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**Overview of the Maryland Law of Defamation**

Four elements must be present for a plaintiff to establish a *prima facie case* of defamation, including that:

“(1) ... the defendant made a defamatory statement to a third person,

(2) ... the statement was false,

(3) ... the defendant was legally at fault in making the statement, and

(4) ... the plaintiff suffered harm." *Hosmane v. Seley-Radtke,* 227 *Md. Avo.* 11. *20-21,* 132 A3d 348 *(2016)* (citing *Offen v. Brenner. 402 Md.* 191, 198, 935 A2d 719 *(2007)), aff'd, 450 Md.* 468, 149 A3d *573 (2016))”*

A defamatory statement is one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." *[Batson v. Shiflett,* 325 *Md.* 684. 722-23, *602 A2d* 1191, *1210* (1992) , A false statement is one that is not substantially correct. *Id. at* 726, *602 A2d at 1212.]*

Whether a publication is defamatory is a question of law for the court.

*[Id. at* 21; *see also Piscatelli supra,* 424 *Md. at 307,* It is the plaintiffs burden to prove that the statement was false . See *Piscatelli supra.* 424 *Md, at 307* (citing *Batson, supra,* 325 *Md, at 726,]*

Where a plaintiff can establish a *prima facie* case of defamation, the defendant bears the burden of proving that a *privilege existed* at the time of the statement in order to escape liability,

A privilege is a "circumstance[] in which a person will not be held liable for a defamatory statement because the person is acting 'in furtherance of *some interest* of *social importance, which is entitled protection.*'"

*[Woodruff v, Trepel,* 125 *Md, Apo,* 381, 391, 725 A2d 612 (1999), *cert denied,* 354 *Md.* 332, 731 *A2d 440* (1999) (quoting W. Page Keeton et ai., Prosser and Keeton on Torts § 114, 815 (5th ed, 1984); *see also Gvhari v. Darvish,* 363 *Md.* 42. 55, 767 *A2d* 321 *(2001),* A privilege may be either absolute or qualified,]

A qualified, or "conditional," privilege may "defeat[] a claim of defamation, if the defendant did not abuse that privilege." *[Piscatelli supra,* 424 *Md. at 307* (citing *Hanrahan v, KeJlv,* 269 *Md,* 21, *29-30, 305* A2d 151 (1973!!. ]

The Court of Appeals has recognized four common law qualified privileges:

(1) The public interest privilege, to publish materials to public officials on matters within their public responsibility; (2) the privilege to publish to someone who shares a common interest, or, relatedly, to publish in defense of oneself or in the interest of others; (3) the fair comment privilege; and (4) the privilege to make a fair and accurate report of public proceedings,

*[Gohari, supra,* 363 *Md, at* 57 (quoting Dan B. Dobbs, The Law ofTorts, § 413, 1158 (2000) The Law of Torts")) (emphasis added). Regarding what is broadly termed the "common interest" privilege, ***the policy******underlying the common law was that* a *person should not be held liable for defamation where that person, "in good faith,*** ... ***publishes* a *statement in furtherance* of*his own legitimate interests, or those shared in common with the recipient or third parties.*** *H Marchesi v. Franchino.* 283 *Md. 131 .* 135-36, 387 A2d 1129 (1978).

The Law of Torts, § 414 at 1160-61 :

Common interests are usually found among members of identifiable groups in which members share similar goals or values or cooperate in a single endeavor .... The idea is to promote free exchange of relevant information among those engaged in a common enterprise or activity and to permit them to make appropriate internal communications and share consultations without fear of suit . . . .

*Gohari, supra,* 363 *Md. at 58.*

To demonstrate that defendant abused his or her privilege, the plaintiff must establish that the defendant made the statement with actual malice --i.e. with "knowledge of falsity or reckless disregard for truth." *Marchesi, supra.* 283 *Md. at* 139. Furthermore, a plaintiff may provide evidence that the defendant did not make the statement "in furtherance of the interest for which the privilege exists." *Happy 40 IIlC., supra, 63 Md. App. at* 33. As we have explained above, however, it is not enough to demonstrate that the defendant **r20]** *"acted* out of ill will, hatred or a desire to injure," "acted negligently," "acted in reliance on the unverified statement of a third party without personal knowledge of the subject matter of the defamation subject," or "acted without undertaking the investigation that would have been made by a reasonably prudent person." *Bagwell. supra, 106 Md. App. at* 513 (citing *Capital-Gazette Newspapers. Inc. v. Stack.* 293 *Md.* 528, *539-40* 445 A2d *1038* (1982)). Moreover, actual malice is not established where evidence shows the defendant "acted on a reasonable belief that the defamatory material was 'substantially correct' and 'there was no evidence to impeach the [publisher's] good faith .'" *Id.*

Malice is not established if there is evidence to show that the publisher acted on a reasonable belief that the defamatory material was "substantially correct" and "there was no evidence to impeach the [publishe~s] good faith."

*Bagwell, supra, 106 Md. App. at* 512-13 (Citations omitted).

Respectfully,

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