

Panel Reinstates Defamation Action Over Neighbors' Letter to Officials

BY ANDREW KESHNER

A BROOKLYN appellate panel has reinstated a defamation action stemming from a letter that Long Island homeowners sent to public officials asserting that there were "definitely illegal" activities occurring on their neighbor's property.

In a 2004 letter Audrey and Louis Paini wrote that Liere Farm in Yaphank had engaged in illegal dumping and bribery of local officials.

"Trust me when I tell you this is definitely illegal and people who are responsible will one day be brought to justice, and I will not stop until I see this happen," stated the letter, which was sent to, among others, the Suffolk County district attorney, Brookhaven town supervisor and then-Senator Hillary Clinton.

The 110-acre farm's owner, Robert Liere, sued the Painis for defamation as a result.

Deeming the letter "an impasse plea for help" and "mere rhetorical hyperbole," Supreme Court Justice Paul Baisley Jr. in Suffolk County dismissed the

action in November 2010 (NYLJ, Nov. 3, 2010).

But the Appellate Division, Second Department, disagreed in a unanimous, unsigned reversal.

In *Liere v. Paini*, 2010-11323, the panel, quoting case law, held that the allegations of "illegal activities in which the plaintiff was engaging on his farm, 'were reasonably susceptible of a defamatory meaning and did not constitute personal opinion since they reasonably appeared to contain assertions of objective fact, which do not fall within the scope of protected opinion.'"

Justices Reinaldo Rivera, Cheryl Chambers, Leonard Austin and Sheri Roman sat on the panel and heard oral arguments on Feb. 14.

The March 27 decision is the case's second trip to the Second Department. In October 2008, a panel upheld the dismissal of the Painis' counterclaim that they were protected against Liere's suit because the action was barred as a Strategic Lawsuit Against Public Participation (SLAPP) under Civil Rights Law §§70-a and 76-a.

The Painis are represented pro bono by Victor Kovner and

Camille Calman of Davis Wright Tremaine.

"We are disappointed and respectfully disagree," Kovner said, adding that he will seek to appeal to the Court of Appeals.

Robert Cava of West Babylon, who represented Liere, called the ruling "correct" because the letter contained factual assertions, not mere opinion.

Cava added that the Painis had made similar claims to the Town of Brookhaven and the state Department of Environmental Conservation but had not been able to back up their accusations.

The DEC's litigation against the farm ended when the Second Department in 2008 struck down the agency's determination that it had violated solid waste regulations. Cava said he expected the town's allegations soon to be resolved.

@ Andrew Keshner can be contacted at akeshner@alm.com.

Online

➤ The Second Department decision is posted at nylj.com.

Calendar

Today

Benjamin N. Cardozo School of Law
Art as Investment: Legal and Business Issues, 5 p.m., 55 Fifth Ave. Contact 212-790-0257 or heymancenter@yu.edu.

New York State Bar Association
For all events call 800-582-2452 or visit nysba.org.

- CLE: Family Court Practice, 9 a.m.-4:35 p.m., New York Hotel Pennsylvania, 401 Seventh Ave.
- CLE: What You Need to Know as a Guardian Ad Litem, 9 a.m.-1 p.m., Sheraton Syracuse University Hotel and Conference Center.
- CLE: The Sunshine Act and the Final Rule on Conflicts

Brennan Center for Justice, 6-9 p.m., 108 W. Third St. Contact 646-292-8342 or kimberly.lubrano@nyu.edu.

Practising Law Institute
CLE: Trial Evidence: Advocacy, Analysis, Illustrations, 9 a.m.-5 p.m., 810 Seventh Ave. Call 800-260-4754 or visit pli.edu.

Tomorrow

New York City Bar
Role of the International Court of Justice, 6:30-8:30 p.m., 42 W. 44th St. Call 212-382-6600 or visit nycbar.org.

New York State Bar Association
For all events

Practising Law Institute

CLE: Developments in Pharmaceutical and Biotech Patent Law, 9 a.m.-5 p.m., 810 Seventh Ave. Call 800-260-4754 or visit pli.edu.

Monday, April 9

Practising Law Institute

CLE: Consumer Financial Services Institute, 9 a.m.-5 p.m., continues April 10, 810 Seventh Ave. Call 800-260-4754 or visit pli.edu.

Tuesday, April 10

Brooklyn Bar Association

CLE: Tracing Missing Persons.

ALM SENIOR MANAGEMENT

Bill Carter, President/CEO

Allison C. Hoffman, SVP/Chief Legal Officer

Eric F. Lundberg, SVP/Chief Financial Officer

Kevin H. Michielsen, SVP/Information and Research Solutions

Kevin J. Vermeulen, SVP/Legal Media

Jeffrey K. Whittle, SVP/Chief Technology Officer

Michael Desiato, VP/Real Estate Media

Stephen Lincoln, VP/Regional Businesses

Aric Press, VP/Editor-In-Chief



READER'S SERVICES:

For subscriptions and to purchase back issues, call 1-877-256-2472.

For questions regarding reprints and permissions, call 347-227-3382, e-mail reprints@alm.com, or visit almreprints.com.

To track calendar and motion information for individual cases, call MA 3000 at 212-457-4988.

Send decisions of interest to decisions@alm.com

To access decisions and articles published in the Law Journal, visit nylj.com.

of New York as a newspaper of general circulation for the publication of legal notices in civil and admiralty causes.

Postmaster: Send address changes to the New York Law Journal, 120 Broadway, New York, N.Y. 10271. Available on microfilm and microfiche. Rates on request.

The New York Law Journal® is a registered trademark of ALM Media Properties, LLC.

