

8-29-2017

***Sign Here Petitions LLC v. Andrew D. Chavez, et. al., 1 CA-CV 16-0363 (2017)***

In Arizona, when considering a motion for summary judgment in a defamation case, the superior court must: (1) act as Free Speech gatekeeper and avoid any chilling effect on free expression by protecting against meritless litigation; (2) determine whether a statement is defamatory by considering all of the circumstances surrounding the statement; and (3) employ a reasonable-person test to evaluate the circumstances surrounding an allegedly defamatory statement.

Sign Here and Petition Partners are competitors in the voter-signature-collection industry. Chavez is a managing member of Petition Partners, and is active on social media, including Twitter. In 2014, Sign Here conducted an unsuccessful signature drive under a \$71,000 contract. Part of Sign Here's failure was based on its use of convicted felons to gather signatures. In response to Sign Here's signature-collection efforts, Chavez tweeted several statements that were allegedly inaccurate and defamatory.

After Chavez's tweets, Sign Here filed a defamation action. Chavez and Petition Partners moved for summary judgment, arguing the tweets were incapable of defamatory meaning. The trial court agreed, and granted summary judgment in favor of Chavez and Petition Partners. Sign Here timely appealed.

The Court of Appeals affirmed, finding Sign Here had not presented evidence establishing a *prima facie* defamation case. When considering Sign Here's evidence, the Court applied the constitutional test for fully protected speech because Chavez's tweets contained both commercial and personal elements.

The Court also held that Chavez's statements were substantially true. Although the tweets were exaggerated, the gist was accurate, as interpreted by a reasonable person. Specifically, the Court found Sign Here's service was expensive and that it was not diligent, competent, or effective in its contractual performance. Accordingly, the literal truth of the tweets would not have made a material difference to a reader, and any damage to Sign Here's reputation was caused by its own failure to fulfill its contract.

Finally, the Court affirmed the denial of Sign Here's request for Rule 60(c) relief holding it waived the issue because it failed to request Rule 56(f) relief.