No. 04-16-00184-CV

IN THE COURT OF APPEALS FOR THE
FOURTH COURT OF APPEALS DISTRICT
SAN ANTONIO, TEXAS

RONALD F AVERY

APPELLANT / CROSS APPELLEE

VS.

DYLAN BADDOUR; HEARST COMMUNICATIONS, INC.

APPELLEES / CROSS APPELLANTS

ON APPEAL FROM THE 2ND 25TH
JUDICIAL DISTRICT COURT
GUADALUPE COUNTY, TEXAS
THE HONORABLE W. C. (BUD) KIRKENDALL, JUDGE PRESIDING

COMBINED APPELLANT REPLY BRIEF & CROSS APPELLEE BRIEF

Ronald F. Avery
Pro Se
1933 Montclair Dr.
Seguin, Texas 78155
Phone: 830/372-5534
E-Mail: Taphouse@SBCglobal.net

ORAL ARGUMENT REQUESTED

Table of Contents

Index of Authorities

Cases

Statutes

Reference Notation

(C-15)	Refers to the page number of the Clerk's Record at the Trial Court.
(R-12)	Refers to the page number of the Reporter's Record at the Trial Court.
(A-13)	Refers to the page number of the Appendix in Appellant's Brief.
(Hearst-17)	Refers to the page number of the Combined Brief and Reply Brief of Baddour and Hearst.
(Avery-A-23)	Refers to the page number of the Appendix in the Combined Brief and Reply of Cross Appellee (Avery)

Appellant Reply Issues & Cross Appellee Issues:

Summary of Argument

Hearst and Baddour need a defense that is outside the elements of Avery's suit such as the statute of limitations because the facts in this case support Avery's libel suit. This is why Avery continues to pound upon the facts. The only defense Hearst and Baddour have is to show that the facts in this case do not support all the elements of a libel case. None of the Baddour and Hearst citations of law will make the facts go away. When their cases are studied they do not apply as they wish.

Baddour, a Houston Chronicle news reporter attended a meeting of people calling themselves the government of the "Republic of Texas." Avery hosted this meeting at a building he has a small interest in and gave a speech at the meeting addressing this group. The group donated some money to him for the use of his building. Baddour sat through the all day meeting and heard the speech Avery made to the group. The publication of this report was delayed for five months and then was uploaded to HoustonChronicle.com on Sunday (September 13, 2016), the weekend of the "9/11 Terror Attack Memorial." That following Monday, 9/14/15, the article was published on the front page of the Houston Chronicle.

The facts on record show, inter alia, that Baddour published statements of fact about Avery that were false, such as, he was a "member" of the "Republic of Texas" and that he is a secessionists. Baddour's articles said false things about the

"Republic of Texas" and Avery, falsely shown as a member, such as, they were "anti-government" and that they "deny the legitimacy of government." Inapplicable material was added by hyperlinks to the articles based upon the false statements made in the articles. The hyperlinked articles took the readers through a progression of worse and worse ideas and behavior ultimately bringing the readers to the conclusion that the "Republic of Texas" and Avery, falsely shown as a member, were domestic right-wing terrorist worse than Muslims. These conclusions by the readers were expressed in writing below the online article establishing statutory defamation per se.

The justification of the hyperlinks started with the bold and false declaration by Baddour, the Houston Chronicle reporter, that the Texians were secessionists. The first link then based upon secessionism took the readers to an article in Politico titled "Putin's Plot to Get Texas to Secede." The article said that a member of a real secessionist group, The "Texas National Movement," went to Russia, perceived by many to be a hostile nation to America, and met with far-right fascists and neo-Nazis and railed about Western decadence.

These links progressed to a New York Times article about the "Growing Right-Wing Terror Threat" and a Department of Homeland Security threat assessment about the "Sovereign Citizen Extremists" that would "drive violence at home, during travel and at government facilities." These links were justified by the

falsehoods Baddour stated in his article concerning the "Texians" and Avery being secessionists, anti-government, who deny the legitimacy of government.

Baddour and the Houston Chronicle attempted to correct some of their mistakes by publishing a "revision" that essentially said that Avery was not a member and not wearing a jacket in the lead photograph.

But even after Baddour and the Chronicle had been made aware of the fact that the Texians and Avery were not secessionists Baddour wrote in his revision that the "Republic of Texas was a secessionist organization. That means they republished a falsehood they had been informed about showing malice.

All this means that the facts support every element of Avery's libel lawsuit. It has been shown that Baddour published false statements of fact and that they were directed at Avery and that one of Avery's friends saw the front page article on the news stand at the Bush Airport in Houston.

Because the articles produced written expressions of public ridicule, contempt and hatred statutory defamation per se was established and general damages like mental anguish are applicable without a showing of other evidence. Therefore Avery has shown and established in the record all the elements of a significant libel case, namely, 1) false statements of fact not opinion were published, 2) the false statements of facts were about Avery, 3) the false facts were defamatory, 4) Baddour showed malice by knowingly republishing the same false fact that the

Republic of Texas and Avery, shown as a member, are a secessionist organization. 5) Avery was damaged by the false statements of fact resulting in written expressions of public hatred which allows the general damage of mental anguish.

Baddour and Hearst have not shown a defense other than trying to show that some element of the libel suit has not been established. They cannot do that as the facts will not go away. Baddour and Hearst have not shown any other defense outside the elements of a libel suit and therefore this case on appeal should reversed and remanded for trial on the merits. And the trial court denial of Baddour and Hearst attorney fees, costs and expenses should be affirmed.

Argument

1. Hypothetical Example:

How would you like to be a judge running for office on a platform of individual property rights and be informed by a friend that the San Antonio Express News ran a front page story about your speech to the "Friends of Public Education" titled "Communist Determined to Take Over America" with your name under a photo of some woman wearing a jacket that said "Even Marx Saw Need For Public Education?" The article is about a meeting of members of the "Friends of Public Education." And when you contact the paper about you and the group being opposed to communism and not being a member of the "Friends of Public Education," they tell you that it is a minor inaccuracy that does not alter the substantial truth of the articles because public education is a tenet of the communist manifesto and you associated with the "Friends of Public Education," a communist organization.

When you explain to the Express News that both you and the "Friends of Public Education" are opposed to communism because it does not allow individual property rights, they insist that it is a "distinction without a difference" because you and the "Friends" and the communists want free public education provided by the state. The online version of the article with your name in the captions had links to the Communist Party website, other stories about mass murders committed by

communists in Red China and Russia during and following the revolutions. The online version of the article has a picture of you speaking at the microphone before the "Friends of Public Education" with your name under it.

Below the online article numerous people leave their anonymous comments calling American communists a bunch of "stupid, incompetent, ignorant traitors and murderers that should be captured and tried for treason and executed." And finally when the paper refuses to run a full three page Correction, Clarification and Retraction of the false story, you sue them and they reply that all they did was declare that you were merely exercising your sacred right to dissent enshrined in the U.S. Constitution. They write not three pages but over 100 pages about what a great service you perform for the nation by your dissent and how their articles are incapable of a defamatory meaning in the face of evidence of many public comments calling for the arrest, trial and execution of all American communists with your name in the captions above the comments.

The paper finally prints a "revision" to the article where they say "Judge Betty Sue is not a member of the Friends of Public Education, a communist organization, and the woman wearing the jacket in the lead photo is not Judge Betty Sue." They also remove your name from the picture of you speaking before the organization but say below the photo; "members take turns at the microphone." So nine months later you are still shown as a "member of the Friends of Public Education, a

communist organization" in the San Antonio Express News web page that can be seen by as many as 30 million people a month. If this is not libel then there is no such thing as libel in this land.

2. Cross Appellants assert: Avery failed to submit clear and specific evidence to support libel which cannot be done by merely pleading facts.

2.1. Reply: Avery submitted Affidavits supporting his pleadings which had exhibits attached. This is clear and specific evidence.

Avery plead facts and filed affidavits with testimony and exhibits attached to them which is sufficient evidence unless challenged by other affidavits with contradictory evidence. Little if any of the declarations made by Baddour and Hearst attorneys contradict Avery's affidavits and exhibits.

All that is required of Avery and the Court under CPRC Sec. 27.006(a) is to find clear and specific evidence of each element of libel in the pleadings and affidavits in the record. This appeal court has the same duty to consider the pleadings and affidavits for clear and specific evidence of element of libel de novo.

2.2. Reply: Cross Appellants supplied much of the evidence on record with their Declarations.

The Cross Appellants supplied hundreds of pages of exhibits attached to their Declarations which supplied most of the evidence that supports Avery's libel claim. Their evidence is his evidence.

3. Cross Appellants Assert Articles Incapable of Defamation Based upon the Following:

3.1. "Hypothetical Reasonable Reader" Standard should apply instead of actual evidence of public hatred. Reply:

The Appellees hope this court will dismiss the irrefutable matter-of-law evidence of actual written expressions of public ridicule, contempt and hatred against Avery and substitute in its place some "hypothetical average reasonable reader standard" where a judge alone determines if the person exposed to the actual expression of public ridicule, contempt and hatred has been defamed or not. This is ludicrous. The Appellees have not produced any case law showing where the courts have substituted a "hypothetical average reasonable reader" standard in place of actual recorded expressions of public hatred. This standard is used when there is no actual evidence of public ridicule, contempt and hatred. Those cases are inapplicable to this libel suit.

3.1.1. Avery's view irrelevant. Reply:

If the view of Avery (the victim of the actual written evidence of the expression of public ridicule, contempt and hatred constituting statutory libel per se) is irrelevant than certainly the view of Baddour, the creator of the libel per se, is also irrelevant and should not be considered by this court. All the groundless assertions that Baddour was expressing his First Amendment rights to free speech and expression while misreporting on the legal constitutionally enshrined right of Avery to dissent should be dismissed as irrelevant. What is relevant, however, is

that this case should be reversed and remanded for trial on the merits because at least prima facie evidence of all the elements of a significant libel suit were shown at the Trial Court and before this Court of Appeals and Cross Appellants have shown no element of any defense.

3.1.2. Online Anonymous Expressions of Public Hatred Irrelevant.

Reply:

This is truly an amazing assertion that the Cross Appellants make. They say the real written expressions of public ridicule, contempt and hatred generated by their article in the blog right under it are not from real people:

> Moreover, as a factual matter, there is no evidence in the record that any actual readers understood the Articles to be defamatory of Avery or expressed hatred towards him as a result of the Chronicle's reporting. Notwithstanding Avery's repeated claims that "many of the readers" expressed hatred towards him, *(see* App. Br. at 3 5), Avery points only to a couple of anonymous online comments following the Web Article *(see* App. Br. at 10-11)-and there is no evidence of who these commenters are, much less that these comments represent the true understandings of multiple real people. For all the record shows, these comments could have been all posted by the same person under different pseudonyms-indeed, they could have been posted by Avery. And there is no evidence from which the Court can conclude that the comments set forth the commenters' true opinions of the Texians, especially in light of the well-recognized fact that people express different (and angrier) positions in anonymous online comments than they otherwise would. (Appellees' Brief page 32-33)

The Appellees first said these comments were from "anonymous people," as if that would get rid of the statutory per se evidence of public ridicule, contempt and hatred. Knowing this assertion of anonymity would not make the evidence go away, they had to advance their claim that these comments were not from "real

people." This assertion is absurd. Baddour got Avery's email from Avery's response he posted on the same blog under the subject online article (C-99), (C-351). The manager of the HoustonChronicle.com website knows the email address of every one who posts something there. If the posts do not come from real people why provide such a place for comments?

It is obvious that the Houston Chronicle provides this blog space to get the reaction of real people to their articles so they can determine the opinions of their readers and the degree to which they hold such opinions. This allows them the ability to both find and alter public opinion by degree.

Further, the assertion is absurd because a person would need more than multiple email addresses, they would need multiple computers. In most cases the blog sites recognize individual computers by number and will not allow the same computer to register on a blog with multiple pseudonyms and email addresses.

The bizarre assertion that Avery might be the author of these comments of public ridicule, disgrace and hatred is a desperate act to make the matter-of-law evidence of public hatred go away. If their assertion could be true it would apply better to them. Could it be that the Houston Chronicle is staffing their blogs with those who could further control public opinion by writing outrageous remarks? The Chronicle would be even more to blame! This case should be remanded to the Trial

Court so that we can get the emails of these bloggers and ask them if they are real people.

The Cross Appellants assert that "only a couple" of these bloggers wrote expressions of public ridicule, contempt and hatred. Avery used the worst comments referring to GITMO or "Guantanamo Military Prison" and water-boarding or "enhanced interrogation" to make his point but he also mentioned other comments that showed ridicule and contempt, relating to ignorance, incompetence, foolishness, stupidity, rashness, gun craziness and the like. Seven of the 23 comments were expressions of public ridicule and contempt. And an additional two of the 23 were expressions of public hatred. Forty percent (40%) of the comments were public expressions of ridicule, contempt and hatred. The other 60% questioned the alarm of the article and the comments of the 40%. But none of the comments expressed that the article was false presumably because they weren't at the meetings and didn't know the group or subject but relied upon the false article. The 60% were wise not to become too alarmed by the article. There is no law on how many people must express public ridicule, contempt and hatred before it becomes defamation. There is no law that says a judge can make a finding that the person was not exposed to public ridicule, contempt and hatred when there is written evidence of it.

There were about 23 comments made and they stopped shortly after Avery's post about suing the Chronicle, most likely they did not want to be involved in a lawsuit and they quit making comments.

Most folks are more outspoken of their real feelings when they can do so anonymously. Why do we vote anonymously? We protect the decisions of people so they will vote for who they really want rather than who somebody else wants.

3.1.3. Comments Unrelated to Articles and Come from Prior bias. Reply:

Cross Appellants take it even a step further and assert that there is no evidence that the comments are even related to the articles. They assert that the comments were generated from somewhere else and just appeared at this location of the web. This is ludicrous:

> Similarly, there is no evidence that any negative opinions expressed in the comments were actually the result of the Articles (much less of isolated statements in the Articles *(see* App. Br. at 30, 43), or any "correlation" between the Web Article and the hyperlinked reports *(id.* at 35)), as opposed to prior beliefs, biases, articles read, misunderstandings, or general anger of the commenters. (Hearst-33.)

The Cross Appellants and their officers of the court are simply lying to this court. Every comment relates back to the article above the blog. And most comments would not make since at all without the article above it. However, we can all agree that some of their expressions have come from years of reading mainstream media of which Hearst Communications Inc. and its Houston Chronicle are a part. So the comments reflect what mainstream media has told

them for 14 years concerning "9/11 Terror Attack on America" being Muslim and what the MS media has told them about the "domestic terrorism" being committed by U.S. citizens such as "Lone Wolves." It is part of a mainstream media pattern to keep the "War on Terror" constantly in front of the people and to increase the idea that the new "terror threat" comes from within the United States in the form of our own citizens and neighbors.

This trend is more of a threat coming from mainstream media rather than reality. As an example; no mainstream media outlet like Hearst will publish the findings of Super Nanothermite[1] in all the dust samples found at the World Trade Center along with the discovery of rivers of molten iron in the basements of all three skyscrapers 6 weeks after they were "pulled" on 9/11/01 at the WTC.[2] Molten iron is a byproduct of a super Nanothermite reaction. This material cuts through steel like a hot knife through butter and burns underwater and in oxygen starved debris covered basements. These discoveries prove that the WTC was demolished by the careful placement of this new product through out the WTC needing controlled secured access at every third floor at least. This one discovery proves the jets did not bring down the WTC. And in fact the firemen reached the 78th floor of the South Tower WTC-2 and radioed back that they were going to put out the small

[1] Link to Bentham Open leading to pdf file of scientific analysis of WTC dust samples: http://benthamopen.com/ABSTRACT/TOCPJ-2-7

[2] Link to Testimony of Molten Iron in basements of 3 demolished skyscrapers at WTC by Architects and Engineers for 9/11 Truth. https://www.youtube.com/watch?v=9oVs_94VHk8

pockets of fire with two lines (hoses). The charges were detonated immediately after that message to prevent the firemen from putting out the fires and putting an end to phony cause of the "collapse" of the obsolete condemned skyscrapers due to asbestos hazard.

Now that we know the WTC was not demolished by "Muslim, Radical Islamo-Fascist, Extremist, Terrorist," with two random jet collisions, the towers were designed and built to withstand, and that the mainstream media won't publish these facts, the mainstream media is raising the so-called "threat level" against the citizens of the United States. The "Republic of Texas" group was targeted for this by the Houston Chronicle on the weekend of the memorial of the so-called "9/11 Terrorist Attack." That's why the front page "news" articles were saved for five months before publication. The object of the articles was to raise the "threat level" about "domestic terrorism" using the "Republic of Texas" as an example. Therefore, yes some of those "prior beliefs, biases, misunderstandings, or general anger" expressed in the blog came from earlier mainstream media propaganda that Hearst and its 50 newspapers has a major role in maintaining.

It is an old tactic used by corrupt oligarchies when their societies begin to yearn for justice from government:

> Constant apprehension of war, has the same tendency to render the head too large for the body. A standing military force, with an overgrown Executive will not long be safe companions to liberty. The means of defense against foreign danger, have been always the instruments of

> tyranny at home. Among the Romans it was a standing maxim to excite a war, whenever a revolt was apprehended.[3]

The question is; when are the courts of this land going to step up and warn the so-called "newspapers" that they can't pursue their goal creating the need for a police state in the minds of Americans by making domestic terrorists out of citizens by telling lies about what they stand for and advocate in order to falsely link them to those who would do harm to the people? The courts of Texas belong to the people of Texas not national news corporations and their private agendas.

3.2. Articles on their face did not imply that Avery was a criminal.

Reply:

The publication of a false statement of fact or implication that a person committed a criminal act or was in the process of committing a criminal act is defamatory in common law. But the reverse is not true that a statement must be made that someone committed or was in the process of committing a crime in order to establish defamation. Defamation results when words are used in such a way to expose the person to expressions of public ridicule, contempt and hatred. It is undeniable that the Cross Appellants have generated the written expressions of public ridicule, contempt and hatred by their articles about the "Texians" and Avery, falsely shown as a member.

[3] Ralph Ketcham, ed. *Anti-Federalist Papers and the Constitutional Convention Debates* (Mentor, Penguin Books USA, Inc., 375 Hudson Street, New York, NY, 10014, U.S.A.) p. 97 statement by James Madison in debate on State equality in Senate from June 28-July 2, 1787.

3.3. Articles on their face did not make any defamatory statements or implications regarding Avery. Reply:

The articles said that "All Texians have informally renounced their U.S. citizenship." That is both false and defamatory as it applies to Avery who was shown by name and is still shown as a member photographically. It's not a crime to renounce your citizenship but it is defamatory resulting in written expressions of public ridicule, contempt and hatred.

Further, Avery is an architect and maintains a license in the "State of Texas" to practice architecture. Who wants to hire an architect that has renounced their U.S. citizenship which must include their citizenship in the State of Texas as well. No one can be a citizen of the "State of Texas" and not a citizen of the "United States." How would Avery maintain his State architecture license after renouncing his citizenship? Avery's ancestors are the founders of Texas and the United States as he has stated in his affidavit and He can understand why people would publically ridicule someone who renounced their citizenship.

3.4. It's not defamatory to state or imply, even incorrectly, that Avery was exercising his legal rights. Reply:

The Cross Appellants have failed to show any evidence that they published any statement or implication in the subject articles that Avery was exercising his legal rights, incorrectly or otherwise. The Cross Appellants are claiming something they never said was not defamatory. Who would argue with that? That is a strawman argument. Certainly, Avery is not complaining about the articles implying or

stating that Avery was exercising his legal rights. Where did they say that? Nowhere! The Cross Appellants are trying to say that the "average reasonable reader" should have known that the "Texians" and Avery as a shown member were exercising their rights. But as we can see by the evidence on record Baddour used words and written material linked to it in a way that exposed Avery to public ridicule, contempt and hatred.

It appears that about 40% of the "average reasonable readers" did not get the message that the "Texians" and Avery, a shown member, were exercising their legal rights. They rather perceived the connection between the Texians and secessionist, and far-right fascists, neo-Nazis and the growing right-wing terror threat in America and they responded with written expressions of public ridicule, contempt and hatred.

3.4.1. The articles' alleged implication that Avery is a Texian "secessionist" does not pertain to just any legal right--it concerns the celebrated right of political dissent on which this country was founded and which is enshrined in the First Amendment as a value above all others. Reply:

This is an absurd argument. Just because people have a right to do something does not mean it cannot be defamatory. People have a right to be Gay or Homosexual, but calling a Heterosexual Christian a Homosexual is defamatory resulting in public ridicule, and contempt and isolation within his church community and hatred among other non-Christian work associates.

We celebrate the right to keep and bear arms under the Second Amendment but it is defamatory to say a person sleeps with a his legs wrapped around a 50 caliber machine gun every night. It is also defamatory to publish that someone is a secessionist who has been known for years to publicly oppose secession, especially when the publication links to a progression of worse ideas all based upon that someone being a secessionist. Political dissent may be a celebrated right, and enshrined in the First Amendment, but it can also be defamatory if it is stated in such a way to expose the person to public ridicule, contempt and hatred.

The Cross Appellants dare to assert that the readers of their subject articles observed and applauded with celebration the courage of the "dissenters" presented therein. The articles were not written to make the subjects courageous dissenters with good ideas but rather incompetent idiots and many of the comments reflected that view.

They further assert that, we now, and their readers, should have appreciated the exchange of valuable ideas in the subject articles. What exchange of whose ideas? No exchange of the real ideas held by the victims of the articles were shared with the public in the articles. More time was spent running them down rather than revealing what they had discovered or thought about secession versus failure to perfect a lawful union.

The articles focused more on the naive, helpless, incompetent, disconnected "gray-haired" old men "meeting for 15 years with little avail" in the "shuttered wooden beer hall on the banks of the Guadalupe River," then on the ideas they hold and how they relate to other groups. Cross Appellants didn't bother to publish pictures of Thomas Jefferson, George Washington and Samuel Adams on the mirrors behind the bar (Avery-A-1). Nothing in the articles really celebrated the dissent of any of the victims of the articles and it combined them with secessionist with whom they publicly and boldly disagree in order to further link them ultimately to right-wing domestic terrorism.

3.5. Articles not capable of defamation through its Hyperlinks to extrinsic, third-party reports on other websites. Reply:

Upon the fabricated falsehood that the "Texians" were secessionists, the articles hyperlinked a progression of worse and worse ideas in other articles that ultimately lead to the written expressions of public ridicule, contempt and hatred for the group including Avery as a shown and named member.

It is absurd to say that these articles were not capable of defamation when we have matter-of-law written evidence of the defamation they produced. The articles are most certainly capable of producing defamation because we have the written expression of public ridicule, contempt and hatred in evidence on record.

3.5.1. No "reasonable reader could agree with Avery that those hyperlinks could imply he was an extremist and or terrorist. Reply:

Since we have the written evidence of defamation on record the Cross Appellants want to replace the real people and their comments with a truly fictional "reasonable reader of average intelligence." Let's face it, they want to simply get rid of the evidence on record. But the only "average reasonable reader" that will satisfy the Cross Appellants is Dylan Baddour and Hearst Communications, Inc.

The Cross Appellants have no real reason they injected those hyperlinks in the first place. They did that to achieve the results they got, demonization and defamation of people who are not what they published they were. It is a round about way to demonize someone to use the juxtaposing of other facts such that the whole gist and sting of the articles achieves their object without them actually making the direct statements. It is an implication by juxtaposing unrelated information that aided in the expression of public ridicule, contempt and hatred.

3.5.2. Articles state Texians are nonviolent so hyperlinks don't apply. Reply:

Hearst wants to make one sentence in their articles make the great bulk of their article and their hyperlinks inapplicable. If the hyperlinks don't apply what in the world are they doing there in the first place? Avery agrees that the hyperlinks don't apply. It is the use of the inapplicable hyperlinks that is the problem. It is the gist and sting of the entire article with all its links that exposes Avery to the public ridicule, contempt and hatred. Hearst cannot get rid of the gist and sting of many

pages with one sentence mired a paragraph describing a recent raid and a 1997 seven-day standoff ending with gun fire leaving a member dead. Hearst doesn't like the gist and sting doctrine when it comes to defamation. See *Turner v. KTRK Television 38 S.W.3d 103 Sup Crt 2000 at 118* and *Bingham v. Sw. Bell Yellow Pages, Inc., No. 2-06-229-CV, 2008 WL 163551, at *4 (Tex. App.-Fort Worth Jan. 17, 2008, no pet.)*

3.5.3. Linked material does not mention Avery by name. Reply:

The articles don't need to mention Avery by name to defame him and neither do the hyperlinks need to mention him by name to defame him. He is defamed when readers and viewers of the article can determine that the articles are about him. And certainly a picture of him standing at a microphone in the article with the caption under it that says "members take turns at the microphone," shows that he is the subject of the article and the hyperlinks to it. See *Arcand v. Evening Call Pub. Co., 567 F.2d 1163 (C.A.1 (Mass.), 1977)* and *Levine v. Steve Scharn Custom Homes, Inc., 448 S.W.3d 637 (Tex. App., 2014)*

3.5.4. The particular way the links are incorporated into the web article does not give rise to any implications about Avery or the Texians as a group. Reply:

The assertion that the language around the hyperlinks do not give rise to any implications about Avery or the Texians as a group is without merit:

> Still, the February raid was at least partly the result of an uneasy tension between law enforcement nationwide and anti-government groups. In early 2015, various reports, including one by the Department of

> Homeland Security, highlighted concern with a growing number of people who deny the legitimacy of the government.

The quote above from the article makes a pretty seamless connection between raids on the "Texians" resulting from an uneasy tension between law enforcement nationwide and anti-government groups. This implies rather strongly that the "Texians" are anti-government. That link about anti-government groups takes the reader to the "Growing Right-Wing Terror Threat" article. The link to a Department of Homeland Security Assessment relates to the raid on the Texians and implies that "Texians" deny the legitimacy of the government and therefore they will act as the Department of Homeland Security warns, to drive violence at home, during travel and at government facilities.

The language alone in this quote is defamatory and it connects defamatory material to it. Avery is not "anti-government" and the "Texians" are not anti-government either. The "Texians" claim to be a legitimate government how could they deny the legitimacy of government? The description above, in the quote, is a description of anarchists. Neither Avery nor the "Texians" are anarchist. But Baddour was right on one thing, anarchy is growing faster than any other movement in this country. And corruption of government and failure to rule justly and alter and amend government when its errors are shown helps the anarchist movement. Avery has argued publicly against anarchy as much as he has argued against secession. Very little of Baddour's articles about the Texian ideas are

truthful and most of them are defamatory and that's why Avery requested a lengthy Correction, Clarification and Full Retraction (C-28) through (C-32).

4. Articles are Substantially True:

4.1. The Articles' gist is true as they relate to Avery.

4.1.1. Avery admittedly associated with the Texians. Reply:

Avery's association with the "Texians" does not create membership in their organization or acceptance of their discoveries, principles and doctrines.

4.1.2. Avery hosted them on his property. Reply:

Who thinks that the Double Tree Hotel in Austin are supporters of and members of Architects and Engineers for 9/11 Truth because they rented the ballroom to them for an all day press conference? Simply hosting a meeting on your property does not make you, the property owner, a member or force you to accept the views of those at the meeting. Avery has hosted many group meetings over the years and he has not agreed nearly with all of them.

4.1.3. Avery shared their fundamental belief that Texas is not part of the United States. Reply:

This assertion is simply false. The "Texians" believe that the "Republic of Texas" has never been a lawful state in the United States because its union with the United States was not perfected by a lawful treaty. Avery does not share that view with the "Texians." Avery believes the United States is dissolved by the alteration of many Constitutional Provisions by law without the required amendments or approval by the people through their states. For these reasons the "Texians" and

Avery agree that secession is an absurdity. That is the common ground they share not the independence of the "State of Texas" from the "United States."

This is where the news reporter lied in his articles so he could connect the hyperlinks to his story. This is where Hearst and Baddour have *willfully blinded themselves* in order to make the "Texians" and Avery, falsely shown as a member, into Right-Wing Terrorists. Nothing about the "Texians" or Avery makes them Right-Wing. It is the articles and its hyperlinks about secessionists that make them Right-Wing. This willful blindness to the truth that the Texians are not secessionist shows malice. See *Tavoulareas v. Washington Post Company 817 F.2d 762 at 776*

4.1.4. Avery's complaints of literal falsity are minor inaccuracies that do not affect substantial truth of the Articles. Reply:

This assertion is a perversion of the "Substantial Truth" doctrine. This doctrine applies to cases that vary in degree not totally reverse the character and thought of the people involved. The Substantial Truth doctrine does not support Baddour's declaration that the Texians and Avery, falsely as a member, are secessionists when they are, in fact, vehemently opposed to secession. The doctrine of substantial truth applies to variables of degree not opposites in nature. One who steals 20 dollars is not substantially different from one who steals 40 dollars. But one who is opposed to secession cannot be a secessionist by the substantial truth doctrine. Just as a surgeon against the practice of bloodletting cannot be made into an advocate of bloodletting merely because his patients bleed when operated on.

5. No Damages:

5.1. Avery failed to show damage to reputation as a result of articles because the articles are not defamatory on their face. Reply:

Avery and Cross Appellants has shown evidence of statutory defamation per se wherein general damages are presumed. Avery also claimed the damage of the fear of government raids upon him and his family and property (C-328). This is a damage to his mental and physical sense of wellbeing and safety.

5.2. Element of Damages cannot be satisfied with allegations of mental anguish. Reply:

Once statutory defamation per se has been shown, general damages are presumed and assumed and mental anguish is acknowledged as a general damage that is awarded. Evidence of statutory defamation per se (CPRC Sec. 73.001) has been established in the record of this case. (C-98) through (C-103) See *Leyendecker & Associates, Inc. v. Wechter, 683 S.W.2d 369 (Tex., 1984)*

5.3. Element of Damages cannot be satisfied with allegations of online comments. Reply:

It is not the allegations of online comments that establish damage. General damage is recognized and presumed when statutory defamation per se evidence is present as in this case. Defamation per se is established when a person is exposed to written expressions of public ridicule, contempt and hatred.

5.4. Element of Damages cannot be satisfied with possibility that Avery might recover exemplary damages. Reply:

Exemplary damages are awarded when it is shown that the Defendant did not publish a sufficient Correction, Clarification and or Retraction prior to the filing of

the lawsuit. The Cross Appellants did not publish a correction on the web until six days after the lawsuit was filed and 55 days after it was requested by certified mail. Avery is still shown as a member on their website in the third photograph. The Cross Appellants do not claim that they made a sufficient correction nor have they challenged the Avery's request for Corrections, Clarifications and Retractions in accordance with CPRC Sec. 73.058.

Cross Appellee Issues Presented

1. Failure of Judge to Award Mandatory Attorney Fees, Costs and Sanctions means only one thing.

1.1. Proof that Trial Court gave no serious attention to the evidence on file or the components of a Motion to Dismiss under the libel statute.

This issue reveals the shear want of judicial inquiry given this Motion to Dismiss by the Trial Court. There is no decision to be made regarding mandatory attorney fees, court cost and expenses when the motion is granted. How in the world could the judge have studied this complicated motion to dismiss involving three steps with six or more elements in the last two steps and mess up on the easiest part of the case?

The Trial Court literally scratched out the portion of the order that asked for mandatory attorney fees, and other expenses incurred in defending against a SLAPP suit under the given section of the libel statute (Section 27.009(a)), see Judge's signed order on appeal, (A-2).

The fact that the Cross Appellants had to appeal their entitlement of mandatory attorney fees, costs and expenses proves the Trial Court did not study this case at all nor even look up the libel statute. If the Trial Court Judge abused their discretion on this simple mandatory issue then it is obvious that he gave no serious attention to the Motion on Appeal as to the evidence shown by Avery. One cannot study this motion to dismiss and grant it and then deny the mandatory attorney

fees, costs and expenses and even possible sanctions to prevent Cross Appellee from filing any more terrible SLAPP suits.

1.2. Award of Attorney Fees, Costs and Expenses Too Harsh For Victim of False News Reporting

The Trial Court at least thought the defense of this suit did not deserve the award of costs, expenses and Hearst New York in-house attorney fees and scratched them out. Obviously the Trial Court did not sense the nature of a true SLAPP suit that was brought merely to punish or prevent the Cross Appellants from exercising their Constitutional Rights of Free Speech. Something is amiss and it is that the whole Motion should have been studied more diligently and denied. It is a most obvious contradiction of thought to dismiss a Strategic Lawsuit Against Public Participation and then deny the libel statute's mandatory attorney fees required to defend against such a horrible type of lawsuit.

But Avery did not file this lawsuit to prevent Baddour from exercising any of his rights to free speech or expression in the Houston Chronicle or anywhere else. Avery sued Baddour and Hearst because the articles were false, were statements of fact not opinion, were defamatory and damaging and falsely applied to him and written with malice. This is not a SLAPP suit and should not be treated as one by affirming the obvious oversights of the Trial Court and punish Avery, one who was in fact, exercising their Constitutional Rights of Free Speech, and Association.

Prayer

Therefore Premises Considered, The Appellant / Cross Appellee, Ronald F. Avery prays that the Fourth Court of Appeals:

1. Reverse the trial court order dismissing this libel suit and Remand it for trial on the merits;
2. Affirm the trial court order dismissing the attorney fees, costs and expenses;
3. And Grant Avery any other relief to which he is entitled.

Respectfully submitted,

_____

Ronald F. Avery, Pro Se
1933 Montclair Drive
Seguin, Texas 78155
Home phone: 830/372-5534
Email: taphouse@sbcglobal.net

Certificate of Service

I certify that on June 13, 2016, I served a copy of the foregoing Combined Appellant / Cross Appellee's Brief on the Appellees / Cross Appellants listed below by Certified Mail RRR 7014 2120 0003 2600 7188:

Jonathan R. Donnellan
Kristina E. Findikyan
Jennifer D. Bishop
The Hearst Corporation
Office of General Counsel
300 W. 57th Street, 40th Floor
New York, NY 10019
(212) 841-7000
(212) 554-7000 (fax)
jdonnellan@hearst.com
Attorneys for Defendants:
Dylan Baddour and Hearst Communications, Inc.

_____
Ronald F. Avery, Pro Se

Appendix