

IN THE COUNTY COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 502015SC010977XXXXSB

ANY TIME GUTTER & SCREENING INC.
AND ARTHUR KAUFMAN,

Plaintiffs,

v.

VINCENT LOIACONO,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND
FOR DISMISSAL PURSUANT TO ANTI-SLAPP LAW**

This cause, having come before this Honorable Court on Thursday, September 1, 2016 upon Defendant's Motion for Summary Disposition and for Dismissal Pursuant to Anti-Slapp Law ("Motion") and the Court having reviewed the file, heard argument of the parties and being duly advised in the premises of the motions, it is hereby:

ORDERED AND ADJUDGED that the Motion is GRANTED, as follows:

1. Arthur Kaufman ("Kaufman") owns and operates Any Time Gutter & Screening, Inc. ("Any Time Gutter"), a Palm Beach County business that advertises roofing, screening and gutter services.
2. Vincent Loiacono solicited an estimate from Plaintiffs to build a screen enclosure in the back of his home.
3. Kaufman met Mr. Loiacono's wife, Melissa, at their home. In her opinion, Mr. Kaufman was rude to her. Later, Plaintiffs provided an estimate in the amount of \$5,200.00 via

text message. Mr. Loiacono received several other estimates ranging from \$1,885.00 to \$2,575.00 for the same work.

5. At all relevant times, Plaintiffs were unlicensed; i.e, they did not possess licenses in any contracting trade or specialty.

6. Mr. Loiacono made a posting concerning Plaintiffs on ripoffreport.com (the "Posting").

7. In their Amended Complaint, Plaintiffs complain that the Posting defamed them.¹

8. Specifically, Plaintiffs claim Mr. Loiacono made the following false statements:

- Plaintiffs were rude and disrespectful.
- Kaufman said that pulling a permit was unnecessary.
- Plaintiffs' estimate was significantly more expensive than other screen builders.
- Plaintiffs were banned from Mr. Loiacono's residential community.
- Plaintiffs were unlicensed, in violation of county code.
- Plaintiffs were doing illegal gutter work in the Boynton Beach area.

9. By way of procedural background, Plaintiffs' original Statement of Claim also alleged the Posting was defamatory. By Order dated April 18, 2016, the Court dismissed the defamation cause of action without prejudice.²

10. After Plaintiffs' submitted the instant Amended Complaint, Mr. Loiacono moved for summary disposition. Fla. Sm. Cl. R. 7.135.

11. Mr. Loiacono submitted affidavits authored by himself, his wife, Broward County Investigation and Enforcement Services official Marlene Vela and the Certification Official at

¹ Plaintiffs claim sounds in slander, but his pleading relies on written statements.

² Plaintiffs' other causes of action were dismissed with prejudice.

the Palm Beach County Contractor Licensing Board, Robert Melancon. Mr. Loiacono also filed the Deposition of Arthur Kaufman (with exhibits) dated March 31, 2016.

12. Plaintiffs did not file any evidence. However, Plaintiffs attempted to introduce the deposition transcript of Donna Bauer at the hearing. According to Mr. Kaufman, Ms. Bauer, the president of the homeowners' association of the community in which the Loiaconos live, testified that Mr. Loiacono told her he was scared or afraid of Plaintiffs.

13. Plaintiffs also attempted to introduce a purported recording of a phone conversation between Glenn Wexler, a Boynton Beach official, and Mr. Kaufman. The Court excluded this recording for two reasons. First, Mr. Loiacono made a proper discovery request for the recording and Plaintiffs refused to produce it, thereby attempting to ambush Mr. Loiacono at the hearing. Second, it became clear, in the Court's questioning of Mr. Kaufman at the hearing and his deposition testimony, that recording violates Fla. Stat. §§ 934.01, *et seq.* In particular, Mr. Kaufman admitted that he had taped Mr. Wexler without his knowledge or consent. Mr. Kaufman failed to provide evidence his recording fit into an exception under the rule. Also, the recording of a non party constitutes inadmissible hearsay.

14. As stated in the Court's April 18, 2016 opinion, rude is a non-actionable opinion. "Rude" is not actionable in a defamation case. Schibursky v. IBM, 820 F. Supp. 1169, 1182-83 (D. Minn. 1993) ("rude" and "hard to work with" were too imprecise to be actionable); Pritsker v. Brudnoy, 389 Mass. 776, 780 (Sup. Ct. Mass. Norfolk 1983) (holding that statement that plaintiff was rude is a non-actionable opinion). Rude and disrespectful are not appropriate subjects of a defamation action.

15. Similarly, Mr. Loiacono's statement to Ms. Bauer that he was scared or frightened of Plaintiffs is a non-actionable opinion. McMann v. Doe, 460 F.Supp.2d 259, 269 (D.Mass. 2006); Chaker v. Mateo, 209 Cal.App.4th 1138, 1149 (Cal. 4th Ct. App. 2012).

16. Truth is a defense to defamation.

17. The undisputed evidence submitted to the Court is that Mr. Kaufman did tell Ms. Loiacono that pulling a permit for the screen enclosure job was unnecessary.

18. Likewise, Loiacono's statement that Plaintiffs were unlicensed is true, according to statements under oath from Broward and Palm Beach County officials.

19. Plaintiffs admitted that they were banned from Loiacono's community, albeit for a short time. Mr. Kaufman's business card was posted in the gatehouse under the name "Arthur Kaufman" and "Banned."

20. The undisputed evidence submitted to the Court is that Mr. Wexler told Loiacono that he thought that he caught Plaintiffs performing illegal gutter work in the Boynton Beach area.

21. Furthermore, Plaintiffs admitted they performed illegal gutter work in Broward and Palm Beach Counties. At his deposition, Mr. Kaufman refused to state whether he performed gutter work in Boynton Beach on condos or townhouses, which work requires a license in Palm Beach County. See Palm Beach County Standards for Certified Specialty Contractors, §2(b). Accordingly, Plaintiffs failed to rebut the truth of the statement. And, the precise location of Plaintiffs' illegal contracting work in Boynton Beach (as opposed to Boca Raton) is not material in that the evidence demonstrates he performed illegal gutter work in Palm Beach and Broward Counties.

22. At his deposition, Plaintiffs failed to identify any damages caused by the Posting. Kaufman Depo. Tr. at pp. 116:24-117:5 (“I have no idea.”); 118:25-119:11 (refusing to identify his damages).

23. Even if, arguendo the Posting was defamatory, Plaintiffs, who are unlicensed, may not legally generate income from building gutters, screen enclosures or roofs.

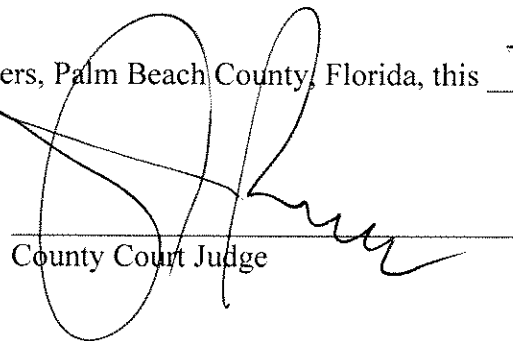
24. Accordingly, Mr. Loiacono is entitled to summary disposition against Plaintiffs’ Amended Complaint because: (a) the alleged statements are not defamatory and (b) there is no evidence of damages. There is no triable issue in this action. The Amended Complaint is dismissed with prejudice and Summary Disposition is entered in favor of Defendant.

25. Mr. Loiacono is entitled to tax his reasonable attorney’s fees and costs because the lawsuit was a strategic lawsuit against public participation. Fla. Stat. § 768.295. The Court finds that Plaintiffs filed this lawsuit against Loiacono without merit and primarily because he exercised the constitutional right of free speech in connection with a public issue.

26. In addition, Loiacono is entitled to tax costs under Fla. Stat. §§ 57.041; 57.071.

27. Within 30 days hereof, Mr. Loiacono shall file a motion to determine the amount of reasonable attorney’s fees and costs.

DONE AND ORDERED, in Chambers, Palm Beach County, Florida, this 2 day of September, 2016.


County Court Judge

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