Plaintiffs do not dispute this fact. Accordingly,
8 the *New York Times Co.* standard applies. Under the *New York Times Co.* standard, when a
9 defamation action is brought by a public official or public figure, then the First Amendment
10 constitutional safeguards apply. The First and Fourteenth Amendments require “a federal rule that
11 prohibits a public official from recovering damages for a defamatory falsehood relating to his
12 official conduct *unless he proves that the statement was made with ‘actual malice’ – that is, with*
13 *knowledge that it was false or with reckless disregard of whether it was false or not.’* *Monitor*
14 *Patriot Co. v. Roy*, 401 U.S. 265, 270, 91 S. Ct. 621, 624-25, 28 L. Ed. 2d 35, 40 (1971) (emphasis
15 added) (citing *New York Times Co. v. Sullivan*, supra.).

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19 “When . . . the plaintiff is a public figure, he cannot recover unless he proves *by clear and*
20 *convincing evidence* that the defendant published the defamatory statement with actual malice, i.e.,
21 with ‘knowledge that it was false or with reckless disregard of whether it was false or not.’” *Masson*
22 *v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510, 111 S. Ct. 2419, 2429, 115 L. Ed. 2d 447, 468
23 (1991) (emphasis added) (citing *New York Times Co. v. Sullivan*, supra.). “Mere negligence does
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25 ¹ The First Amendment of the United States Constitution provides: “Congress shall make no law respecting an
26 establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of
27 the people peaceably to assemble, and to petition the Government for a redress of grievances.” Covenant § 501(a) provides that
28 provisions of the United States Constitution are applicable within the Northern Mariana Islands, “as if the Northern Mariana Islands
were one of the several States.” See, COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN
POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801 note, reprinted in CMC at B-101 *et seq.* The First
Amendment of the United States Constitution is made applicable to the several states by the the Fourteenth Amendment of the United
States Constitution.

1 not suffice.” *Id.* “Actual malice under the *New York Times* standard should also not be confused
2 with the concept of malice as an evil intent or a motive arising from spite or ill will.” *Id.* Thus, a
3 newspaper’s failure to investigate the accuracy or truthfulness of an ad prior to the ad’s publication
4 does not provide the requisite intent to show actual malice. *Varanese v. Gall*, 518 N.E.2d 1177,
5 1180 (Ohio 1988), *see also generally*, *New York Times Co.*, *supra*. Rather, to demonstrate actual
6 malice, the plaintiff must demonstrate that the defendant “in fact entertained serious doubts as to the
7 truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity
8 and demonstrates actual malice.” *Varanese*, 518 N.E. 2d at 1180 (*citing St. Amant v. Thompson*, 390
9 U.S. 727, 731, 88 S. Ct. 1323, 1325, 20 L. Ed. 2d 262, 267 (1968)); *see also Garrison v. Louisiana*,
10 379 U.S. 64, 74, 85 S. Ct. 209, 215, 13 L. Ed. 2d 125, 132 (1964). The requirement of clear and
11 convincing evidence that applies to actual malice is also the highest standard of proof in civil cases.
12 This heightened burden of proof of actual malice was decided by the Supreme Court in viewing the
13 case before it “against the background of a profound national commitment to the principle that
14 debate on public issues should be uninhibited, robust, and wide-open, and that it may well include
15 vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.”
16 *New York Times Co.*, 376 U.S. at 270, 84 S. Ct. at 721, 11 L. Ed. 2d at 701.

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20 In this case, Younis Art Studio, Inc. publishes the Marianas Variety. The Marianas Variety
21 is one of two English language newspapers published and in general circulation in the
22 Commonwealth. Plaintiffs contend that Younis Art Studio published the political advertisements
23 containing the Letter with actual malice. In support of their proposition, Plaintiffs submitted an
24 affidavit from Richard Pierce concerning facts involving the Saipan Garment Manufacturers
25 Association, declarations from Fitial and Plaintiffs’ counsel Steven P. Pixley, and pointed to
26 excerpts from the depositions of Jeanette L. Sarabia, an advertising manager for the Marianas
27 Variety, Abed E. Younis, who personally authorized the publication of the advertisement, and
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1 Stanley Torres. None of the above affidavits, declarations, and depositions show any facts that
2 Younis Art Studio had knowledge that the contents of the political advertisements were false. The
3 “sting” of the Letter is that Torres accused Fitial of accepting a bribe because of what Fitial said.
4 On the other side of this accusation is that Torres implicates “Mr. Tan” as paying Fitial the bribe
5 money. Plaintiffs, during the time the articles were written or the political ads were published, never
6 presented Mr. Younis any information that would show that these accusations were false. *See, New*
7 *York Times Co.*, 376 U.S. at 287, 84 S. Ct. 730, 11 L. Ed. 2d at 71-711 (even if the media defendant
8 had the facts to prove a statement false, the decision makers must have had the information at the
9 time of the publication). Denial of the statements is not a showing that they were false. Therefore,
10 there is no evidence showing Younis had knowledge that the ads contained false statements. There
11 is also no evidence showing that Younis acted with “reckless disregard of whether it was false or
12 not.” Contrary to what Younis testified to, that “it makes no difference whether the advertisement
13 was true or false,” had Younis known that it was in fact false, and went ahead and authorized its
14 publication, this Court would find that a reasonable jury could find by clear and convincing evidence
15 that Marianas Variety acted with actual malice. However, the fact remains that Younis did not know
16 that the advertisement was in fact false. News reporter Sabuco had already attempted to make
17 contact with Fitial and Tan. There was no additional duty for Marianas Variety to seek information
18 from Fitial or Tan.

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22 Plaintiffs argue the Ninth Circuit case of *Solano v. Playgirl, Inc.*, 292 F.3d 1078 (9th Cir.
23 2002) supports their argument for a finding of actual malice at the summary judgment stage in this
24 case. This Court finds *Solano* case distinguishable. In *Solano*, a former actor from the television
25 show “Baywatch” sued Playgirl magazine for its unauthorized publication of his photo on the cover
26 of their magazine (though no nude photographs were published of Solano in the magazine). Above
27 the photograph of Solano was printed the headline, “Primetime’s Sexy Young Stars Exposed..” *Id.*
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1 at 1085. The evidence presented by Plaintiff further demonstrated that the editors had *purposefully*
2 sought to imply that there was more nudity in the magazine, and that the editors were aware that the
3 cover would give readers the impression that Solano appeared nude inside the magazine. *Id.* On this
4 basis, the court found the existence of actual malice. These facts are plainly distinguishable from
5 those of the present case.
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7 In this case, there is no evidence that Abed Younis, in making the final decision to publish
8 the ads, knew that they contained false statements, or displayed reckless disregard for the truth or
9 falsity of the ads. *See Welch v. Am. Pub. Co. of Kentucky*, 3 S.W.3d 724, 728 (Ky. 1999).
10 Furthermore, the political ads were not made with embellishments or aggrandizements by Marianas
11 Variety that deviated from the essence of the contents of the Letter. Plaintiffs have submitted
12 evidence to demonstrate that Abed Younis dislikes Tan and Fitial, but as explained above, evidence
13 of ill-will or dislike of a Plaintiff is insufficient to demonstrate the inherently subjective intent
14 required in proving actual malice by clear and convincing evidence. Also, the mere observation by
15 Sarabia that the ad was “questionable” does not demonstrate knowledge on the part of the Marianas
16 Variety that the contents of the ads were false, or that the Marianas Variety knew that the content
17 was very likely false, rather, it demonstrates ordinary editorial caution.
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20 V. CONCLUSION

21 As this Court has previously noted, the First Amendment does not give a media defendant
22 *carte blanche* to defame any person, including public figures and public officials. A media
23 defendant can be held to answer and be liable for a defamatory action. However, because of the
24 importance of protecting the First Amendment rights to freedom of speech and freedom of the press,
25 the First Amendment requires that Plaintiffs have the burden of presenting proof of clear and
26 convincing evidence that Marianas Variety acted with actual malice in publishing the political ads
27 and various articles concerning the contents of the Letter. Any less would subject media defendants
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1 to constant lawsuits and chill the open public discourse, especially in the political arena.² As the
2 United States Supreme Court stated, “judges, as expositors of the Constitution, have a duty to
3 independently decide whether the evidence in the record is sufficient to cross the constitutional
4 threshold that bars the entry of any judgment that is not supported by clear and convincing proof of
5 actual malice.” *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 686, 109 S. Ct.
6 2678, 2695, 105 L. Ed. 2d 562, 588 (1989). In this case, based on the foregoing facts and law, this
7 Court finds that Plaintiffs have failed to meet their burden of proof and finds that no reasonable jury
8 could find actual malice by clear and convincing evidence, even viewing all the evidence in a light
9 favorable to the Plaintiffs. Accordingly, Marianas Variety’s motion for summary judgment is
10 hereby GRANTED. Plaintiffs’ defamation causes of action against Marianas Variety are hereby
11 dismissed with prejudice.
12

14 **IT IS SO ORDERED** this 2nd day of February 2004.

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17 _____
RAMONA V. MANGLONA, Associate Judge

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27 ² In fact, Fital testified that the reason he filed the lawsuit was to prevent the Marianas Variety from publishing
28 critical materials against him during the 2003 elections. However, this Court’s conclusion is not based on Fital’s motive
for filing the lawsuit, but its review of the record to determine if there is sufficient evidence to establish actual malice.