

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

JOHN PAUL MAC ISAAC, )  
Plaintiff/Counterclaim )  
Defendant, )  
 )  
v. ) C.A. No. S22C-10-012 RHR  
 )  
CABLE NEWS NETWORK, INC., )  
POLITICO LLC, and BFPCC, INC., )  
Defendants, )  
 )  
and )  
 )  
ROBERT HUNTER BIDEN, )  
Defendant/Counterclaim )  
Plaintiff. )

Submitted: April 16, 2024  
Decided: September 30, 2024

*Upon Defendant Cable News Network, Inc.'s Motion to Dismiss,*  
**GRANTED**

*Upon Defendant Politico LLC's Motion to Dismiss,*  
**GRANTED**

*Upon Defendant BFPCC, Inc.'s Motion to Dismiss,*  
**GRANTED**

*Upon Plaintiff/Counterclaim Defendant John Paul Mac Isaac's Motion to Dismiss  
Counterclaims,*  
**GRANTED**

*Upon Defendant/Counterclaim Plaintiff Robert Hunter Biden's Motion for  
Summary Judgment,*  
**GRANTED**

*Upon Defendant Robert Hunter Biden's Motion to Strike Subpoenas,*  
**MOOT**

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ROBINSON, J.

This case began as a defamation claim filed by plaintiff against Cable News Network, Inc., Politico LLC, Robert Hunter Biden, and the Biden for President Campaign Committee, Inc. Biden countersued plaintiff, asserting invasion-of-privacy and related claims. This decision grants CNN’s, Politico’s, and Biden for President Campaign Committee, Inc.’s motions to dismiss, grants Biden’s motion for summary judgment, and grants plaintiff’s motion to dismiss Biden’s counterclaims. Another pending motion—Biden’s motion to strike third party subpoenas—is now moot.

### **BACKGROUND**

The following background is drawn from the largely undisputed facts in the pleadings and the documents they incorporate by reference. John Paul Mac Isaac (“Mac Isaac”) was the owner of The Mac Shop, Inc., a computer repair store in Wilmington, Delaware (the “Mac Shop”).<sup>1</sup> He claims that in April 2019, Robert Hunter Biden (“Biden”), the son of the former vice president, sought the recovery of information from several damaged computers and enlisted Mac Isaac’s help. Mac Isaac states he had Biden sign a repair authorization that acknowledged that “[e]quipment left with the Mac Shop after ninety days of notification of completed service will be treated as abandoned and you agree to hold the Mac Shop harmless

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<sup>1</sup> D.I. 86, Second Amend. Compl. (“Compl.”) ¶ 11.

for any damage or loss of property” (the “Repair Authorization”).<sup>2</sup> Mac Isaac claims he asked Biden to provide Mac Isaac with an external hard drive to which Mac Isaac could transfer the recovered data from a damaged laptop computer, and that Biden did so on April 13.<sup>3</sup> Later that day, Mac Isaac called Biden and advised Biden that he had recovered the data.<sup>4</sup> On April 17, Mac Isaac sent an electronic invoice to Biden for his services in the amount of \$85.00.<sup>5</sup> Biden did not pay the invoice or return to the Mac Shop to retrieve the hard drive.

Mac Isaac accessed Biden’s personal data on his laptop. Mac Isaac claims that he needed to review the data to preserve it and became alarmed at some of the information he found. In late July 2019 through October 14, 2020, Mac Isaac had various interactions with the Federal Bureau of Investigation (“FBI”), U.S. Congressional staff members, and Robert Costello (“Costello”), an attorney for Rudolph Giuliani, who was an associate of then-president Donald J. Trump. In December 2019, in response to a federal grand jury subpoena, Mac Isaac turned over the laptop and hard drive to the FBI. Mac Isaac kept a copy of the hard drive for himself. In August 2020—after the contents of the hard drive, which Mac Isaac believed were relevant to then-president Trump’s impeachment hearing, were not

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<sup>2</sup> *Id.*, Ex. A.

<sup>3</sup> *Id.* ¶ 18.

<sup>4</sup> *Id.* ¶ 19.

<sup>5</sup> *Id.* ¶ 20.

disclosed during the hearing—Mac Isaac provided a copy of the recovered data and the Repair Authorization to Costello. Mac Isaac claims he told Costello that he wished to remain anonymous. That request was not honored.

On October 14, 2020, the New York Post published an article titled, “Smoking-gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to VP Dad.”<sup>6</sup> The article provides many details allegedly stemming from “a massive trove of data recovered from a laptop computer.”<sup>7</sup> That article did not name Mac Isaac, but it initially published a photograph of the Repair Authorization that included the name of the Mac Shop.

Despite his request to remain anonymous, Mac Isaac did not remain quiet. Whether he was motivated to set the record straight or to benefit from his role in a political controversy, Mac Isaac gave several media interviews, including one with defendant CNN. He claims these interviews were done under duress because he was ambushed by the media and was so intimidated by them that he gave several interviews. Several weeks later, to share his side of the story, Mac Isaac’s attorney submitted an article to the Washington Post and the Wall Street Journal, neither of

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<sup>6</sup> *Id.* ¶ 36; see also Emma-Jo Morris & Gabrielle Fonrouge, New York Post, *Smoking-gun Email Reveals How Hunter Biden Introduced Ukrainian Businessman to VP Dad* (Oct. 14, 2020), <https://nypost.com/2020/10/14/email-reveals-how-hunter-biden-introduced-ukrainian-biz-man-to-dad/>.

<sup>7</sup> *Id.*

which published the article. Mac Isaac eventually published it on a website, justthenews.com.

On October 19, 2020, in response to the disclosure of the contents of the laptop, over fifty former intelligence officials released a “Public Statement on the Hunter Biden Emails” that expressed their concern that the release of the emails “has all the classic earmarks of a Russian information operation.”<sup>8</sup> Mac Isaac claims that the defendants’ reporting and comments on this statement defamed him, by, among other things, suggesting that he was a Russian agent.

Mac Isaac initially filed his complaint on October 17, 2022 and named, in addition to the current defendants, United States Representative Adam Schiff. He filed a first amended complaint on January 20, 2023 and then filed a motion for leave to file a second amended complaint. Meanwhile, several of the defendants filed motions to dismiss. Before this court could act on those motions, the United States removed the case to federal court under the Westfall Act after certifying that Representative Schiff was acting in his official capacity as a member of Congress when he made the allegedly defamatory statements. In March 2023, the District Court for Delaware granted the United States’ motion to dismiss and remanded the case to this court.

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<sup>8</sup> Compl., Ex. F.

Mac Isaac filed his second amended complaint (“SAC”) on August 2, 2023 alleging defamation, defamation per se, aiding and abetting, and conspiracy against all defendants. In response, CNN and Politico filed motions to dismiss. After conducting limited discovery, Biden filed a motion for summary judgment. This court conducted oral argument with defendants CNN, Politico, and Biden. The Biden for President Campaign Committee, Inc. (“BFPC”) was delayed in receiving and responding to the SAC, but eventually also filed a motion to dismiss. With the benefit of that oral argument, and the briefing of BFPC’s motion, further oral argument on BFPC’s motion to dismiss is not necessary.

## **STANDARDS OF REVIEW**

### **A. Motions to Dismiss**

Under Superior Court Civil Rule 12(b)(6), the court will dismiss a plaintiff’s complaint if it fails to state a claim upon which relief can be granted.<sup>9</sup> “Dismissal is warranted only when ‘under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted.’”<sup>10</sup> The court, however, need not “accept every strained interpretation of the allegations proposed by the plaintiff.”<sup>11</sup> For defamation claims specifically, early dismissal for failure to state a claim “not only protects against the costs of meritless litigation, but provides

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<sup>9</sup> Del. Super. Ct. Civ. R. 12(b)(6).

<sup>10</sup> *Murray v. Mason*, 244 A.3d 187, 192 (Del. Super. Ct. 2020) (quoting *In re Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 168 (Del. 2006)).

<sup>11</sup> *Id.*

assurance to those exercising their First Amendment rights that doing so will not needlessly become prohibitively expensive.”<sup>12</sup>

## **B. Motions for Summary Judgment**

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.<sup>13</sup> Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.<sup>14</sup> As such, “[t]he purpose of summary judgment is to avoid the delay and expense of a trial where the ultimate fact finder, whether judge or jury, has nothing to decide.”<sup>15</sup> All facts are viewed in a light most favorable to the non-moving party.<sup>16</sup>

## **DISCUSSION**

A plaintiff may recover damages when a media outlet or an individual makes a statement that tends to harm the plaintiff’s “reputation, diminish [the plaintiff’s] esteem, respect, goodwill, or confidence...”<sup>17</sup> A communication is defamatory if the

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<sup>12</sup> *Fairbanks v. Roller*, 314 F. Supp. 3d 85, 89 (D.D.C. 2018) (cited by *Owens v. Lead Stories, LLC*, 2021 WL 3076686, at \*9 (Del. Super. Ct. July 20, 2021)).

<sup>13</sup> *Preston Hollow Cap. LLC v. Nuveen LLC*, 2022 WL 2276599, at \*1 (Del. Super. Ct. June 14, 2022); *see also* Super. Ct. Civ. R. 56(c).

<sup>14</sup> *Id.*

<sup>15</sup> *Merrill v. Crothall-Am., Inc.*, 606 A.2d 96, 99 (Del. 1992).

<sup>16</sup> *Preston Hollow Cap. LLC*, 2022 WL 2276599, at \*1.

<sup>17</sup> *Spence v. Funk*, 396 A.2d 967, 969 (Del. 1978).



statement would deter third persons from associating or dealing [with the plaintiff].”<sup>18</sup> To successfully bring a defamation claim under Delaware law:

Plaintiff must plead and ultimately prove that: 1) the defendant made a defamatory statement; 2) concerning the plaintiff; 3) the statement was published; and 4) a third party would understand the character of the communication as defamatory.<sup>19</sup>

If the statement meets these elements of defamation, the court must decide whether the plaintiff is a public or private figure. If the plaintiff is a public figure, even for a limited purpose, the “plaintiff must [also] plead and prove that the statement is false, and that the defendant made the statement with actual malice.”<sup>20</sup> When the plaintiff is a private figure, the plaintiff will recover if the publisher negligently publishes a libelous matter.<sup>21</sup> The question of whether a plaintiff is a public or private figure is one of law, not fact.<sup>22</sup> In considering the truthfulness of a publication, the court will consider whether “the ‘gist’ or ‘sting’ of the article was true.”<sup>23</sup>

#### **A. CNN’s Motion to Dismiss**

Mac Isaac alleges that CNN defamed him twice: (1) during an October 16, 2020 interview with Representative Adam Schiff on the CNN show, *The Situation*

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<sup>18</sup> *Id.*

<sup>19</sup> *Page v. Oath Inc.*, 270 A.3d 833, 842 (citing *Doe v. Cahill*, 884 A.2d 451, 463 (Del. 2005)).

<sup>20</sup> *Id.*

<sup>21</sup> *Gannett Co., Inc. v. Re*, 496 A.2d 553, 556–57 (Del. 1985).

<sup>22</sup> *Agar v. Judy*, 151 A.3d 456, 477 (Del. Ch. 2017) (citing Restatement (Second) of Torts § 580A cmt. c).

<sup>23</sup> *Gannett Co.*, 496 A.2d at 557 (citing *Williams v. WCAU–TV*, 555 F.Supp. 198, 202 (E.D. Pa. 1983)).

*Room* with Wolf Blitzer, and (2) in an online article.<sup>24</sup> During his appearance on *The Situation Room*, Blitzer asked Schiff, “Does it surprise you at all that this information that Rudy Giuliani is peddling very well could be connected to some sort of Russian Government disinformation campaign?” Schiff responded:

**Well we know that this whole smear on Joe Biden comes from the Kremlin.** That’s been clear for well over a year now that they’ve been pushing this false narrative about the Vice President and his son. And, you know, the idea that the President, that the White House Counsel, and others were made aware that Giuliani was being used by **Russian intelligence** and using **Russian intelligence** in the sense of meeting with **an agent of the Kremlin** and pushing out this **Kremlin false narrative**. . . . **But clearly, the origins of this whole smear are from the Kremlin.**<sup>25</sup>

And, later in the interview, after acknowledging that the intelligence community had not provided more information about these allegations, Schiff stated, “But we do know this: the Russians are once again actively involved in trying to denigrate the Vice President.”<sup>26</sup> Mac Isaac argues that because he was well-known as the source of the laptop, Schiff’s statements imputed that Mac Isaac was an agent of the Kremlin, and that CNN defamed him by publishing this interview.

The online article included a statement from the assistant FBI director, Jill C. Tyson (“Tyson”). On October 19, 2020, the then-director of national intelligence,

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<sup>24</sup> Marshall Cohen *et al.*, *US Authorities Investigating if Recently Published Emails are Tied to Russian Disinformation Effort Targeting Biden* (Oct. 16, 2020), CNN, <https://www.cnn.com/2020/10/16/politics/russian-disinformation-investigation/index.html>.

<sup>25</sup> Compl. ¶¶ 66, 67 (emphasis added in Compl. and reproduced here).

<sup>26</sup> *Id.* ¶ 69.

John Ratcliffe, stated on a national news program that there was no intelligence to support the claim that the contents of the laptop were part of a Russian disinformation campaign. The next day, Tyson wrote a letter stating that the FBI had nothing to add to that statement. When CNN published an article on these events, it mentioned “a computer repair store owner in Delaware” and wrote that “Tyson suggested that the review was continuing.”<sup>27</sup> Mac Isaac points out that the letter did not say that the review was continuing, and argues that by publishing this statement, CNN defamed him.

CNN argues that the motion to dismiss should be granted because (1) these statements do not concern Mac Isaac, (2) they are protected by the Fair Report Privilege, and (3) because Mac Isaac does not plead facts that show CNN acted with actual malice. CNN points out that the sentence about the continuing review immediately preceded a direct quotation from Tyson’s letter that stated if additional intelligence is developed, the FBI would consider the need for further briefing.

A plaintiff must show that a publication, which tends to harm his reputation, was “concerning him.”<sup>28</sup> These publications must mention the plaintiff either directly or indirectly.<sup>29</sup> A reader must be able to infer from the contents of the

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<sup>27</sup> D.I. 89, Def. Cable News Network, Inc.’s Mot. to Dismiss Pl.’s Second Am. Compl. (“CNN’s Mot. to Dismiss”), Ex. 3.

<sup>28</sup> *Page*, 270 A.3d at 842.

<sup>29</sup> *See Helicopter Helmet, LLC v. Gentex Corp.*, 2018 WL 2023489, at \*4 (D. Del. May 1, 2018).

publication that the statement is referring to the plaintiff.<sup>30</sup> In *Helicopter Helmet, LLC v. Gentex Corp.*, the Delaware District Court found that an advertisement using the phrase “Is your helmet a dangerous counterfeit?” was not actionable because the advertisement did not mention any helicopter helmet manufacturer by name.<sup>31</sup> In that case, the plaintiffs argued that only a small number of companies manufacture helicopter helmets and therefore the statement must be understood as referring to the plaintiffs. The court, however, dismissed these claims because the advertisement must mention the plaintiffs “either directly or obliquely.”<sup>32</sup>

In the present case, Mac Isaac argues he was defamed by a statement that did not mention him. In the statement, neither he nor his business is named or referenced. While the statement mentions several people, none are Mac Isaac. There are no statements or descriptions that would direct or lead a listener to understand that Mac Isaac was somehow involved in the alleged Russian disinformation campaign. Without more information or context, no reasonable person would have reason to believe that Mac Isaac was involved in Russian disinformation. Nor can it be reasonably inferred that the statements actually defame Mac Isaac. Once he turned over the laptop to the FBI, members of Congress, and Costello, the controversy over the laptop took on a life of its own and Mac Isaac’s identity faded into the

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<sup>30</sup> See *Williams v. Howe*, 2004 WL 2828058, at \*4 (Del. Super. Ct. May 3, 2004).

<sup>31</sup> *Helicopter Helmet, LLC*, 2018 WL 2023489, at \*4.

<sup>32</sup> *Id.*

background. Although a CNN viewer may be aware that Mac Isaac was the person who turned over Biden’s laptop, neither CNN nor its guests state that he was part of the disinformation campaign. Therefore, Mac Isaac cannot meet the burden to show that CNN’s statements concerned him or were defamatory towards him.

Even if this court finds the statements concerned Mac Isaac, his defamation claim must fail because Mac Isaac is a limited public figure and must therefore plead facts that show CNN acted with actual malice. To be considered a “limited public figure” a plaintiff must “thrust [himself] to the forefront of particular public controversies<sup>33</sup> in order to influence the resolution of the issues involved.”<sup>34</sup> He must “invite attention and comment.”<sup>35</sup> Here, Mac Isaac clearly thrust himself into this controversy. He now says that he wished to remain anonymous, but he put events into motion that he surely knew would spin out of control. He argues in his briefs that the two initial interviews he gave to the media—one of which was nearly an hour long—shortly after the New York Post published the article were coerced and not voluntary because he was ambushed by the reporters. But he took many other acts that put himself into the controversy. He tried to get his version of events

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<sup>33</sup> See 50 Am. Jur. 2d Libel and Slander § 72 (“A public controversy is not simply a matter of interest to the public; rather, it must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way.”).

<sup>34</sup> *Gertz*, 418 U.S. at 345; see also *Page*, 270 A.3d at 843 (“The Court extended this high bar to public figures in *Curtis Publishing Co. v. Butts*, and to what are generally known as limited purpose public figures in *Gertz v. Robert Welch*.”).

<sup>35</sup> *Gertz*, 418 U.S. at 345.

published by the Wall Street Journal and the Washington Post, and then later published the article online. He claims his motivations for getting his statement published was to “set the record straight” and to “get the true story out to people.”<sup>36</sup> He also admits that he was frustrated that then-president Trump did not have access to the laptop’s data during his impeachment trial.<sup>37</sup> As to his ongoing public involvement—including publishing a book about the laptop controversy and attending conferences where he sells copies of the information from the laptop—he claims he is only doing so because he needs to earn a living to replace the income he lost when he closed the Mac Shop. But, regardless of his motivations, Mac Isaac voluntarily thrust himself into the controversy, thereby making himself a limited public figure.

For a limited public figure to maintain an action for defamation, he or she must plead actual malice. Although Mac Isaac uses the term “actual malice” in his SAC, those words in and of themselves are not sufficient to meet the pleading burden. As the Delaware Supreme Court noted, “[i]n a case where the defendant is an institution, the state of mind must be ‘brought home’ to the person or persons in the ‘organization having responsibility for the publication....’”<sup>38</sup> Here, Mac Isaac

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<sup>36</sup> D.I. 121, Pl.’s Ans. Br. in Opp’n to Def. Politico LLC’s Mot. to Dismiss Pl.’s Second Am. Compl. (“Pl.’s Ans. Br. to Politico’s Mot. to Dismiss”) at 26.

<sup>37</sup> Compl., Ex. D.

<sup>38</sup> *Page*, 270 A.3d at 844 (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 287 (1964)).

does not name any person or persons at CNN who were responsible for any false statements; his general allegations of a wide-ranging conspiracy are insufficient to demonstrate actual malice. For these reasons, CNN’s motion to dismiss is GRANTED.

**B. Politico’s Motion to Dismiss**

Mac Isaac claims the following headline Politico published on October 19, 2020 defamed him: “Hunter Biden story is Russian disinfo, dozens of former intel officials say.”<sup>39</sup> In the body of the article, the only reference to Mac Isaac is to a “Mac shop owner in Delaware.”<sup>40</sup> Mac Isaac admits in his briefing that the Politico article is substantially true, but takes issue with the headline, and argues that many readers browse headlines only.<sup>41</sup> He points out that the headline is false because it states that the story *is* Russian disinformation, while the letter signed by the national security experts only states that they *suspected* disinformation. Mac Isaac claims that the headline is “propaganda” and is used to “deliberately spread false allegations for the purpose of injuring a cause...or a person (Plaintiff and others).”<sup>42</sup> Further, Mac

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<sup>39</sup> Pl.’s Ans. Br. to Politico’s Mot. to Dismiss at 13.

<sup>40</sup> Compl. ¶ 108.

<sup>41</sup> Pl.’s Ans. Br. to Politico’s Mot. to Dismiss at 11–12.

<sup>42</sup> *Id.* at 15.

Isaac admits if the court deems the headline as non-defamatory, he does not have a claim.<sup>43</sup>

Regardless of whether the headline is true or false, it does not mention Mac Isaac, either directly or indirectly. Furthermore, the sub-headline states, “More than 50 former intelligence officials signed a letter casting doubt on the provenance of a New York Post story on the former vice president’s son,” which clarifies the headline. As with CNN’s motion to dismiss, even if the statements were defamatory or concerned Mac Isaac, he is a limited public figure and he has not adequately pled actual malice. Therefore, Politico’s motion to dismiss is GRANTED.

### **C. BFPCC’s Motion to Dismiss**

Mac Isaac claims that he was defamed by BFPCC officials and by candidate-Joseph Biden himself in five separate statements, each of which is quoted in the SAC. The statements all claim the contents of the laptop are Russian disinformation but do not mention Mac Isaac or his business. The SAC provides a date for only one of these statements, October 14, 2020, but it also provides hyperlinks to various articles that supposedly include the defamatory statements. These hyperlinks are problematic. The one paragraph with a date in this count alleging defamation by BFPCC, Paragraph 136, has a link to a lengthy Politico article dated October 14,

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<sup>43</sup> *Id.* (“Had Politico used a different (accurate) headline or if they had changed it once it came to light that the headline clearly did not match the message of the Article, Plaintiff may not have a valid claim against them.”).



2020 that contains a quotation from a Biden campaign official. The court will *assume* the statement was made the same day the article was published, since that was the date of the New York Post article. Paragraphs 136 and 137 provide a link to an article dated November 12, 2020 on Substack written by Glenn Greenwald that mentions the two supposedly defamatory statements, but does not say when they were made. Paragraph 139 contains a link to an article on the National Review website titled, “Sure Seems Joe Biden Knowingly Lied about the Hunter Biden Laptop Story.” When the court visited that website, it displayed a date of March 17, 2022. The article contains the quotation cited in the SAC, but it only says that Joseph Biden made that statement in 2020. Finally, the link in Paragraph 140 does not work, and Paragraph 140 does not otherwise provide the date the statement was supposedly made. Simply put, the SAC—and the initial complaint and first amended complaint—does not set forth the exact dates these statements were made. And, to the extent Mac Isaac relies on the hyperlinks to advance substantive claims, they do not provide further clarity.

Clarifying the specific dates when the allegedly defamatory statements were made is important because one of arguments BFPCC raises in its motion to dismiss is that the claims were filed outside the two-year statute of limitations. In their briefing, the parties seem to agree all five statements were made between October 14, 2020 and October 24, 2020. Mac Isaac filed the initial complaint on October 17,

2022, which was more than two years after the only date mentioned in the count against BFPCC. That complaint, however, did not name BFPCC in the caption, but did claim defamation and defamation per se against BFPCC in the body of the complaint in Count 5. BFPCC was not served with that complaint. Mac Isaac concedes he made a clerical error by omitting BFPCC in the caption. Mac Isaac filed a first amended complaint on January 20, 2023 and the SAC on August 2, 2023, both of which properly named BFPCC in the caption.

The court is well within its purview to grant BFPCC’s motion to dismiss because Mac Isaac filed the initial complaint—the one that does not properly name BFPCC in the caption—two years after the only date alleged in the initial complaint, October 14, 2020. But, the motion to dismiss should also be granted because Mac Isaac filed the first amended complaint—that fixed the “clerical” problem that omitted BFPCC from the caption—on January 20, 2023, well more than two years after the last defamatory statement (as agreed to by the parties in their briefing) on October 25, 2020. Mac Isaac argues that Superior Court Civil Rule 15(c) allows him to relate back to the initial complaint. This Rule allows an amendment if three criteria are met. In this case, Mac Isaac cannot meet the third requirement in 15(c)(3) because he cannot establish that BFPCC knew or should have known of his clerical error. This situation was not one where there was a mistake as to the identity of the party—Mac Isaac’s initial complaint sets out a claim against BFPCC in the body, so

he clearly knew the party he intended to sue. He also failed to request a praecipe to issue a summons to BFPCC of the flawed initial complaint, which would have put BFPCC on notice that it was intended to be included in this litigation.

Finally, even if the claim against BFPCC were decided on the merits, this court would grant the motion to dismiss because—consistent with the rulings on the other defendants’ motions to dismiss—the statements, even considered in the light most favorable to Mac Isaac, are not defamatory and are not about Mac Isaac. And Mac Isaac, as a limited public figure, has not shown actual malice. Therefore, BFPCC’s motion to dismiss is GRANTED.

**D. Mac Isaac’s Motion to Dismiss Biden’s Counterclaims**

Biden initially filed counterclaims against Mac Isaac on March 17, 2023 while this case was briefly in federal court. After the federal court remanded this case to this court, Biden filed six counterclaims against Mac Isaac: (1) invasion of privacy by intrusion, (2) invasion of privacy by publication of private facts/matters, (3) conspiracy to invade privacy by intrusion, (4) conspiracy to invade privacy by publication of private facts/matters, (5) aiding and abetting an invasion of privacy by intrusion, and (6) aiding and abetting an invasion of privacy by publication of private facts/matters.

Biden claims that Mac Isaac invaded his privacy when Mac Isaac accessed the laptop’s data and that he published that private data when he gave it to several

people, and that he continues to do so. Biden points out that while some contents were shared in 2019 and 2020, Mac Isaac continued to share more information later in 2022 and 2023. For example, Mac Isaac’s initial disclosures contained details about Biden’s financial matters and ties to Ukraine. But in later articles and interviews, Mac Isaac disclosed additional content, including videos of Biden engaging in sexual acts while allegedly under the influence of drugs.<sup>44</sup>

Mac Isaac filed a motion to dismiss Biden’s counterclaims arguing that Biden is outside the statute of limitations for these types of claims. Mac Isaac argues that the statute of limitations for the invasion of privacy by intrusion and related claims ran on either April 12, 2021—two years after he first accessed the laptop’s contents—or, in the alternative, on August 28, 2022—two years after Mac Isaac gave the data to Costello. For the invasion of privacy by publication and related claims, Mac Isaac argues the statute of limitations expired on October 14, 2022—two years after the New York Post published the article about the laptop.

Biden responds that he was “blamelessly unaware of the particularity with which Mac Isaac handled his private data, including the scale and scope of Mac Isaac’s repeated strategic and intentional disclosures of his most intimate information” until Mac Isaac published a book on November 22, 2022 that provided

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<sup>44</sup> D.I. 88, Def. Robert Hunter Biden’s Ans. to Pl.’s Second Am. Compl. (“Biden’s Ans. and Countercl.”) ¶ 55.

additional details of how he accessed the laptop.<sup>45</sup> Biden also points out that Mac Isaac continues to publish and re-publish private facts about him.<sup>46</sup> Therefore, Biden argues, his counterclaims are not barred by the statute of limitations.

The statute of limitations for each of the above referenced causes of actions is two years.<sup>47</sup> Delaware follows the “time of discovery rule” which states that the statute of limitations does not start until a plaintiff has reason to know that a wrong has been committed.<sup>48</sup> If a plaintiff could have discovered the alleged wrong with due diligence, the statute of limitations will continue to run.<sup>49</sup>

The statute of limitations is not tolled when a defendant continues to publish and republish. In the present case, Biden knew that information on his laptop was revealed on October 14, 2020, following the publication of the New York Post article. At that moment, Biden knew his privacy had been invaded and was on notice that the data on his laptop had been compromised and disseminated. As such, the statute of limitations expired on October 14, 2022—that is, Biden was well outside the statute of limitations when he filed his counterclaims in federal court on March

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<sup>45</sup> D.I. 124, Def./Countercl. Pl. Robert Hunter Biden’s Ans. Br. in Opp’n to Pl./Countercl.-Def. John Paul Mac Isaac’s Mot. to Dismiss Countercls. (“Biden’s Ans. to Pl’s. Mot. to Dismiss Countercls.”) at 1.

<sup>46</sup> *Id.* at 12.

<sup>47</sup> *Clark v. Delaware Psychiatric Ctr.*, 2011 WL 3762038, at \*1 (Del. Super. Ct. Aug. 9, 2011); *see also* 10 *Del. C.* § 8119.

<sup>48</sup> *Pack & Process, Inc. v. Celotex Corp.*, 503 A.2d 646, 651 (Del. Super. Ct. 1985).

<sup>49</sup> *Shockley v. Dyer*, 456 A.2d 798, 799 (Del. 1983).

17, 2023. For these reasons, Mac Isaac’s motion to dismiss Biden’s counterclaims is GRANTED.

**E. Biden’s Motion for Summary Judgment**

Mac Isaac alleges Biden defamed him during a CBS interview on April 4, 2021. During this interview, Biden said:

There could be a laptop out there that was stolen from me. It could be that I was hacked. It could be that it was the—that it was Russian intelligence. It could be that it was stolen from me. Or that there was a laptop stolen from me.

Mac Isaac claims that this statement was defamatory, and that the defamation continued when CNN later published an article containing a video with clips of the CBS interview, cited above, and a second CBS interview.<sup>50</sup> Mac Isaac argues that Biden’s statements were slander per se because they maligned Mac Isaac’s business and profession, and that they fall into the category of defamation-by-implication. He claims that through discovery he can prove that Biden was lying because Biden knew the laptop they were discussing was indeed the one Biden left with Mac Isaac.

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<sup>50</sup> D.I. 171, Pl./Countercl. Def. John Paul Mac Isaac’s Ans. Br. in Opp’n to Def./Countercl. Pl. Robert Hunter Biden’s Mot. for Summ. J. (“Pl.’s Ans. Br. to Biden’s Mot. for Summ. J.”) at 6; Paragraph 155 of the Compl. includes Biden’s statement, but it also contains—prefaced by a “See”—a website link to a CNN article about the interview that also contains a video of excerpts of similar statements made by Biden. Until argument and briefing, it was not obvious to the court that the linked interviews were intended to be part of his defamation claim. Whether information contained in the link is part of Mac Isaac’s claim does not affect this court’s analysis.

Biden argues the above statement is not defamatory because it is a protected expression of opinion incapable of being defamatory.<sup>51</sup> Biden focuses on the use of “could” throughout his statement, arguing that the usage shows that he was making a statement of possibilities.<sup>52</sup>

First—as with the rulings on the other defendants’ motions to dismiss—these statements cannot be understood to be defamatory by a reasonable listener. The above statement and similar statements made by Biden do not name or reference Mac Isaac or his business directly or indirectly. A reader must be able to infer from the contents of the publication that the publication is referring to the plaintiff.<sup>53</sup> A reasonable listener would need additional information to link Mac Isaac to the laptop and its contents. If Biden had said that Mac Isaac was the one who stole or hacked the laptop, or was acting as a Russian agent, the statements might be defamatory, but that is far from what Biden said. Biden’s statements to CBS News and repeated by CNN are not defamatory towards Mac Isaac, even by implication. Furthermore, as

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<sup>51</sup> For this argument, Biden relies on the Delaware Supreme Court ruling in *Riley v. Moyed*, 529 A.2d 248 (Del. 1987). More recently, however, in *Cousins v. Goodier*, 283 A.2d 1140, 1158 (Del. 2022), the Court acknowledged that there are occasions where an opinion can be defamatory. In *Cousins*, unlike the facts of this case, the Court found that the defendant’s statements defamed the plaintiff.

<sup>52</sup> In his briefs, Biden also argues that because he had other laptops that he lost track of, he could have been referring to one of those laptops, not the one he left with Mac Isaac. He quotes extensively from Mac Isaac’s deposition to show that even Mac Isaac was confused about what other computers to which Biden could have been referring. From the context of the entire interview, however, it was clear he was being asked about the laptop he left at the Mac Shop, so this argument is unavailing.

<sup>53</sup> See *Howe*, 2004 WL 2828058, at \*4.

discussed above, Mac Isaac is a limited public figure, and he cannot show that Biden's statement was malicious. Therefore, Biden's motion for summary judgment is GRANTED.

**F. The Aiding and Abetting and Conspiracy Claims Against All Defendants**

In the SAC, Mac Isaac alleges that all defendants conspired to hide information obtained from the laptop because they supported the election of now-President Joseph Biden and to oppose the re-election of President Trump. Mac Isaac asserts that if voters had known more about the laptop, Donald Trump would have won the election. At oral argument, Mac Isaac asserted that the discovery process will allow him to expose the conspiracy between the defendants. Because Mac Isaac's defamation claims against all the defendants fail, the derivative claims he raises of civil conspiracy to defame (count 5) and aiding and abetting defamation (count 6) cannot survive.

**G. Biden's Motion to Strike Subpoenas**

While these motions were pending, Mac Isaac filed numerous subpoenas directed at non-parties. Those receiving the subpoenas included members of Biden's family (including his father, uncle, and daughters), numerous government officials (including the Secretary of State of the United States, advisors to President Biden, and the former Acting Director of the CIA), and various business associates of Biden. The subpoenas requested extensive information. For example, the subpoenas



typically sought all communications between the non-parties and Biden, and any documents or communications about Biden from January 1, 2019 to present. Because of the broad and burdensome nature of the subpoenas, and because of the dispositive nature of the pending motions, the court stayed the subpoenas until these motions could be decided. Because this decision terminates this litigation, the motion to strike is MOOT.

### **CONCLUSION**

As explained above, CNN, Politico, and BFPCC's motions to dismiss are GRANTED. Biden's motion for summary judgment is also GRANTED. Mac Isaac's motion to dismiss Biden's counterclaims is GRANTED. Because these rulings terminate this litigation, Biden's motion to strike the subpoenas is MOOT.

**IT IS SO ORDERED.**