

Libel and Privacy Claims Over News Coverage of Sexual Harassment Complaint Dismissed

Innocent Construction and Fair Report Privilege Protect Media

By Steven Mandell, Natalie Harris
and Catherine Gibbons

An Illinois state court this month dismissed libel and privacy claims against the Chicago Sun Times, Fox Television and Cumulus Broadcasting over a news report about a federal lawsuit filed against Northwestern University arising from a student's allegations of sexual harassment by a university professor. [Ludlow v. Sun Times Media, LLC, et al.](#) No. 2014 L 1529 (Ill. Cir. Ct. Cook Cty. July 16, 2014) (Flanagan, J.). The news report did not name the professor and thus could be innocently construed as not being "of and concerning" plaintiff. Moreover, the news report was a fair and accurate summary of the federal lawsuit allegations about the professor.

Background

On February 10, 2014, Northwestern University undergraduate journalism student Yoona Ha filed a complaint in U.S. District Court alleging discrimination and retaliation by the university following her report of sexual harassment committed by Northwestern philosophy professor Peter Ludlow.

In her federal complaint, Ms. Ha alleged that in 2012, after she had been a freshman student in Professor Ludlow's "Philosophy of Cyberspace" class, she accompanied him to an art event related to his field of research and interest. (The professor's course involved the ethical and moral considerations of the "virtual world" and included the showing of videos of avatar characters engaged in sex.)

According to Ms. Ha's lawsuit, on the evening in question "Ludlow commented on how attractive [she] was and started to rub her back and kiss her at the bar." Then Ms. Ha claimed that Ludlow took her to a bar and urged her to drink until she "was too intoxicated to put up any meaningful resistance to [his] unwelcome advances." Ms. Ha further alleged in her lawsuit that she proceeded to go in and out of

consciousness and when she regained consciousness "she was in an elevator going up to Ludlow's apartment, with Ludlow furiously making out with [her]." According to Ms. Ha, she "begged Ludlow to stop," but he "told [her] it was 'inevitable' that they would have sex." Ms. Ha claimed that she woke up in Ludlow's bed with his arms around her and that she "panicked and blacked out."

Ms. Ha alleged that following the incident, Ludlow "begged [her] not to tell anyone, and told her that he could mentor her academically or pay her money." According to Ms. Ha's lawsuit, she was hospitalized after attempting to commit suicide "as a result of the stress and trauma" of these events and she was diagnosed with Post Traumatic Stress Disorder (PTSD) which requires ongoing psychiatric care.

Northwestern University's Investigation

Ms. Ha's lawsuit alleged that she reported the incident to another professor, Northwestern conducted an investigation and the university concluded, among other things, that Ludlow did engage in unwelcome and inappropriate sexual advances toward Ms. Ha. Specifically, Northwestern found that Ludlow "initiated kissing, French kissing, rubbing [Ms. Ha's] back, and sleeping with his arms on and around [Ms. Ha]," according to Ms. Ha's lawsuit.

Ms. Ha also alleged that Northwestern found that Ms. Ha was incapacitated due to heavy consumption of alcohol purchased for her by Ludlow and that Ms. Ha was unable to offer meaningful consent. Northwestern also allegedly found that Professor Ludlow told Ms. Ha that he thought Ms. Ha was attractive, discussed his desire to have a romantic and sexual relationship with her, and shared other personal information of a sexual nature, all of which was unwelcome to Ms. Ha. Northwestern disciplined Ludlow for violating

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Northwestern's Policy on Sexual Harassment, but did not terminate his employment, according to Ms. Ha's lawsuit.

Professor Sues Local News Media

On February 10, 2014, the same day Ms. Ha filed her complaint in federal court against Northwestern, the *Chicago Sun-Times* published, and disseminated via wire service, an online article about the lawsuit with the headline: "Student allegedly raped by professor suing Northwestern University." Notably, neither the headline, nor the article, identified Professor Ludlow by name.

Chicago-based television station WFLD Fox 32 and talk radio station WLS AM 890 obtained the wire service story and published it verbatim on their respective websites. The story recounted Ms. Ha's lawsuit allegations, including her claims that a Northwestern philosophy professor had sexually assaulted her, "furiously" made out with her, that she "begged him to stop" and that he told her it was "inevitable that they would have sex."

Days later, Professor Ludlow sued the *Chicago Sun-Times*, Fox Television Stations, Inc. and Cumulus Broadcasting, LLC for defamation and false light invasion of privacy, alleging that all the news stories were false and defamatory because they used the word "raped" in their headlines even though Ms. Ha's lawsuit never used the word "rape" and her lawsuit alleged that Mr. Ludlow "sexually assaulted" her without any specific allegation of sexual intercourse.

Complaint Dismissed With Prejudice

The three media defendants moved to dismiss Professor Ludlow's complaint for failure to state a claim. The Court granted defendants' motions and dismissed Professor Ludlow's complaint without leave to amend. The Court concluded that Professor Ludlow failed to plead facts which

would lead others to understand that the article was "of and concerning" him because the article did not name him and held that "the defamation claim here is . . . susceptible to an innocent construction as it could be reasonably interpreted as referring to someone other than the Plaintiff and not injurious to him." The Court also held that because the article did not name him, the article "is not defamation *per se* as the Plaintiff would need to refer to extrinsic facts to demonstrate the defamatory nature of the word as to him."

The Court also held that the article was a fair report of Ms. Ha's lawsuit against Northwestern University. Professor Ludlow conceded that the federal complaint was an "official proceeding" and the Court held that the word "raped" in the article headline was a fair abridgement of the sexual assault allegations in the complaint. The Court held that "[i]n common usage and in dictionaries, the terms 'rape' and 'sexual assault' are synonymous." In addition, the Court concluded that use of the word "rape" in the headline of the article had the same "gist or sting" as the allegations of sexual assault and other related complaint allegations (including the professor's unwelcome sexual advances, sexual conduct, and statements regarding inevitable sex, and the student's awakening with the professor's arms around her and her lack of consent).

The Court did not address the wire service defense raised by the media defendants that simply republished the *Sun-Times* wire story and headline, which has yet to be recognized, in Illinois.

Sun-Times Media, LLC was represented by Damon E. Dunn and Seth A. Stern of Funkhouser Vegosen Liebman & Dunn Ltd., Chicago. *Cumulus Broadcasting, LLC* was represented by Floyd A. Mandell, Carolyn M. Passen, and Eugene E. Endress of Katten Muchin Rosenman LLP, Chicago. *Fox Television Stations, Inc.* was represented by Steven P. Mandell, Natalie A. Harris and Catherine L. Gibbons of Mandell Menkes LLC, Chicago. Peter Ludlow was represented by Kristing M. Case and Kate Sedey of The Case Law Firm, Chicago.

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