

FRANK J. MONTELEONE

ATTORNEY AT LAW

Client Newsletter

A newsletter
for clients
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New York's Court of Appeals Holds That The "Single Publication" Rule Applies To Defamatory Statements Published On the Internet

Ruling Extends Reach of Rule to Cyberspace

The Court of Appeals' recent decision in *Firth v. State of New York*, 2002 N.Y. Lexis 1901 (July 2, 2002) presented New York's highest court with one of its first opportunities to determine how legal principles concerning the law of defamation developed in connection with traditional mass media apply to the internet. Specifically, the issue presented in *Firth* was whether, for purposes of the statute of limitations, the single publication rule is applicable to allegedly defamatory statements that are posted on an internet site, and if so, whether an unrelated modification to a different portion of the website constitutes a "republication," thereby triggering a new limitations period.

By extending the single publication rule to the internet and rejecting a rule that would treat any modification to a website as a republication of the defamatory statement, the Court of Appeals sought to secure the internet's unique advantages of

fluidity and rapid dissemination of information.

The Historical Background to the Single Publication Rule

Under the early common law of defamation, each communication of a defamatory statement to a third person gave rise to a new cause of action. Thus, a publisher of a book containing defamatory matter would be exposed to a new suit with every sale, even if those sales were many years removed from the initial publication. Under this scenario, the statute of limitations would never expire so long as a copy of the book remained available for sale or inspection to the public, a result wholly antithetical to the existence of statutes seeking to bar stale claims.

Recognizing that the common law rule was incompatible with modern methods of mass production and dissemination of printed matter, the Court of Appeals adopted the single publication rule in *Gregoire v. G.P. Putnam's Sons*, 298 N.Y. 119 (1948), stating that the publication of a book or a single issue of a newspaper or magazine, although consisting of thousands of copies widely distributed, "is, in legal effect, one publication which gives rise to one cause of action, and that the applicable statute of limitations runs from the date of that publication."

The Court of Appeals limited this rule to the

original publication, and stated that the repetition of the defamatory matter in a later edition of a book, newspaper or magazine would constitute a republication and would give rise to a new cause of action and trigger a new limitations period.

The Court's Analysis

In *Firth*, the plaintiff was a former Director of Law Enforcement for the state's Department of Environmental Conservation. At a press conference on December 16, 1996, the State Inspector General issued a report containing statements critical of Plaintiff's managerial style, and made the full text of the report available on its website.

Plaintiff commenced an action for defamation based on statements contained in the report on March 18, 1998, more than one year after the report was first released and posted on the internet. The lower court granted summary judgment to the state and dismissed the suit on the ground the claim was barred by the one year statute of limitations for defamation actions.

On appeal, the Plaintiff asserted that the continuing availability of the report on the internet constituted a continuing wrong or a new publication, and that therefore the action was timely. The Plaintiff further asserted that even if the single publication rule applied to the internet, the State should be deemed to have republished the report when it made changes to other unrelated portions of the website.

The Court of Appeals rejected both of these arguments. In upholding the application of the single publication rule to the internet, the Court found no significant difference between the internet and traditional media with respect to the policy concerns impelling the original adoption of the rule. Communications on a public website resemble communications contained in traditional media, only on a far grander scale. Adopting a multiple publication rule "would implicate an even greater potential for endless retriggering of the statute of

limitations, multiplicity of suits and harassment of defendants." The threat of such lawsuits would inhibit the pervasive dissemination of information that is one of the internet's greatest promises.

Similarly, the Court rejected a rule that would equate an *unrelated* modification or addition of a website with a republication of the defamatory statement, finding that the republication exception has no application to the addition of unrelated material on a website. In this regard, the Court noted that many websites are in a constant state of flux, with new information posted on a frequent basis. A rule that would treat such unrelated additions as a republication of the defamatory material would either discourage the placement of new information on the internet or slow the exchange of such information.

Conclusion

By extending the single publication rule to the internet, the Court of Appeals has ensured that the protection against stale claims afforded to writers and publishers by the rule will not vary by virtue of the medium of communication used.

New York Residents May Limit Unwanted Sales Calls From Telemarketers

New York State passed a law which became effective April 1, 2001, which imposes substantial fines against telemarketers who call persons on a "Do Not Call" registry maintained by the Consumer Protection Board. The law is designed to reduce this obnoxious modern nuisance, and requires telemarketers nationwide who place calls to New York State residents to obtain a list of telephone numbers on this registry and to eliminate those phone numbers from their databases. Telemarketers who violate the law are subject to a

fine of up to \$5000 per call. The law provides some exceptions for charitable, religious and political organizations.

Although the law has been in effect for over a year, only one-third of New York households have registered. If you want to reduce these annoying phone calls, you must place your name and telephone number on the "Do Not Call" list maintained by the State. New York State residents can register free of charge by calling 1-866-622-5569; by visiting the Consumer Protection Board's website at www.consumer.state.ny.us; or by writing to the New York State Consumer Protection Board, including your name, address, and the phone number you wish to register to: "Do Not Call" Registry, NYS Consumer Protection Board, P.O. Box 2078, Albany, NY 12220-0078.

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