

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

Dan Risley,)
Plaintiff,)
)
v.)
)
Ed Cushman individually and as agent for)
Automotive Service Association, and)
Automotive Service Association.)
Defendants.)

COMPLAINT

Plaintiff, Dan Risley (“Plaintiff”), by his attorneys, for his complaint against Defendants Ed Cushman individually (“Cushman”), Ed Cushman as agent of Automotive Service Association (“Cushman as Agent of ASA”) and Automotive Service Association (“ASA”) states:

Parties and Jurisdiction

1. Plaintiff is citizen of Will County, Illinois.
2. On information and belief Cushman is a citizen of Spokane County, Washington.
3. ASA is a corporation duly organized under the laws of Texas with its principal place of business in North Richland Hills, Texas.
4. This Court has jurisdiction over this matter because the defamatory statement was made in Orlando, Florida.
5. This is an action exceeding \$15,000 exclusive of interests, costs, and attorney’s fees.

Facts Common to All Counts

6. For all relevant time periods, Plaintiff was the President of ASA.
7. For all relevant time periods, Cushman was a Board Member of ASA.

8. On May 4, 2018 ASA held a Board Meeting at its Annual Meeting and Conference in Orlando, Florida (the “Board Meeting”).

9. Present at the Board Meeting were ASA board members Roy Schnepfer, Bob Wills, Fred Hules II, Darrell Amberson, Scott Benavidez, Cushman and Plaintiff.

10. At the Board Meeting, Cushman, acting in his official capacity as a Board Member of ASA, stated the following to the ASA Board in attendance:

On May 3, 2018 I spoke with fellow ASA Board Member Joel Baxter about the company culture at ASA. As a result of this conversation with Mr. Baxter I became physically sick and couldn't deal with this any longer and had to inform the ASA Board that a staff member of ASA has accused Mr. Risley [Plaintiff] of sexual misconduct, and, because of cases such as the one involving Joe Paterno, immediate action is required by the ASA Board including the immediate termination of Mr. Risley's employment with ASA. In the event that the ASA Board terminates Mr. Risley's employment, Bill Haas is willing and able to take over duties as President.

11. Plaintiff responded by denying that he had ever engaged in any sexual misconduct, or any sexual activity with any person besides his wife, and excused himself from the ASA Board meeting humiliated.

12. At no time during Plaintiff's response did Cushman advise Plaintiff or the ASA Board that the allegations against Plaintiff were not sexual in nature.

13. The Joe Paterno case was intended to refer to the sexual abuse of 10 boys over 15 years by Penn State assistant coach Jerry Sandusky and the failure of Joe Paterno and Penn State to act when confronted with allegations of the same.

14. At the time Cushman made the statements discussed in paragraph 9 he knew they were false.

Count I – Defamation Per Se Against Cushman

15. Plaintiff incorporates paragraphs 1 through 13 of his Complaint as if fully set forth herein.

16. On May 4, 2018 Cushman published false statements about Plaintiff as described in paragraph 9 of this Complaint to the ASA Board Members in attendance.

17. Cushman knew that the statements made by him against Plaintiff were false.

18. As a direct and proximate result of Cushman's statements Plaintiff suffered damages.

Count II – Respondeat Superior against ASA

19. Plaintiff incorporates paragraphs 1 through 17 of his Complaint as if fully set forth herein.

20. At all times relevant Cushman was a Board Member of ASA.

21. At the time that Cushman made the statements discussed in paragraph 9 Cushman was acting in the course and scope of his position as a Board Member of ASA.

22. Cushman, while acting in the course and scope of his position as a Board Member of ASA, was the agent of ASA and ASA was the principal.

23. ASA is liable for the defamatory statements made by Cushman pursuant to the doctrine of respondeat superior.

Count III – Defamation Per Se Against ASA

24. Plaintiff incorporates paragraphs 1 through 17 of his Complaint as if fully set forth herein.

25. At all times relevant Cushman was a Board Member of ASA.

26. At the time that Cushman made the statements discussed in paragraph 9 Cushman was acting in the course and scope of his position as a Board Member of ASA.

27. ASA is liable for the defamatory statements made by Cushman because they were made by Cushman in his official capacity as an ASA Board Member.

Count IV – Slander Per Se Against Cushman

28. Plaintiff incorporates paragraphs 1 through 13 of his Complaint as if fully set forth herein.

29. On May 4, 2018 Cushman published false statements about Plaintiff as described in paragraph 9 of this Complaint to the ASA Board Members in attendance.

30. Cushman knew that the statements made by him against Plaintiff were false.

31. Cushman knew that the statements made by him against Plaintiff concerning Plaintiff's ability to perform his job functions as President of ASA were false.

32. As a direct and proximate result of Cushman's statements Plaintiff suffered damages.

Count V – Respondeat Superior Against ASA

33. Plaintiff incorporates paragraphs 1 through 17 of his Complaint as if fully set forth herein.

34. At all times relevant Cushman was a Board Member of ASA.

35. At the time that Cushman made the statements discussed in paragraph 9 Cushman was acting in the course and scope of his position as a Board Member of ASA.

36. Cushman, while acting in the course and scope of his position as a Board Member of ASA, was the agent of ASA and ASA was the principal.

37. Cushman knew that the statements made by him against Plaintiff concerning Plaintiff's ability to perform his job functions as President of ASA were false.

38. ASA is liable for the statements made by Cushman pursuant to the doctrine of respondeat superior.

Count VI – Slander Per Se Against ASA

39. Plaintiff incorporates paragraphs 1 through 17 of his Complaint as if fully set forth herein.

40. At all times relevant Cushman was a Board Member of ASA.

41. At the time that Cushman made the statements discussed in paragraph 9 Cushman was acting in the course and scope of his position as a Board Member of ASA.

42. Cushman knew that the statements made by him against Plaintiff concerning Plaintiff's ability to perform his job functions as President of ASA were false.

43. ASA is liable for the defamatory statements made by Cushman because they were made by Cushman in his official capacity as an ASA Board Member.

WHEREFORE, Plaintiff Dan Risley respectfully requests that this Court enter judgment in his favor and against Defendants Ed Cushman, Ed Cushman as agent for Automotive Service Association and Automotive Service Association, award all damages available to Plaintiff including punitive damages, and for all further relief this Court deems just.

DEMAND FOR JURY TRIAL

Plaintiff demands jury trial by all of issues so triable.

Respectfully Submitted,

/s/ Frank Edel Blanco

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