UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 13th day of October, two thousand five.

PRESENT: HONORABLE THOMAS J. MESKILL,
HONORABLE JON O. NEWMAN,
HONORABLE REENA RAGGI,
Circuit Judges.

CATRYNA SEYMOUR,
Plaintiff-Appellant,

v. No. 04-6626-cv

THE LAKEVILLE JOURNAL COMPANY LLC,
Defendant-Appellee.

APPEARING FOR APPELLANTS: PETER G. EIKENBERRY (Whitney North Seymour, Jr., *on the brief*), New York, New York.

APPEARING FOR APPELLEES: KENNETH P. NORWICK, Norwick & Chad, New York, New York.

Appeal from the United States District Court for the Southern District of New York

(George B. Daniels, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court entered on December 13, 2004 is hereby AFFIRMED.

Plaintiff Catryna Seymour appeals the Rule 12(b)(6) dismissal of her libel action against The Lakeville Journal. We review de novo a district court's dismissal of a complaint under Rule 12(b)(6), see Nicolaou v. Horizon Media, Inc., 402 F.3d 325, 327 (2d Cir. 2005), and will affirm only if it appears that the plaintiff can prove no set of facts that will entitle her to relief on the pleaded claim, see Velez v. Levy, 401 F.3d 75, 84 (2d Cir. 2005). We assume the parties' familiarity with the facts and record of prior proceedings, which we reference only as necessary to explain our decision.

Plaintiff submits that the district court erred in concluding that the defendant's published statements are not reasonably susceptible to a defamatory connotation under New York law. See Celle v. Filipino Reporter Enters., Inc., 209 F.3d 163, 177-78 (2d Cir. 2000) (and cases cited therein). In making such a determination, a court does not construe the challenged statements "'with the close precision expected from lawyers and judges'" but rather considers how they would be "'read and understood by the public to which they are addressed.'" Celle v. Filipino Reporter Enters., Inc., 209 F.3d at 177 (quoting November v. Time Inc., 13 N.Y.2d 175, 179, 244 N.Y.S.2d 309, 312 (1963)) (emphasis in original).

Applying this principle to our own review, we conclude that the challenged article, even when considered in light of Conn. Gen. Stat. § 12-71b(d), is not reasonably susceptible

to a defamatory connotation. While the article reports on town proceedings concluding that plaintiff's car taxes should have been paid to Falls Village rather than to Salisbury (where the tax rate was significantly lower), nothing in the article states or even implies that the error was the result of deliberate tax evasion. Nor does the article, read as a whole, convey such an implication. Indeed, the challenged article quotes extensively from plaintiff's own press release explaining the innocent circumstances that led her to conclude that her tax obligation was to Salisbury. On these facts, no reasonable reader would infer that plaintiff deliberately violated state tax law.

In any event, because the article accurately reports official town proceedings with respect to plaintiff's tax obligations, defendant is immune from suit pursuant to N.Y. Civ. Rights Law § 74, which states: "A civil action cannot be maintained against any . . . corporation, for the publication of a fair and true report of any . . . official proceeding, or for any heading of the report which is a fair and true headnote of the statement published." See McDonald v. East Hampton Star, 10 A.D.3d 639, 639-40, 781 N.Y.S.2d 694, 695 (2d Dep't 2004) (citing Holy Spirit Ass'n for Unification of World Christianity v. New York Times Co., 49 N.Y.2d 63, 67, 424 N.Y.S. 165, 167 (1979)).

The district court's December 13, 2004 judgment of dismissal is hereby AFFIRMED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK

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BY