

“There’s an App for That” Seminar - *Baggins v. Gollum*, facts from Defendant Gollum’s summary judgment motion

I. Introduction

Plaintiff Bilbo Baggins, a hobbit from the Shire, became lost one night in the catacombs near the Goblin Kingdom. That night, Baggins wandered into the cave that serves as the home of Defendant Smeagol Gollum, and struck up a conversation with Defendant. There, while Plaintiff and Defendant challenged each other to a riddle-solving game, Plaintiff found an antique gold ring, which was at that time the exclusive property of Defendant.

There is no dispute that Plaintiff took the ring with him when he left Defendant’s home.

There is also no dispute that while Plaintiff was leaving Defendant’s cave, Defendant realized that Plaintiff had taken Defendant’s ring. There is no dispute that Defendant yelled at Plaintiff and called him a “nasty hobbit.” Plaintiff states that Defendant also loudly referred to Plaintiff a “sneaky thief hobbit” and a “nasty dirty thief” to a third party Plaintiff identified only as “Precious.”

Plaintiff subsequently sued Defendant for slander, alleging that Defendant’s statements calling Plaintiff a thief and a nasty hobbit damaged Plaintiff’s reputation, meriting an award of damages.

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False statement of fact?
 - Not a statement of fact -
 What's a "nasty hobbitises" or "sneaky hobbitises" anyway?
 This is a statement of hyperbole or opinion that isn't an actionable statement of fact.
 - "Thief?" - Baggins is a burglar; Oakenshield hired him specifically for that purpose. Also, Baggins admits to having stolen from Smaug, and Gollum's ring was found in Baggins' possession at deposition. This statement is true.

Elements of Claim:
 (1) a false and defamatory statement,
 (2) about plaintiff,
 (3) published without privilege to a third party,
 (4) with fault of at least negligence on the part of the defendant, and
 (5) that was either defamatory *per se* or caused special harm to the plaintiff.

Published to a third party?
 - NO. There was no one else in the cave. Gollum suffers from a unique mental health condition, and regularly has conversations with himself / an alter personality known as Precious.

Fault?
 - As a famous burglar who has the ear of wizards and Dwarvish nobility, Baggins may be considered a public figure. Thus, under *New York Times v. Sullivan*, he must prove actual malice, which is either knowing falsity or reckless disregard for the truth.

Defamatory?
 "Thief" is defamatory *per se*, as it accused Baggins of a crime. "Nasty" and "sneaky" are not statements of fact that can be true or false.

About Plaintiff (Identification)
 - Yes, the statements are "of and concerning" Baggins