APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10453
Non-Argument Calendar

D.C. Docket No. 1:16-cv-24542-RNS

HORACIO SEQUEIRA, Plaintiff-Appellant,

versus

STEVEN STEINLAUF,
Individual,
GEICO GENERAL INSUANCE COMPANY,
GATE SAFE, INC.,
AMERICAN AIRLINES, INC.,
a Corporation, et al.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Florida

(December 21, 2018)

Before TJOFLAT, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Horacio Sequeira, proceeding *pro se*, appeals the district court's final judgment granting summary judgment and dismissing his third amended complaint. He also appeals the district court's order dismissing his second amended complaint and denying his motion to amend the scheduling order and leave to file a fourth amended complaint. On Appeal, he argues, first, that the district court erroneously converted American Airlines, Inc.'s ("American") motion to dismiss into a motion for summary judgment. Second, he argues that the district court abused its discretion in dismissing new parties and claims alleged in his second amended complaint for violating its scheduling order because the authorization order was ambiguous. He also argues that the court erred in dismissing his claims against American for failure to state a claim.

Third he argues that the district court abused its discretion in denying his motion to amend the scheduling order and leave to file a fourth amended complaint because he established good cause. Finally, he argues that the court erred in granting summary judgment on his defamation claim because he presented evidence that his former employer, Gate Safe, Inc. ("Gate Safe"), made false statement against him.

I

We review *de novo* a district court's grant of a motion to dismiss. *SFM Holdings, Ltd. v. Banc of Am. Securities,* LLC, 600 F. 3d 1334, 1336 (11th Cir.

(2010). We may *sua sponte* raise the issue of whether a district court failed to abide by Federal Rule of Civil Procedure 56's notice requirements. *Griffith v. Wainwright,* 772 F. 2d 822, 824 (11th Cir. 1985).

If a district court considers matters outside the pleadings in adjudicating a Rule 12(b)(6) motion to dismiss, the motion is converted into a Rule 56 motion for summary judgment.

Trustmark Ins. Co. v. ESLU, Inc., 299 F. 3d 1265, 1267 (11th Cir. 2002). Where conversion occurs, the district court must notify the parties of the conversion and give them a reasonable time to respond. *Id.*; Fed R. Civ. P. 56(f). Failure to abide by Rule 56's notice requirement constitutes reversible error. *Ga. State Conference of N.A.A.C.P. v. Fayette Cty. Bd. Of Comm'rs*, 775 F. 3d 1336, 1344 (11th Cir. 2015).

Because the district court did not consider matters outside of the pleadings in dismissing Sequeira's second amended complaint, it did not convert American's motion to dismiss into a motion for summary judgment.

II

We have an obligation to satisfy ourselves of our own jurisdiction and may raise the issue *sua sponte*. *AT&T Mobility, LLC v. Nat'l Ass'n for Stock Car Auto Racing Inc.*, 494 F.3d 1356, 1360 (11th Cir. 2007). We review jurisdictional issues *de novo*. *Id.* We review dismissals for violating court orders for abuse of discretion. *Granton v. Great Am. Commc'ns.* 178 F.3d 1373, 1374 (11th Cir. 1999).

Federal courts have "'no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" *Zinni v. ER Solutions*, 692 F.3d 1162, 1166 (11th Cir. 2012) (quoting *Church of Scientology of Cal. v. United States*, 315 F.3d 1295, 1299 (11th Cir. 2002). Review of the dismissal of an amended complaint may become moot where the plaintiff was allowed to file a subsequent amended complaint. *Burton v. City of Belle Glade*, 178 F.3d 1175, 1188 n.10 (11th Cir. 1999).

We lack jurisdiction to review the district court's order dismissing Sequeira's second amended complaint because the dismissal was rendered moot by Sequeira's third amended complaint. To the extent that the dismissal of some of the claims was not rendered moot, the district court did not abuse its discretion in dismissing Sequeira's

claims against GateGroup and LSG, and new claims against Gate Safe and American. Sequeira's first amended complaint listed only Gate Safe, Geico, and American as defendants, and raised only negligence, assault, libel, slander, wrongful discharge, and lost wages claims. The district court's January 20, 2017, scheduling order informed Sequeira that the deadline date for joining additional parties or amending pleadings was February 24, 2017. Sequeira violated that order by adding LSG and GateGroup as defendants in his second amended complaint, and raising new claims-specifically new negligence, age discrimination, failure to accommodate, failure to engage in the interactive process, harassment, breach of contract, and retaliation claims. Although Sequeira had not been engaged in a pattern of violating the district court's order, he was not prejudiced by the dismissal because it was without prejudice. *Dynes v. Army Air Force Exch. Serv.*, 720 F.2d 1945, 1499 (11th Cir. 1983). And, the district court's decision to strictly enforce the terms of its scheduling order and dismiss the additional parties and claims was not an abuse of discretion. See *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1307 (11th Cir. 2011).

Sequeira's argument that he misunderstood the district court's instructions permitting him to file a second amended complaint is unavailing. The district court's grant of leave to file a second amended complaint was explicit in that he could file an amended complaint addressing the deficiencies in his first amended complaint. These instructions were unambiguous, because the only deficiencies referenced by the court in its order were factual deficiencies with regards to his negligence claim against Geico and American, and his assault, libel, and slander claims against Gate Safe. Thus, the district court did not abuse its discretion in dismissing Sequeira's claims against LSG and GateGroup, and his additional claims against

Gate Safe and American.

The district court did not err in dismissing Sequeira's negligence claims against American because there was no employer/employee relationship between American and any of the workers alleged in the second amended complaint. Negligent hiring, training, and retention claims brought under Florida law all require the existence of an employer/employee relationship in order to be actionable. *Lewis v. City of St. Petersburg*, 260 F.3d 1260, 1265 (11th Cir. 2001) (applying Florida law); *Malicki v. Doe*, 814 So.2d 34, 361-62 (Fla. 2002); *Garcia v. Duffy*, 492 So.2d 435, 438-39 (Fla. Dist. Ct. App. 1986). Sequeira alleged that both American and LSG hired workers to operate American trucks to collect **food carts** from warehouses managed by American and LSG. However, Sequeira alleged that prior to picking the carts up, only LSG workers lined up the carts for inspection. Further, the individual who caused Sequeira's injury, failed to seek medical assistance, and failed to report the incident—Abdiel—was alleged to be an LSG employee. The other alleged negligent actors, Campbell, Maria, Latchu, and Rodriguez, were all Gate Safe employees. Although Sequeira alleged that American was negligent in hiring, training, and retaining its employees, he did not identify a single American employee involved in his injury. Thus, because Sequeira did not allege that any American employees negligently caused him harm, the district court did not err in dismissing his negligent hiring, training, and retention claims against American.

Also the district court did not err in dismissing Sequeira's negligence claim because American had not duty to protect Sequeira from the risk of being hit by food carts. As discussed above, the only workers alleged to be involved in the lining up of food cars for inspection were those of LSG. Therefore, American could not be liable for the actions of LSG's employees absent a special relationship between

LSG's employees lining up the food carts and American. *KM ex rel. D.M. v. Publix Super Markets, Inc.*, 895 So.2d 1114, 1117 (Fla. Dist. Ct. App. 2005). As Sequeira concedes, American had no control over LSG employees, and, as such, no special relationship existed and American could not be held liable for LSG's employee's negligence in lining up the carts. See id. Finally, Sequeira does not challenge the district court's determination that American could not be liable because the dangerous condition was open or obvious, but rather argues that, as a matter of public policy, American should have been held liable anyway. Because this argument was not before the district court when it dismissed Sequeira's second amended complaint, this Court need not address it now on appeal. *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1331-32 (11th Cir. 2004).

III

We review the denial of a motion to amend a complaint for abuse of discretion. *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1012 (11th Cir. 2005). To obtain reversal of a district court judgment that is based on multiple, independent grounds, an appellant must challenge every stated ground, or we will summarily affirm. See Sapuppo v. Alstate Floridian Ins. Co., 739 F.3d 678, 680 (11th Cir. 2014).

Where a party that seeks to file an amended complaint after already having previously done so, it may do so "only with the opposing party's written consent or the court's leave," which should be granted when justice requires. Fed. R. Civ. P. 15(a)(2). Where the request to file an amended complaint is made after the time provided by the court's scheduling order, the party must show good cause under Rule 16(b). *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1419 (11th Cir. 1998); Fed. R. Civ. P.16(b)(4).

Because Sequeira does not contest every ground that the district court gave in denying his motion to modify the

scheduling order and leave to file a fourth amended complaint, we summarily affirm the denial of his motion.

IV

We review a district court order granting summary judgment de *novo*, Viewing "the evidence and all reasonable inferences drawn from it in the light most favorable to the nonmoving party." Battle v. Bd. Of Regents, 468 F.3d 755, 759 (11th Cir. 2006).

A district court may grant summary judgment if "the movant shows that there is not genuine dispute as to any material fact and the movant is entitle to judgment as a matter of law." *Shaw v. City of Selma*, 884 F.3d 1093, 1098 (11th Cir. 2018). If shown, the burden shifts to the nonmoving party to show that a genuine issue of fact exists. Id. Summary judgment should be granted against a party who fails to establish the existence of an essential element of their case for which they will bear the burden of proof a trial. Melton v. Abston, 841 F.3d 1207, 1219 (11th Cir. 2016). A district court may not consider unsworn statements in ruling on a motion for summary judgment. Carr v. Tatangelo, 338 F.3d 1259, 1273 n.26 (11th Cir. 2003).

A defamation claim brought under Florida law requires that the plaintiff show that "(1) the defendant published a false statement (2) about the plaintiff (3) to a third party and (4) that the falsity of the statement caused injury to the defendant." Valencia v. Citibank Int'l, 728 So.2d 330, 330 (Fla. Dist. Ct. App. 1999).

Because Sequeira did not present evidence of any false statements made by Gate Safe, the district did not err in granting summary judgment on his defamation claim. **AFFIRMED**.

APPENDIX B

United States District Court

For the

Southern District of Florida

Horacio Sequeira, Plaintiff,

v.

Civil Action No. 16-24542-Civ-Scola

Gate Safe, Inc., Defendant

Filed: Jan. 25, 2018

Order on Motion for Summary Judgment

Plaintiff Horacio Sequeira, proceeding, Pro se, brings this suit against Defendant Gate Safe, Inc. ("Gate Safe") for wrongful discharge and defamation. This matter is before the Court on Gate Safe's Motion for Summary Judgment (ECF No. 157). For the reasons set forth below, the Court Grants Gate Safe's motion.

1. Background

Sequeira's claims arise out of an injury that he allegedly suffered while performing his duties as a Security Operator for Gate Safe. Sequeira's First Amended Complaint asserted multiple claims against Gate Safe, including wrongful discharge and defamation, as well as claims against various other defendants (ECF No. 9). The Court dismissed the claims against the other defendants, and dismissed the defamation claim against Gate Safe with leave to amend (ECF No. 47). Sequeira subsequently filed a Second Amended complaint that included two new defendants and asserted various claims against the defendants, including an amended defamation claim against Gate Safe (ECF No. 48). The granted all of the motions to dismiss, but gave Sequeira one final opportunity to amend the defamation claim against Gate Safe (ECF No. 104). Sequeira subsequently file a Third Amended Complaint (ECF No. 122).

The Third Amended Complaint asserts claims of wrongful discharge and defamation against Gate Safe. The wrongful discharge claim alleges that Sequeira's doctors provided his supervisors with work restrictions after he suffered the work-related injury. (Third Am. Compl. ¶ 11, ECF No. 122.) Sequeira alleges that his supervisors subsequently pressured him to quit by ignoring the work restrictions, mocking his limp, not providing, him with heavy-duty boots, and implying that Sequeira was faking his injury. (*id.* ¶ 12.) Sequeira alleges that his supervisors suspended him after he informed them that he was going to file a worker's compensation claim "for unsatisfactory work performance due to walking too slowly." (id. ¶¶ 13, 14.) The defamation claim alleges that Sequeira's supervisors imitated and mocked the limp that resulted from his injury, made sarcastic statements about Sequeira faking his injury, and had him "escorted around as a criminal at the workplace by a security guard and a Gate Safe supervisor

on three separate "occasions." (*Id.* ¶¶ 24, 27, 31.) Sequeira alleges that this conduct imputed the crime of fraud to him and that his clearance to work at the airport as a result. (*Id.* ¶¶ 27, 31.) In ruling on Gate Safe's partial motion to dismiss the Third Amended Complaint, the Court held, for the second time, that Sequeira cannot base his defamation claim on non-verbal conduct. (Order 3-4, ECF No. 149.) However, the Court permitted the defamation claim to proceed with respect to the alleged verbal statements. (*Id.* At 4-5)

2. Legal Standard

Under Federal Rule of Civil Procedure 56, "Summary judgment is appropriate where there 'is no genuine as to any material fact' and the moving party is 'entitled to a judgment as a matter of law.'" *See Alabama v. N. Carolina,* 130 S. Ct. 2295, 2308 (2010) (quoting Fed. R. Civ. P. 56(a)). At the summary judgment stage, the Court must view the evidence in the light most favorable to the nonmovant, *see Adickes v. S.H. Kress & Co.,* 398 U.S. 144, 158-59 (1970), and it may not weigh conflicting evidence to resolve disputed factual issues, *see Skop v. City of Atlanta, Ga.,* 485 F.3d 1130, 1140 (11th Cir. 2007). Yet, the existence of some factual disputes between litigants will not defeat an otherwise properly grounded summary judgment motion; "the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). Where the record as a whole could not lead a rational trier of fact to find in the nonmovant's favor, there is no genuine issue of fact for trial. *Matsushita Elect, Indus, Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

"[O]nce the moving party has met its burden of showing a basis for the motion, the nonmoving party is required to 'go beyond the pleadings' and present competent evidence designating 'specific facts showing that there is a genuine issue for trial.'" *United States v. $183,791,391* F. App'x 791, 794 (11th Cir. 2010) (quoting *Celotex Corp v. Catrett,* 477 U.S. 317, 324 (1986)). Thus, the nonmoving party "may not

rest upon the mere allegations or denials of his pleadings, but [instead] must set forth specific facts showing that there is a genuine issue for trial." *See Anderson,* 477 U.S. at 248 (citation omitted). "Likewise, a [nonmovant] cannot defeat summary judgment by relying upon conclusory assertions." *Maddox-Jones v. Bd. Of Regents of Univ. of Ga.,* 2011 WL 5903518, at *2 (11th Cir. Nov. 22, 2011). Mere "metaphysical doubt as to the material facts" will not suffice. *Matsushita,* 475 U.S. at 586.

Analysis

A. Wrongful Discharge Claim

Sequeira brings his wrongful discharge claims under Florida Statute § 440.205. That provision provides that "[n]o employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the Worker's Compensation Law." With respect to Sequeira's allegations that his supervisors pressured him to quit by ignoring his work restrictions, Florida courts have held that such a claim does not fall within the scope of § 440.205, and is properly addressed by the judge of compensation claims. *See Fratarcangeli v. United Parcel Service,* No. 8:04-cv-2812-T-TGW, 2008 WL 821946, at *17 (M.D. Fla. Mar. 26, 2008) holding that the plaintiffs claim that the defendant forced him to work in excess of physical limitations imposed upon him by a doctor was not actionable under § 440.205); *Coker v. Morris,* No. 3:07 cv 151/MCR/MD, 2008 WL 2856699, at *7 n.21 (N.D. Fla. July 22, 2008) (internal citations omitted) (holding that employer's alleged failure to provide work which respects an employee's physical limitations is not actionable under § 440.205); *Montes de Oca v. Orkin Exterminating Co.,* 692 So.2d 257, 259 (Fla. 3d Dist. Ct. App. 1997) (holding that an allegation that the defendant attempted to coerce the plaintiff into settling a workers' compensation claim by not

respecting his physical limitations did not fall within the scope of § 440.205).

However, Sequeira also alleges that he was terminated after he informed that he intended to file a worker's compensation claim, and that his supervisors pressured him to quit by mocking his limp, implying that he was faking his injury, and failing to provide him with work boots. Florida courts apply the burden-shifting approach used to analyze. Title VII retaliation claims to Florida worker's compensation retaliation claims. Humphrey *v. Sears, Roebuck, and Co.*, 192 F.Supp.2d 1371, 1374 (S.D. Fla. 2002) (Moore, J.) *Coker*, 2008 WL 2845699, at *7 (citations omitted). Under this approach, a plaintiff must first establish a prima facie case of retaliation by demonstrating that: (1) he engaged in a statutorily protected activity; (2) he suffered an adverse employment action; and (3) there is a causal connection between the protected activity and the adverse employment action. *Fratarcangeli,* 2008 WL 821946, at *6 (citing *Higdon v. Jackson*, 393 F.3d 1211, 1219 (11th Cir. 2004)). Once a plaintiff establishes a prima facie case of retaliation, the burden shifts to the defendant "to articulate a legitimate, nondiscriminatory reason for its employment decision." *Id.* at *4 (citing *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1981)). This burden is "'exceedingly light.'" *Holifield v. Reno,* 115 F,3d 1555, 1564 (11th Cir. 1997) (citing *Turnes v. AmSouth Bank, N.A.,* 36 F.3d 1057, 1061 (11th Cir. 1994)). If the defendant meets the burden, "the plaintiff has the opportunity to demonstrate that the defendant's articulated reason for the adverse employment action is a mere pretext...." *Id.* (citation omitted). Indeed, Florida courts have held that "Section 440.205 does not... provide a blanket prohibition against the discharge of an employee for legitimate business reason once the employee has filed or pursued a worker's compensation claim, but prohibits only the retaliatory discharge of an employee for

the act of filing a worker's compensation claim." *Musarra v. Vineyards Dev. Corp.*, No. 2:02-CV-301-FTM-29SP, 2004 WL 2713264, at *5 (M.D. Fla. Oct. 20, 2004) (citing *Perich v. Climatrol, Inc.*, 523 So.2d 684, 685 (Fla, 3d. Dist. Ct. App. 1988)).

Gate Safe does not dispute that Sequeira filed a worker's compensation claim in connection with his July 10, 2016 injury and that he was subsequently fired on October 1, 2016. (Mot. 9.) However, Gate Safe argues that Sequeira has not established a prima facie case of retaliation, and that it had a legitimate, non-retaliatory reason for terminating his employment. (Id. 10-13).

The undisputed facts establish that Sequeira's job as a Security Coordinator required him to inspect airline food carts for items that could be used as weapons, and to seal the carts once the inspection was complete. (Gate Safe Statement of Undisputed Material Facts ¶ 3, ECF No. 156.) American Airlines required that Gate Safe personnel inspect catering equipment in accordance with specific guidelines. (*Id.* ¶ 5.) Gate Safe's Work Rule 12 provided that an employee who violated or breached customer security guidelines would be subject to suspension and discharge. (*Id.* ¶ 6.) In addition, Gate Safe's Zero Tolerance Policy stated that certain violations, including a breach of security guidelines, "are considered so severe that immediate termination is the only option." (*Id.*; zero Tolerance Policy, ECF No. 155-4.) Finally, Gate Safe's disciplinary matrix provided for termination in the event that an employee completely failed to check food carts. (Gate Safe's Statement of Undisputed Material Facts ¶ 7.) Sequeira received training on American Airlines' Catering Search & Seal Program, and signed acknowledgments stating that he had received Gate Safe's Work Rules and Zero Tolerance Policy. (*Id.* ¶¶ 10-11) Following Sequeira's work-related injury, a doctor cleared him to return to work with no restrictions on August 29, 2016 (*Id.* ¶ 20.) On

September 29, 2016, Gate safe's Manager of Operations, Dennis Latchu, performed a routine sealed food carts without inspecting them. (*Id.* ¶21.) Gate Safe Supervisor of Operations Jean Ade also reviewed the video and confirmed Latchu's observation. (*Id.*) Latchu reported the incident to Gate Safe's Director of Operations, Human Resources Manager, and Compliance Panel, which was responsible for ensuring employee's compliance with TSA and airline security standards. (*Id.* ¶ 22.) Latchu also interviewed Sequeira and asked him if he recalled failing to check some of the food carts on September 27, 2016. (*Id.* ¶ 23.) Sequeira initially stated that a lead employee had told him that he did not have to check the food carts. (*Id.*) After that employee was brought into the interview, Sequeira stated that he had seen other Security Coordinators failing to inspect the carts. (*Id.*) Latchu then asked Sequeira to prepare an affidavit. (*Id.* ¶24.) The affidavit that Sequeira prepared stated, in relvant part, that he "had with a little pain in my foot and I take I[sic] pill of Ibuprofen of 800 grams, and ...forget review some carts..." (Id.; Sequeira Aff., ECF No. 155-6.) The lead employee also submitted an affidavit denying that she had told Sequeira not to inspect the carts. (Gate Safe's Statement of Undisputed Material Facts ¶24.)

Latchu suspended Sequeira's employment pending an investigation and revoked his security credentials. (*Id.* ¶ 25.) He also prepared a Corporate Incident Report explaining the basis for the suspension. (*Id.*) The Compliance Panel reviewed the information provided by Latchu, including the affidavits from Sequeira and the lead employee. (Id. ¶ 26.) Sequeira's employment was terminated on October 1, 2016. (*Id.*) Around the same time, Latchu observed two other employees failing to inspect the food carts. (*Id.* ¶ 29.) Those employees were also terminated. (*Id.*)

In response to Gate Safe's Motion for Summary Judgment, Sequeira argues that Gate Safe failed to produce any evidence in support of the motion, and that the documents relied upon by Gate Safe actually support the Third Amended Complaint because the medical restrictions demonstrate that he should have been sitting down instead of standing and inspecting food carts. (Resp. 5-6, ECF No. 167.) However, as stated above, Gate Safe produced evidence that Sequeira Was cleared to return to work without restrictions as of August 29, 2016. Moreover, for the reasons set forth above, any allegations that Gate Safe failed to comply with Sequeira's medical restrictions are not cognizable under § 440.205.

In addition, Sequeira alleges that the declarations that Gate Safe provided from Latchu and Ade are fraudulent, "without date and void." (Resp. 6.) However, only Latchu's declaration is undated, and the facts set forth in his declaration are supported and corroborated both by documentary evidence and the declarations from Ade and Gate Safe's Human Resources Director, who was also a member of the Compliance Panel. Other than the fact that Latchu's declaration is undated, Sequeira has provided no other reason to justify his belief the declarations from Latchu and Ade are fraudulent.

Next, Sequeira argues that Latchu and Ade's declarations are hearsay. Federal Rule of Civil Procedure 56(c)(1)(A) permits a party to support an assertion by citing to materials in the record, including affidavits or declarations. A declaration used to support a motion for summary judgment "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). The declarations submitted by Gate Safe are based on personal knowledge and set out facts that would be admissible in evidence, and

the facts set forth in the declarations are supported by documentary evidence.

Finally, Sequeira argues that Gate Safe's discovery responses were "evasive and incomplete." (Resp. 7.) However, discovery closed on August 25, 2017, and Sequeira did not file a motion to compel better responses. Moreover, Sequeira attached the allegedly incomplete discovery responses as an exhibit to his response, and the responses are from Defendant American Airlines, Inc., who has been dismissed from this case. (Rsp. 29-61.)

The Court has reviewed all of the exhibits attached to Sequeira's response. None of them call into question the facts set forth above concerning Sequeira's termination. Moreover, other than making conclusory allegations about fraud on the part of Gate Safe, Sequeira has not identified any facts that he actually disputes. Thus, even assuming that Sequeira has established a prima facie case of retaliation is pretextual, or that he was terminated because of his worker's compensation claim.

B. Defamation Claim

As noted above, the Court has already ruled that Sequeira cannot base his defamation claim on non-verbal conduct. (Order 4, ECF No. 149.) Thus, the only remaining allegation claim are those concerning the sarcastic comments allegedly made by Sequeira's supervisor, Mr. Carlton. (Third Am. Compl. ¶ 27.) To recover for either libel or slander, a plaintiff must establish that: 1) the defendant established a false statement; 2) about the plaintiff; 3) to a third party; and 4) the party suffered damages as a result of the publication. *See Valencia v. Citibank Int'l*, 728 So.2d 330 (Fla. 3d DCA 1999).

Sequeira confirmed during his deposition that Carlton was the only person who made defamatory comments about him. (Sequeira Dep. Tr. 192:23-193:2, ECF No. 155-1) However, Sequeira could not identify any verbal statements made by Carlton, and instead repeatedly referred to the

gestures that the Court has already ruled cannot serve as the basis for a defamation claim. (*Id.* at 193:3 – 194:18.) Sequeira argues that the excerpts from the deposition transcript "pretend to mislead to the court," but he has neither explained why the excerpts are misleading nor has he provided evidence of any verbal statements that he alleges to be defamatory (Resp. 2-3.) Therefore, Gate Safe is entitle to summary judgment on the defamation claim.

4. Conclusion

For the reasons set forth above, the Court grants Gate Safe's Motion for Summary Judgment (ECF No. 157)

Done and Ordered in chambers, at Miami, Florida, on January 24, 2018. s/Robert N. Scola, Jr. United States District Judge.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10453-AA

HORACIO SEQUEIRA, Plaintiff-Appellant,

Versus

ULISSES RODRIGUEZ, et al.,
Defendants,

STEVEN STEINLAUF,
Individual,
GEICO GENERAL INSUANCE COMPANY,
GATE SAFE, INC.,
AMERICAN AIRLINES, INC.,
a Corporation, et al.,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Florida

(March 15, 2019)

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
BEFORE: TJOFLAT,NEWSM, and ANDERSON, Circuit Judges.
PER CURIAM:
The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.
ENTERED FOR THE COURT:
s/ RLC
UNITED STATES CIRCUIT JUDGE.
ORD-42