"Appendix A."

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

**FORTUNO JEANFORT,**
Appellant,

v.

**FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES**
a/k/a **FLORIDA ATLANTIC UNIVERSITY,**
Appellee.

No. 4D20-1221

[May 27, 2021]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Scott R. Kerner, Judge; L.T. Case No. 50-2018-CA-011407-XXXX-MB.

Fortuno Jeanfort, Boynton Beach, pro se.

Christopher J. Whitelock of Whitelock & Associates, P.A., Fort Lauderdale, for appellee.

PER CURIAM.

*Affirmed.*

WARNER, KUNTZ, JJ., and ROBINSON, MICHAEL, A., Associate Judge, concur.

* * *

***Not final until disposition of timely filed motion for rehearing.***

"Appendix B."

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

FORTUNO JEANFORT, CASE NO: 50-2018-CA-011407-XXXXMB
DIVISION: AJ
Plaintiff,

vs.

FLORIDA ATLANTIC UNIVERSITY, BOARD OF TRUSTEES a/k/a FLORIDA ATLANTIC UNIVERSITY,

Defendant.
_____/

**ORDER ON DEFENDANT, FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES', MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

**THIS CAUSE** having come before the Court upon the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint, and the Court being duly advised in the premises, the Court orders and finds as follows:

**A. Procedural Background**

On September 7, 2018, the Plaintiff in this matter filed a lawsuit against "Florida Atlantic University" arising out of alleged defamatory statements being published in print and online by "Florida Atlantic University." *See generally* Plaintiff's Complaint. The article focuses on an incident in which FAU inadvertently placed an employee's (hereinafter referred to as "Robinson") wages, into the Plaintiff's account, and the ensuing police investigation to recover said funds. *See generally* Second Amended Complaint. In the first two (2) complaints, the Plaintiff set forth a theory of liability alleging that FAU, with malice, intentionally published the article to depict the Plaintiff as a "thief," which is not actually stated in the articles. *See* First Amended Complaint at ¶¶ 53-54. The Defendant moved to dismiss the claims, in part, on the grounds of sovereign immunity.[1] *See Florida Dept. of Environmental Protection v. Green*, 951 So.2d 918 (Fla. 4th DCA 2007) (Holding that the state agencies are immune from suit for any claim against a

state employee, where malice is an element of proving the claim).

On December 20, 2018, FAU filed a motion to dismiss the Amended Complaint on sovereign immunity grounds, which the Court initially denied. FAU then appealed the Court's ruling and the case was stayed pending the appellate court's ruling on the sovereign immunity defense. Eventually, in May of 2019, the Plaintiff, in lieu of an appeal, moved to amend the complaint for the apparent purpose to allege a negligence-based theory in order to circumvent the sovereign immunity statute. On September 10, 2019, the Fourth District Court of Appeal interpreted Plaintiff's Motion as a concession of error and relinquished jurisdiction to the circuit court to consider the Plaintiff's motion for leave to amend. After a specially set hearing on December 31, 2019, the Court permitted the Plaintiff to file his Second Amended Complaint, which was filed on January 6, 2019. The Plaintiff now alleges three (3) counts against the Defendant, including libel per se (Count I), libel (Count II), and negligence (Count III). *See generally* Second Amended Complaint.

**B. Plaintiff's Allegations**

The Plaintiff alleges that an FAU employee, "acting within the scope of his employment reviewed and authorized the publication of the (sued upon) Article." *Id.* at 3. The Second Amended Complaint quotes the "relevant" portion of the Article, which concerns the progress of an investigation into Robinson's missing funds. *Id.* The excerpt specifically states that (1) Robinson was advised that a new detective would be assigned to the case; 2) that FAU police informed Robinson that the funds were placed into the Plaintiff's account; 3) Robinson wanted to "press charges" if the funds were not returned; and 4) FAU reimbursed Robinson for the missing funds. The Plaintiff alleges that "in direct contravention to the FAU Article," the Plaintiff had no knowledge of the misplaced funds until December of 2016. *Id.* at 4. However, the excerpt notably did not comment on the timing of Plaintiff's knowledge of the funds. *Id.* The Plaintiff does not challenge any other specific statements made within the article, but goes on to allege that he has lost employment opportunities as a result of the publication. *Id.* at 4-5.

Despite including a negligence-based theory, the Plaintiff's general allegations (incorporated in each count) still describe intentional and "outrageous conduct." *Id* at 1. The

Plaintiff specifically alleges that the Defendant "maliciously published the libelous order." *Id.* at 4. Under Plaintiff's Count I for libel, the Plaintiff additionally states, "FAU not only failed to act with reasonable care to determine the falsity of the statements by FAU regarding the Plaintiff, but had actual knowledge of the falsity and choose [*sic*] to print the article anyway." *Id.* at ⁋ 37. The Plaintiff also alleges that punitive damages may be awarded for the alleged conduct. *Id.* at ⁋ 44. The same allegations regarding the Defendant publishing the article "in spite of the knowledge of the falsity of the allegations" appears in Count II for libel and even the newly added Count III for negligence. *Id.* at ⁋⁋ 54 and 64.

**C. The Defendant has Absolute Immunity**

It is well settled that "[i]n Florida, '[p]ublic officials who make statements within the scope of their duties are absolutely immune from suit for defamation' ... [and the] absolute privilege protects the statements of all public officials, regardless of the branch of government or the level of the official." *Cassell v. India*, 964 So.2d 190, 194 (Fla. 4th DCA 2007) (quoting *Stephens v. Geoghegan*, 702 So.2d 517, 522 (Fla. 2d DCA 1997)). "[T]he controlling factor in deciding whether a public employee is absolutely immune from actions for defamation is whether the communication was within the scope of the officer's duties." *Quintero v. Diaz*, 2020 WL 20622 (3rd DCA 2020) (citing City of *Miami v. Wardlow*, 403 So. 2d 414, 416 (1981). In *Florida State University Bd. Of Trustees v. Monk*, 68 So.3d 316, 319 (1st DCA 2011), the complaint alleged defamation in relation to an employee's statements made regarding an academic misconduct investigation. *Id.* Citing *Cassell*, the court held that the trial court erred by not dismissing the complaint as the university enjoyed absolute immunity. *See also Crowder v. Barbati*, 987 So.2d 166 (Fla. 4th DCA 2008) (police department's press release calling a citizen a "deadbeat dad" was immune). Here, the Plaintiff alleges that the article was published by a university employee within the course and scope of his duties. *See* Second Amended Complaint at 3. Accordingly, under the absolute immunity doctrine, this admission entitles the Defendant to a dismissal of the Second Amended Complaint as a matter of law.

**D. Plaintiff's Claims are Barred by Sovereign Immunity**

Florida's Sovereign Immunity statute provides, in pertinent part, that "{n}o...employee,

or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." *See* § 768.28(9)(a), Fla. Stat. (2018). Consequently, Florida law protects employees and/or agents of the State University, from any liability for alleged acts committed within the course and scope of their employments. *City of Boynton Beach v. Weiss*, 120 So.3d 606, 611 Fla. 4th DCA 2013); *see also City of Miami v. Simpson*, 172 So.2d 435 (Fla. 1965) (no liability for acts within the scope of employment); *Martin v. Drylie*, 560 So.2d 1285 (Fla. 1st DCA 1990) (employees have sovereign immunity for acts within the scope of employment); *Knauf v. McBride*, 564 So.2d 251 (Fla. 1st DCA 1990). However, Florida's Sovereign Immunity Act continues and provides that:

> The *exclusive remedy* for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(emphasis added). Thus, a state agency is not liable for claims based upon theories in malice, bad faith, or wanton and willful disregard of human rights.

After Defendant's appeal to the Fourth District Court of Appeals, Plaintiff attempted to add a negligence theory in his pleading to circumvent the sovereign immunity statute. However, the Second Amended Complaint still includes clear allegations of intentionality and malice on the part of FAU. The Plaintiff's new negligence allegations are not pled as an alternative theory. Rather, the Plaintiff maintains his intentional tort and malice theories in his general allegations,

which are incorporated in each count, and even goes on to allege, specifically under the negligence count, that the Defendant published the article with knowledge of its falsity. As the Plaintiff alleges intentional and malicious behavior on the part of Defendant, FAU is statutorily immune as a matter of law.

**E.** **The Plaintiff has failed to state any claims based in libel.**

Lastly, the Plaintiff's claims (Counts I and II) based in libel fail as a matter of law.[2] In Florida, a publication is libelous per se when: (1) it charges that a person has committed an infamous crime; (2) it charges a person with having an infectious disease; (3) it tends to subject one to hatred, distrust, ridicule, contempt, or disgrace; or (4) it tends to injure one in his trade or profession." *Blake v. Giustibelli*, 182 So.3d 881, 884 (Fla. 4th DCA 2016) (*quoting Richard v. Gray*, 62 So.2d 597, 598 (Fla. 1958)); *see also Shafran v. Parrish*, 787 So.2d 177, 179 (Fla. 2d DCA 2001) ("When a statement charges a person with committing a crime, the statement is considered defamatory *per se*."). The first and critical element of a libel claim requires that the alleged defendant actually publish the cited false statement in the pleading. *Wolfson v. Kirk*, 273 So.2d 774, 776 (Fla. 4th DCA 1973). As stated above, the communications that were "published" by the University Press and cited by the Plaintiff in his Second Amended Complaint were publications regarding an investigation that contained accurate information. Specifically, an employee of the university reported a possible criminal act, the police released a statement and the identity of the Plaintiff who received the money, and that a criminal investigation was initiated. This information, overall, which was allegedly published is not in dispute. In fact, the Plaintiff only challenges one excerpt from the article by stating, contrary to the excerpt, the Plaintiff did not learn of the misplaced funds until December of 2016. However, the excerpted language of the article does not even comment upon the Plaintiff's knowledge, and therefore the Plaintiff does not identify a specific allegedly libelous statement.

Second, the publication by the University Press never characterized or charged the Plaintiff with any 'infamous' crime. Crimes characterized as having an infamous nature are

murder, perjury, piracy, forgery, larceny, robbery, arson, sodomy or buggery. *King v. State,* 17 Fla. 183, 186 (Fla.1879). Here, the University Press never charged with the Plaintiff with any crime, let alone an infamous one. To the contrary, the University Press, as admitted by the Plaintiff and reflected in his cited exhibits to the Second Amended Complaint, merely reported a criminal investigation by a state agency, and did not "charge" the Plaintiff with any infamous crime. The allegation by the University Police Department also concerned the deposit of sums into another employee's bank account, which hardly qualifies as an "infamous crime" under the law. Therefore, the Plaintiff's allegations against FAU for libel are insufficient as a matter of law.

**ORDERED AND ADJUDGED** that the Defendant's Motion to Dismiss the Plaintiff's Second Amended Complaint is GRANTED, with prejudice.

**DONE AND ORDERED** in Chambers, at West Palm Beach, Palm Beach County, Florida.

50-2018-CA-011407-XXXX-MB 04/19/2020
Scott Kerner Judge
ADMINISTRATIVE OFFICE OF THE COURT

50-2018-CA-011407-XXXX-MB 04/19/2020
Scott Kerner
Judge

Copies furnished:
Christopher J. Whitelock, Esq.
Neil B. Tygar, Esq.

1 Fla. Stat. § 768.28(9)(a) states, "{t}he state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."

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"Appendix C."

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA**
**FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401**

July 20, 2021

**CASE NO.: 4D20-1221**
L.T. No.: 502018CA011407

| | | |
|---|---|---|
| FORTUNO JEANFORT | v. | FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES a/k/a FLORIDA ATLANTIC UNIVERSITY |
| Appellant / Petitioner(s) | | Appellee / Respondent(s) |

**BY ORDER OF THE COURT:**

Ordered that appellant's June 11, 2021 *pro* se motion for rehearing and rehearing en banc is denied. The court correctly granted the motion to dismiss on the ground of absolute immunity. *Fla. State Univ. Bd. of Trs. v. Monk*, 68 So. 3d 316, 319–20 (Fla. 1st DCA 2011); *Crowder v. Barbati*, 987 So. 2d 166 (Fla. 4th DCA 2008)

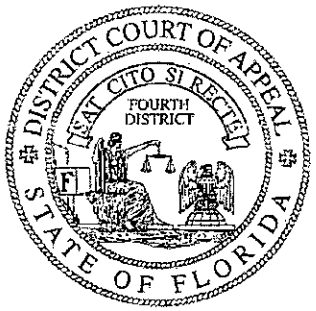
Served:

cc: Christopher J. Whitelock Sheri-Lynn Corey-Forte Fortuno Jeanforte

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
**Fourth District Court of Appeal**



# M A N D A T E

**from**

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA**
**FOURTH DISTRICT**

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Burton C. Conner, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

| | |
|---|---|
| **DATE:** | **August 06, 2021** |
| **CASE NO.:** | **20-1221** |
| **COUNTY OF ORIGIN:** | **Palm Beach** |
| **T.C. CASE NO.:** | **502018CA011407** |

**STYLE:** **FORTUNO JEANFORT** **v.** **FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES a/k/a FLORIDA ATLANTIC UNIVERSITY**

DISTRICT COURT OF APPEAL FOURTH DISTRICT [SAT CITO SI RECTE] STATE OF FLORIDA

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

Served:

cc: Christopher J. Whitelock, Clerk Palm Beach; Sheri-Lynn Corey-Forte; Fortuno Jeanforte

kr