


FILED  
U.S. DISTRICT COURT

2008 NOV -5 P 1:25

IN THE UNITED STATES DISTRICT COURT  
FOR UTAH-CENTRAL DISTRICT

DISTRICT CLERK  
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DEEP BLUE MARINE, A Nevada Corp.

ALEXANDER LINDALE, LLC AND  
WILF BLUM, an individual,

Plaintiffs,

v.

EDWARD KRAJEWSKI, an individual  
JOHN DOES 1-10, individuals.

MOTION TO DENY PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGEMENT

CASE: 2:08cv00405 - TC  
Assigned To: Campell, Tena  
Assign. Date : 5/20/2008  
Description: Deep Blue Marine et al v.  
Krajewski

MOTION TO DENY PLAINTIFF'S MOTION  
FOR SUMMARY JUDGEMENT

Summary Judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. URCP 56 (c). Weese vs. Davis County Comm'n, 834 P.2nd 1.( Utah 1992).

In the case before the Court the Defendant Claims that there has been no libel, because every statement that the Defendant is alledged to have made is truthful.  
Truth serves as an affirmative defense to an action for libel or slander.

A statement does not need to be literally true in order for this defense to be effective. Courts require that the statement is substantially true in order for the defense to apply. This means that even if the defendant states some facts that are false, if the "gist" or "sting" of the communication is substantially true, then the defendant can rely on the defense.

A Motion for Summary Judgment may not be granted if a legal conclusion is reached that ambiguity in contract exists and there is factual issued as to what parties intended. Winegar vs. Froerer Corp. 813 P2d. 104 ( Utah 1991).

Litigants must be able to present their cases fully to the court before judgment can be rendered against them. Prior to Completion of Discovery, however it is often difficult to ascertain whether the non moving party will be able to sustain it's claims. In such a case, summary judgment should generally be denied. Drysdale vs. Ford Motor Co. 947 P2d. 678 ( Utah 1997).

Evidence weighing and fact finding are beyond the proper purview of the Trial Court when considering a motion for summary judgment, the trial court must only consider. When considering a motion for summary judgment, the trial court must only determine whether evidence sufficient to create a factual issue exists. If such a factual issue exists, the court must deny summary judgment. Fransiconi vs Union Pacific Railroad 2001 UT App. 350. 36P. 3d.999.

The Defendant suggests that such a factual issue exists. Copper King Mining released a Press Release stating the "Copper King was firing Alexander Lindale and Wilf Blum for seriously damaging Western Utah Copper Company by making a lot of promises and representations that have not materialized. If it were possible, WUCC would reverse the entire transaction based upon the outcome of this exercise. "

As this Court can see the claim against the Defendant has no merit in regards to Alexander Lindale. Wilf Blum did not full fill his agreement with Copper King and Western Utah Copper Company. Wilf Blum was fired for his own inaction.

The Defendant also states that anything that he has said about Wilf Blum . Deep Blue Marine or Alexander Lindale was the truth and demands a jury trial. The Plaintiff has also not shown any loss of revenue in this case.

### **Jury Demand**

Nov. 1, 2008

**Respectfully submitted**

**THE DEFENDANT**

By Edward Krajewski

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