

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN YIAMOUYIANNIS, Ph.D., :
 :
 Plaintiff, : 78 Civ. 4721 .
 :
 -against- :
 : MEMORANDUM AND ORDER
 CONSUMERS UNION OF UNITED STATES, :
 INC., :
 :
 Defendant. :
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OWEN, District Judge

This libel action arises out of the public controversy concerning the safety of fluoridation of public water supplies, a measure that has been widely instituted in the belief it furthers dental health. Plaintiff, John Yiamouyiannis, is a prominent opponent of fluoridation, and has conducted and publicized studies purporting to establish a link between fluoridation and increased cancer death rates. He claims he was defamed in two articles appearing in the July and August 1978 editions of defendant's magazine, Consumer Reports. The articles defend fluoridation as a valuable dental health measure, and severely criticize as baseless and irresponsible the charges, by plaintiff and others, that fluoridation can cause dangerous side effects, such as cancer.

Both sides move for summary judgment. On these motions, the burden is squarely on plaintiff, an admitted public figure,

to establish, by clear and convincing evidence, at least a genuine issue of fact as to whether the articles were published with "actual malice" within the meaning of New York Times Co. v. Sullivan, 376 U.S. 254 (1964).⁽¹⁾ Rinaldi v. Holt, Rinehardt & Winston, Inc., 42 N.Y.2d 369, 384-85, cert. denied, 434 U.S. 969 (1977); Reliance Insurance Co. v. Barron's, 442 F.Supp. 1341 (S.D.N.Y. 1977). While summary dismissal of actions at early stages in litigation is generally disfavored, see Heyman v. Commerce and Industry Insurance Co., 524 F.2d 1317 (2d Cir. 1975), in libel actions it "may well be the 'rule' rather than the 'exception.'" Oliver v. Village Voice, Inc., 417 F.Supp. 235, 237 (S.D.N.Y. 1976), citing Guitar v. Westinghouse Electric Corp., 396 F.Supp. 1042, 1953 (S.D.N.Y. 1975), aff'd mem., 538 F.2d 309 (2d Cir. 1976). This policy in favor of affording summary relief to defendants in libel actions stems from a recognition of the need to avoid the "chilling effect" on free speech and press such suits may have. See Meeropol v. Nizer, 381 F.Supp. 29, 32 (S.D.N.Y. 1974), aff'd 560 F.2d 1061, 1966 (2d Cir. 1977), cert. denied, 434 U.S. 1013 (1978), and cases cited therein. It seems particularly

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Since the question of "actual malice" is determinative here, there is no need to consider the numerous other bases for summary judgment offered by defendant.

appropriate to guard against any obstacle to the free flow of scientific debate where the truth or falsity of specific assertions may elude us for generations.

To publish a statement with "actual malice" is to publish "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times v. Sullivan, 376 U.S. at 280. It is established beyond dispute that actual malice may not be inferred merely from the false or defamatory content of the statement (id. at 272-73), nor from a lack of investigation before publishing, St. Amant v. Thompson, 390 U.S. 727, 731-32 (1968). Rather, "reckless disregard of the truth [means] subjective awareness of probable falsity: 'There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.'" Gertz v. Welch, 418 U.S. 323, 335 n.6, quoting St. Amant v. Thompson, 390 U.S. at 731 (1968).

To establish actual malice, Mr. Yiamouyiannis relies on the following theory. By defendants own admission, the primary source of information for the Consumer Reports articles was the record of 1977 Congressional subcommittee hearings on the safety of fluoridation, at which Mr. Yiamouyiannis testified. (Defendant's Exhibit C). According to Mr. Yiamouyiannis, the subcommittee hearing record establishes conclusively that his research and studies showing a cancer-link in fluoridation have not been refuted by any reputable authorities. Therefore,

the statements in the Consumer Reports articles pointing out serious flaws in Mr. Yiamouyiannis' studies and data could not have been published with any faith in their veracity. Specifically, Mr. Yiamouyiannis refers to statements in the July article that his studies have been refuted by the National Cancer Institute because they failed to account for the most fundamental factors involved in cancer mortality rates -- age, sex, and race. He states that the Congressional record shows his studies did account for these factors. In essence, therefore, plaintiff claims that the patent falsity of the content of the articles, directly contradicted in the sources relied on by their publisher, is evidence of actual malice.

The foregoing ^{allegations}/are, however, grossly inadequate to raise even an inference of actual malice, much less the clear and convincing proof necessary to survive a motion for summary judgment. There is overwhelming evidence in defendants affidavits, unrebutted by plaintiff, that the articles were prepared in a conscientious and professional manner after a thorough review of reputable sources and standard reference works on medicine and science. No serious question is raised that either the author or the editors who reviewed and approved the articles for publication had the slightest doubt as to their truth and accuracy.

Without contradicting any of these facts, plaintiff relies

entirely on the claimed falsity of the statements to support his claim of actual malice. In light of the clear and weighty precedent rejecting such an approach, see New York Times v. Sullivan, 376 U.S. at 279-80, the suggestion is strong that plaintiff's object in bringing this action is to use this court to discourage the publication of opposing views. Needless to say, it is in the public interest for the debate on the safety of fluoridation to proceed in as free and open a manner as possible, without the threat of libel suits inhibiting the publication of conflicting studies and commentary.

In conclusion, since plaintiff has adduced no evidence to show actual malice on the part of defendants in publishing the two articles in question, summary judgment is granted to defendant and is denied as to plaintiff.

So Ordered.

May 30, 1979.


United States District Judge