

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK MENDELSON	:	Civil Action
1201 Meadowbank Road	:	
Villanova, PA 19087,	:	
	:	
Plaintiff,	:	No. _____
v.	:	
	:	
THE TRIBUNE COMPANY,	:	
435 North Michigan Avenue	:	
Chicago, IL 60610,	:	
	:	
Defendant.	:	

Jury Trial Demanded

COMPLAINT

Plaintiff Mark Mendelson brings this action for compensatory and punitive damages against The Tribune Company, owner and publisher of *The Morning Call*, for defamation and for invasion of privacy arising out of an extraordinary, 9,100-word article, consuming five full pages of the newspaper published on Sunday, November 24, 2002 -- and subsequently posted as a “feature” article on the *mcall.com* website every day since -- under the following boldface-type headline:

One man is
behind Allentown’s nightmare:
Mark Mendelson

In support of his allegations, Mendelson avers as follows:

A. Parties, Jurisdiction and Venue

1. Plaintiff Mark Mendelson is an individual citizen of Montgomery County, Pennsylvania, with an address as set forth above.

2. The Tribune Company (“Tribune”) is a Delaware corporation with a principal place of business in Illinois, with an address as set forth above. The Tribune acquired *The Morning Call* in or about June 2000, along with several other newspaper properties, as the result of a merger with The Times Mirror Company. The Tribune regularly conducts business in the Eastern District of Pennsylvania through *The Morning Call* and other media properties.

3. On information and belief, the law department of the Tribune reviewed and approved the article about Mendelson prior to its publication.

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, as the amount in controversy exceeds \$75,000 and the parties are citizens of different states.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a), as the defamatory article was published in this district, *The Morning Call* is regularly published in this district, and the Tribune is subject to jurisdiction in this district.

B. The Defamatory Publication

6. A copy of *The Morning Call* article that was first published on November 24, 2002, is attached to the Complaint as Exhibit A and incorporated by reference.

Allentown’s Nightmare

7. The premise of the article is described in the increasingly large print of the introduction to the article:

One man is behind Allentown’s nightmare: Mark Mendelson

8. Setting aside the author's failure to describe exactly what "Allentown's nightmare" is, the premise that Mark Mendelson -- who, according to the article, allegedly owns a mere five properties in Allentown -- is personally responsible for all of the problems of Allentown, is so obviously false and defamatory that damages flow from the headline alone.

9. Moreover, the falsity of the premise of the article is proved by *The Morning Call* itself, which published "year in review" stories for 2001 and 2002 that did not even mention Mendelson as an important business story, let alone the cause of "Allentown's nightmare." Instead, the articles suggested other circumstances that may be the true cause of Allentown's nightmare: massive job losses and squandered pension funds.

a. For example, in its December 2001 year-in-review story, *The Morning Call* identified the following top local business stories of that year: (i) Agere Systems lost \$3.4 billion during the quarter ended September 30, forcing a "massive restructuring program" that resulted in the loss of 4,000 jobs locally; (ii) Bethlehem Steel filed for bankruptcy after 97 years of operation, following losses of \$1.4 billion in the first nine months of 2001 and acknowledging that it could not meet obligations of about \$4 billion in retirees' health costs; and (iii) Supervalu closed 19 food stores and laid off 1,440 area employees.

b. Similarly, in the December 2002 year-in-review story, *The Morning Call* again identified Agere and Bethlehem Steel as the top business stories. That year, Agere shut its local factories, cut another 2,900 jobs, and closed sites in Allentown and Reading. *The Morning Call* described the news as "shocking," and noted it was "in stark contrast to . . . the centerpiece for what was supposed to become a new local economy based on fiber optics and semiconductors." Bethlehem Steel also agreed to sell its operations -- contingent on the elimination of health care benefits paid to retirees and their family members.

10. Notably, while nothing in either year-in-review article identified Mark Mendelson as a significant story of 2001 or 2002, those two articles -- at approximately 1,500-1,700 words each -- consumed less than 20% of the newsprint devoted to the Mendelson story.

11. Yet to the readers of *The Morning Call* on November 24, 2002 -- including the 8,000 readers experiencing the real nightmare of recent unemployment, and to the additional thousands of readers who retired from the steel industry to discover the nightmares of no benefits and the loss of \$4,000,000,000 in pension money -- Mark Mendelson and Mark Mendelson alone was responsible for “Allentown’s nightmare.”

The Allentown Properties

12. To the extent the substance of the article was designed to justify the headline, *The Morning Call* story amounted to a case study of five Allentown properties owned by Mendelson or entities allegedly related to Mendelson: the Colonial Theater, the Americus Center Hotel, a parking lot that “was once the doomed Corporate Plaza” office building, a vacant restaurant site, and a vacant bank branch. The article purported to describe the unifying theme for its findings under the following statement: “For most of the 17 years since he came to town, [Mendelson] has maintained a simmering war with City Hall over the blight, and late or unpaid taxes.”

13. Both the case study and the underlying theme are false and defamatory, in several respects.

14. First, contrary to the assertion that Mendelson has shown “contempt” for Allentown since he arrived, Mendelson has invested millions of dollars in the city; assumed large, risky redevelopment ventures; and, until the city’s own economic base and infrastructure literally sank into the ground, was regarded as a successful developer.

15. The Americus Hotel, for example, was in complete disrepair when Mendelson acquired it; he turned it into a centerpiece of the downtown business and social community. His disputes about taxes did not start in the 1980's as the article implies, but grew out of the failure of the political leadership to stem the deterioration and decay of downtown Allentown when businesses and residents began to flee the city in the late 1990's. As one accurate quote from the former manager of the hotel explained, Mendelson could spend "\$10 million in the Americus tomorrow" and have a beautiful hotel -- and still lose money.

16. Second, in describing the Corporate Plaza saga, *The Morning Call* asserted that: "Elements that would come to mark Mendelson's business in the city: his takeover of an underperforming property, conflicts with city officials, unpaid creditors and delinquent taxes, all are featured in the general outline of the history of the doomed office building." That summary was patently false -- except that the property was indeed "underperforming" when it was first built with public money. Mendelson bailed out the City by purchasing the property, put tenants in the building, and turned the Corporate Plaza into a premiere office space. Although a former bureaucrat is quoted as saying, "There was constant wrangling over everything," even *The Morning Call* could not dredge up a single lien on the property. In other words, the facts related to Corporate Plaza were *not* "featured in the general outline" of the history of the building.

17. Moreover, the demise of Corporate Plaza had nothing whatsoever to do with Mendelson. On February 23, 1994, a sinkhole caused by a broken water main pipe crumbled the structure of the building, and ultimately forced its implosion. Astonishingly, however, *The Morning Call* implies that because Mendelson did not pay an assessment to the Downtown Improvement District Authority -- even though his building fell into a sinkhole -- the possible failure of the Authority is somehow Mendelson's fault.

18. The third Mendelson property described by the article is the Colonial Theater, which is shown in side-by-side photographs of the theater today and the theater in an earlier year -- 1950, or seven years before Mark Mendelson was born! Even if each photograph is an accurate depiction, the placement of the photos next to each other in the context of the article is false and defamatory, and obviously designed to suggest that Mendelson was personally responsible for allowing the theater to fall into disrepair from its glory days five decades ago. In fact, the theater was in disrepair when Mendelson acquired it.

19. Next, almost as an afterthought, the article describes the last two parcels: a vacant bank property and a vacant restaurant property. But by conjuring up images of Salvatore Poidomani boiling up his last pot of pasta in 1998, the article attempts to suggest that Sal's Spaghetti House was a thriving neighborhood restaurant when Mendelson acquired it. In fact, it was a dangerous nuisance bar that scared prospective patrons away from the hotel property. Similarly, although the bank property is currently vacant, it has had tenants, and like many other properties in Allentown (and every other city), has changed hands among private owners and lenders. The suggestion that Mendelson's current inability to find tenants for these two properties is the cause of "Allentown's nightmare" is simply preposterous, and, in the context of the entire article, defamatory.

20. Finally, the article fails to report that virtually every property in downtown Allentown suffers from the same problems Mendelson's properties face -- crumbling infrastructure, high renovation and conversion costs, bureaucratic obstacles, and ultimately, a lack of tenants. This is not a secret to *The Morning Call*, however. For example, in an article published in October 2000, *The Morning Call* chronicled the efforts of two developers to obtain a low-interest loan from the Allentown Economic Development Corporation to renovate a

restaurant. After eight months, they reported frustration with the “obstacles thrown in their path by the city’s revitalization agency,” including an overly demanding application process, impractical rules, onerous financial disclosure requirements, a cumbersome review process, and, after finally getting approval, a requirement that they have a tenant before they can get the money to do the renovation. Of course, without doing the renovations, getting a tenant was virtually impossible.

21. Similarly, in February 2003, *The Morning Call* reported that Allentown’s six-month attempt to sell the Lehigh Valley Transit Company building generated a response from just one developer interested enough to tour the building, “but he lost interest as soon as he stepped inside.” As the paper reported, “the developer did not have to do an engineering study -- only look around -- to determine that the cavernous, derelict structure would have been too expensive to renovate for a commercial reuse.”

22. In short, *The Morning Call* article paints a false and defamatory picture of Mendelson’s development record in Allentown, demonizing him for every real and perceived ill that plagues Allentown. Even so, the article falls far short of justifying the conclusion that Mendelson is the “one man behind Allentown’s nightmare.”

Business Ventures Unrelated to Allentown

23. Not satisfied with its misrepresentation of Mendelson’s record in Allentown, *The Morning Call* article also publicizes several other Mendelson projects under the following sub-headings: the state hospitals, the LCB deals, the “A” Project, and the Philly failures. Once again, however, the article is permeated by speculation and inferences painting a false, defamatory and wrongfully intrusive picture.

24. With respect to the state hospital deals, *The Morning Call* article reports first that Mendelson identified an opportunity to purchase real estate from the Department of General Services, won a bid for the right to purchase the former Eastern State Hospital in Bensalem for \$8.5 million in January 1998, and entered into a partnership with a local builder -- all hardly items that are newsworthy or unique.

25. But *The Morning Call* goes on to report that Mendelson later obtained rights to develop three other state properties “for \$1.” In fact, Mendelson and his partners acquired rights to the properties subject to a promise to generate economic growth through redevelopment, which required enormous capital expenditures for environmental, developmental and other similar projects. Although colored by inferences that Mendelson obtained these deals by hiring a former state official after he left his state job making political contributions and ignoring the complaints of neighbors, the article does not actually assert that Mendelson did anything wrong. Nevertheless, *The Morning Call* concludes this section of its “reporting” with a quote from the president of the Somerton Civic Association, questioning why Tom Leonard was in business with Mendelson, saying, “I’ve known Tommy for 20, 25 years” “I said, hey yo, you sleep with the dogs, you’re going to wake up with the fleas.” In the context of the facts reported, the quote, like the rest of the story, is gratuitous and defamatory.

26. Next, repeating its familiar pattern of cloaking a legitimate business deal in the false lights of inferences, speculation and purported controversy, *The Morning Call* devotes several paragraphs of the story to leases between the state Liquor Control Board and Mendelson-related properties for retail liquor stores. As if the author had long forgotten about the blight Mendelson allegedly caused in Allentown, he now complains that “preservationists were aghast” when Mendelson proposed the demolition or relocation of a colonial-era structure.

In fact, the structure was an abandoned, vacant hospice, which was preventing the development of new retail locations. Again, however, the story does not allege that Mendelson did anything wrong to obtain leases from the LCB; it simply allows more false inferences to linger.

27. The article also describes a development project known as Liberty Landing, which would bring luxury apartments, office space, shops, a marina and a hotel to the Delaware River in Philadelphia. Searching again for a controversy where none exists, the article chooses this part of the story to note that Mendelson has made political contributions to candidates in various races, attempting to create an inference that his projects are somehow uniquely dependent on political favors.

28. But of all the inferences, falsehoods and misrepresentations that color the article, the most outrageous description relates to Mendelson's relationship with the bankrupt Metropolitan Hospital in Philadelphia in the early 1990s. Although the article does not explicitly allege that Mendelson engaged in any wrongdoing, it portrays a series of unrelated events to imply that Mendelson was the target of an FBI investigation into misappropriated hospital funds, ghost payroll employees, and substandard renovations to the hospital. The article further implies that Mendelson caused the investigation to become "bogged down," and that Mendelson was involved in a "possible illegal arms sale to South Africa." The facts that (a) Mendelson had nothing whatsoever to do with any of these events, and (b) the only criminal charges filed were against employees of Cooper Hospital, were not significant to *The Morning Call*; it reported only that the assistant United States attorney "decided against prosecuting the case" against Mendelson -- as though there had ever been a case in the first place.

29. And of course, the reporting on these four ventures, which consumed almost two full pages of the newspaper, was not only false and defamatory, it had nothing to do with the headline that Mark Mendelson was the one man behind Allentown's nightmare.

Invasion of Privacy

30. Finally, in addition to its false and defamatory reporting about Mendelson's dealings with Allentown, and in addition to its false and defamatory reporting about other unrelated ventures, *The Morning Call* invaded Mendelson's privacy, including his right to seclusion, by publicizing his private life, and publicizing public aspects of his life in a false light.

31. For example, the article asserts that Mendelson "has lived a lavish lifestyle in the posh Philadelphia suburb of Villanova, enjoyed a sprawling vacation lodge in the Poconos, owned numerous cars and hobnobbed with powerful Pennsylvania politicians and bureaucrats." A photo of his house even accompanies the article across the top of page A3. This flagrant invasion of Mendelson's privacy is wholly unwarranted by any circumstance relevant to the story.

32. Similarly, the article reports that Mendelson was a father of four in his early 30's, and has been divorced four times since 1991. Again, the flagrant invasion of Mendelson's privacy is unwarranted by any circumstance relevant to the story.

33. Moreover, the article feeds directly into anti-Semitic stereotypes, noting gratuitously -- but prominently -- that Mendelson is Jewish.

C. Causes of Action

Count I-- Defamation

34. Mendelson incorporates by reference the allegations of the foregoing paragraphs.

35. The article published by *The Morning Call*, including the large-type, bold-print headline blaring that Mark Mendelson was the one man behind Allentown's nightmare, was false and defamatory.

36. Numerous statements in the article were false and defamatory.

37. The Tribune, through its *Morning Call* media property, caused the article to be published in November 2002, and has caused and/or allowed the article to remain on the website affiliated with *The Morning Call* every day since.

38. The article was designed and perceived to have a defamatory meaning with respect to the plaintiff.

39. Mendelson has suffered damages as a result of the publication of the article, including lost business opportunities, emotional distress and public humiliation.

40. The publication of the article was malicious and outrageous, and justifies an award of punitive damages.

WHEREFORE, plaintiff Mark Mendelson demands judgment against the Tribune for compensatory damages in an amount in excess of \$150,000 (or such other arbitration limit as may be established by the Court from time to time), along with an award of punitive damages, an order directing the removal of the article from the website, costs and attorneys' fees, and such other relief as may be awarded by the Court.

Count II-- Invasion of Privacy

41. Mendelson incorporates by reference the allegations of the foregoing paragraphs.

42. The article published by *The Morning Call* invaded Mendelson's privacy by intruding upon his seclusion, giving publicity to his private life, and publicizing false facts about Mendelson that placed him in a false light.

43. The Tribune intentionally and unreasonably intruded upon the seclusion and private affairs of Mendelson, by causing the article to be published in *The Morning Call* and allowing it to remain on the affiliated website.

44. The contents of the article were highly offensive to Mendelson, and would be highly offensive to a reasonable person.

45. Numerous statements in the article gave publicity to private facts about Mendelson's life, through the widespread dissemination of the article by the Tribune in *The Morning Call* newspaper in November 2002, and through its publication every day since on the Tribune's website affiliated with *The Morning Call*.

46. Moreover, the article publicized facts about Mendelson, which, even if technically true, placed him in a false light.

47. The Tribune knew, and/or was negligent and reckless in not knowing, of the falsity of the publicized matter and the false light in which it placed Mendelson.

48. Mendelson has suffered damages as a result of defendant's invasion of his privacy through the publication of the article, including lost business opportunities, emotional distress and public humiliation.

49. The publication of the article was malicious and outrageous, and justifies an award of punitive damages.

WHEREFORE, plaintiff Mark Mendelson demands judgment against the Tribune for compensatory damages in an amount in excess of \$150,000 (or such other arbitration limit as

may be established by the Court from time to time), along with an award of punitive damages, an order directing the removal of the article from the website, costs and attorneys' fees, and such other relief as may be awarded by the Court.

Dated: March __, 2003

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