

Exhibit H

Pagination

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Majority Opinion >

New York Supreme Court, New York County

FRANK MILO v. CBS, HOLT, RINHART & WINSTON, RICHARD HAMMER, and JOSEPH J. COFFEY JR.

September 25, 1987

Defamation action against publisher, author and source. On defendants' motion for summary judgment.

Granted.

Emilio Nunez, of Lipsig, Sullivan & Liapakis, for plaintiff.

Ronald E. Guttman, Douglas P. Jacobs, and Laura V. Jones for defendant.

Edwards, J.:

Full Text of Opinion

This is a motion by the defendants for an order pursuant to CPLR 3212 granting summary judgment.

The plaintiff Frank Milo owns and operates Milo Printing located at East Twelfth Street and Avenue A in Manhattan.

The defendants CBS and Holt, Rinehart & Winston published a book written by the defendant Hammer. The story is based on the recollections of the defendant Coffey, a retired New York City Police detective.

The book, entitled Vatican Connection, states that the events described are true. It describes a plot whereby the Vatican purchased counterfeit securities from organized crime.

The work contains two references to a Louis Milo. At page 223 the following language appears:

"Because of the size of the job and the need for dispatch, the work should not be given to a single supplier but should be split in half. One part of the engraving and printing was assigned to Louis Milo, whose printing plant on Avenue A and Twelfth Street was hard by Jimmy's Lounge and Rizzo's L and S Coffee Shop. The other half was handed to Ely Lubin, a friend of Ricky Jacobs in Los Angeles who worked with a shop of black printers and engravers on Melrose Avenue. Working from authentic certificates, the engravers on both coasts carefully duplicated the originals, leaving blank only the serial numbers, ownership and signatures. From these plates, Milo in New York and Lubin's printers in Los Angeles set their presses rolling and soon that authentic bond paper had been transformed into the sample package of \$14.5 million in securities - American Telephone and Telegraph Company, \$10,000, 7% bonds; Chrysler

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Corporation, \$5,000, 8 ⁷/₈ % bonds; General Electric Company, \$10,000, 7 ¹/₂ % bonds; and Pan American World Airways, \$10,000, 11 ¹/₈ % bonds. The printing took a little longer than usual, but the demand had been for care, and there had been the promise that this was only a beginning, barely a start on the work that would consume that next weeks and months, until October.

In New York, Milo neatly stacked and packaged his bonds and turned them over to Rizzo. Rizzo handed them to a courier who boarded a plane for Los Angeles, where they were merged with the bonds coming off the presses of Lubin's people. Once Rizzo had seen them off, he called his master forger, William Benjamin, in Philadelphia. The first part of the job was done, he said. Now it was up to Benjamin to finish the work, to make the certificates ready for delivery to Rome."

The second reference to Louis Milo appears at page 306.

"For instance: In December 1979, a case was dropped on Coffey's desk in the Organized Crime Homicide Task Force. A man named Louis Milo had been found murdered in the trunk of his car. The name was not unfamiliar. Milo was [*2] the New York printer who had turned out the counterfeit bonds for the Vatican. For a day, Coffey looked in vain for a possible connection. But Milo had been murdered because of money he owed and because of his links to a pornography ring."

The complaint sounds in defamation. The defendants argue that the statement is not of concerning the plaintiff Frank Milo and the plaintiff will be unable to establish that the defendants acted in a grossly irresponsible manner.

There are numerous similarities between the plaintiff Frank Milo and the Louis Milo described in the book. The plaintiff Frank Milo's print shop is located at the address given in the book. The plaintiff Frank Milo had a brother Louis Milo, who died of natural causes in 1983, and used to work in the shop.

A second Louis Milo, operated Milo Graphics at 9 East Sixteenth Street, Manhattan. This Louis Milo was indicted for counterfeiting, and is the Louis Milo who was found murdered in 1979. Although the defendants do not concede it, this is probably the Milo the book intended to make reference to.

Where the plaintiff is a private individual, and the content of the writing is arguably within the sphere of legitimate public concern (i.e. reasonably related to matter warranting public exposition), the party defamed must establish, by a preponderance of the evidence, that the publisher acted in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties (*Chapadeau v. Utica Observer-Dispatch, Inc.*, 38 NY2d 196 [1 Med.L.Rptr. 1693]). In the instant case the Chapadeau standard applies, since the book is certainly one that is arguably within the sphere of legitimate public concern. Once there is an un rebutted showing that the publisher relied upon the integrity of a reputable author and had no substantial reason to question the accuracy of the information provided by such source, the publisher cannot be held responsible because that information is subsequently found to be false (*Rinaldi v. Holt, Rinehart & Winston*, 42 NY2d 369 [2 Med.L.Rptr. 2169]; cert. denied 434 US 969 [3 Med.L.Rptr. 1432]).

In the instant case, the author Hammer had worked for Time and previously written six non-fiction books. It is un rebutted that the author is reputable. Thus, the publisher was entitled to rely on an experienced author, and the defendants CBS and Holt, Rinehart & Winston's motion for summary judgment, is granted.

In addition, as a matter of law, the book is not of and concerning the plaintiff Frank Milo (*Carlucci v. Poughkeepsie Newspapers, Inc.*, 57 NY2d 883 [8 Med.L.Rptr. 2503]). The book refers to a Louis Milo, and not to the plaintiff Frank Milo.

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Finally, there is no evidence that either the author Hammer, or the retired Detective Coffey acted in a grossly irresponsible manner.

Accordingly, the defendant's motion for summary judgment, is granted.

Settle order.