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NEW YORK COURT OF APPEALS CASE COMPILATIONS: FIRTH V. STATE OF NEW YORK

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FIRTH V. STATE OF NEW YORK[1]
(decided July 2, 2002)

I. SYNOPSIS

The New York Court of Appeals, in a unanimous opinion authored by Judge Levine, determined that the single publication rule is applicable to information published on the internet and that the addition of material, unrelated to the allegedly defamatory publication, to a web site does not constitute republication of the entire web site.[2]

II. BACKGROUND

George Firth, the plaintiff, was the Director of the Division of Law Enforcement of the New York Department of Environmental Conservation.[3] In December 1996, the Inspector General issued a highly critical report regarding the plaintiff's management style and implementation of a weapon trade-in/buy-back program.[4] The plaintiff filed a defamation claim against the State of New York on March 18, 1998.[5] The state filed an affirmative defense pleading that the statute of limitations had expired in accord with CPLR 215(3).[6]

CPLR 215(3) provides that "any claim asserting a cause of action encompassed within CPLR 215(3) must be dismissed if not commenced within one year if the Statute of Limitations defense is properly pleaded in the answer".[7] The plaintiff contended that "each day that the article is available upon the internet constitutes a new publication triggering a new accrual date."[8] However, the New York State Court of Claims, "applying established rules of law appli-

1. 98 N.Y.2d 365 (2002).
2. *Id.*
3. Firth v. State, 706 N.Y.S.2d 835, 837 (N.Y. Ct. Cl. 2000), *aff'd*, 731 N.Y.S.2d 244 (App. Div. 2001), *aff'd*, 98 N.Y.2d 365 (2002).
4. *Id.* at 838.
5. *Id.*
6. *Id.* at 839.
7. *Id.* at 840. *See also* N.Y. C.P.L.R. § 215 (c) (2002).
8. *Firth*, 706 N.Y.S.2d at 841.

cable to the accrual of defamation actions", held that "the one-year Statute of Limitations began to run on December 16, 1996, the date of the Report's original publication and the date when the Report was first made available on the Internet where it has remained unaltered to this date."[9] As such, the court of claims dismissed the cause of action pursuant to the defendant's motion.[10]

The plaintiff appealed the decision of the court of claims to the appellate division.[11] The appellate division found, "as did the Court of Claims, that the single publication rule applies to this case".[12] However, the dissent, while concurring to the majority's disposition of the single publication rule issue, questioned whether the modification of the web site "would constitute a republication which could prevent the dismissal of this action on timeliness grounds."[13] The dissent would have remanded the case for further investigation into the history of modifications to the state's internet site since the initial publication of the allegedly defamatory report.[14]

Plaintiff Firth appealed this decision to the New York Court of Appeals.[15] The court of appeals determined that the single publication rule is applicable to information published on the internet.[16] Further, the court held that the addition of unrelated material to a web site "cannot be equated with the repetition of defamatory matter in a separately published edition of a book or newspaper."[17]

III. Discussion

The court of appeals determined that the single publication rule is applicable to information published on the internet and that the addition of material unrelated to the allegedly defamatory publication to a web site does not constitute republication of the entire website.[18] *Firth* was "the first occasion for [the New York Court of

9. *Firth*, 706 N.Y.S.2d at 843.
10. *Id.*
11. Firth v. State, 731 N.Y.S.2d 244, 245 (App. Div. 2001), *aff'd*, 98 N.Y. 365 (2002).
12. *Id.* at 247.
13. *Firth*, 731 N.Y.S.2d at 248 (Peters, J. dissenting).
14. *Id.* at 248.
15. *Firth*, 98 N.Y.2d at 369.
16. *Id.* at 370.
17. *Id.* at 371.
18. *Id.* at 372.

Appeals] to determine how [New York] defamation jurisprudence, developed in connection with traditional mass media communications, applies to communications in a new medium – cyberspace – in the modern Information Age."[19] Specifically, the *Firth* court determined "whether, for statute of limitations purposes, the single publication rule is applicable to allegedly defamatory statements that are posted on an Internet site and, if so, whether an unrelated modification to a different portion of the [w]eb site constitutes a republication."[20]

A. The Single Publication Rule Applies

The court determined that the single publication rule is applicable, for statute of limitations purposes, to allegedly defamatory statements that are posted on an internet site.[21] The single publication rule expresses that

> the publication of a defamatory statement in a single issue of a newspaper, or a single issue of a magazine, although such publication consists of thousands of copies widely distributed, is, in legal effect, one publication which gives rise to one cause of action and that the applicable statute of limitations runs from the date of that publication.[22]

The plaintiff argued "that because a [w]eb site may be altered at any time by its publisher or owner and because publications on the Internet are available only to those who seek them, each hit or viewing of the report should be considered a new publication that retriggers the statute of limitations."[23] However, based upon the "policies impelling the original adoption of the single publication rule", the court determined that "[c]ommunications accessible over a public Web site resemble those contained in traditional mass media, only on a far grander scale."[24] The *Firth* court recognized that "[c]ommunications posted on [w]eb sites may be viewed by thousands, if not millions, over an expansive geographic area for an

19. *Firth*, 98 N.Y.2d at 367.
20. *Id.*
21. *Id.* at 369.
22. *Id.*
23. *Id.*
24. *Firth*, 98 N.Y.2d at 370.

indefinite period of time."[25] The adoption of a multiple publication rule would seriously inhibit the "the open, pervasive dissemination of information and ideas over the Internet, which is, of course, its greatest beneficial promise."[26] Therefore, the court determined that, for statute of limitations purposes, the single publication rule is applicable to allegedly defamatory statements posted on an internet site.[27]

B. Republication of an Internet Site

Upon concluding that the single publication rule applied, the *Firth* court resolved that the modification of a portion of the web site, unrelated to the alleged defamatory statement, does not constitute republication.[28] The plaintiff argued that "the State should be deemed to have republished the report within one year of the filing of the claim when it added an unrelated report of the Inspector General on the DMV to the Education Department's [w]eb site in May 1997."[29]

Republication retriggers the statute of limitations because the subsequent publication is separate from the original and is "not merely a delayed circulation of the original edition."[30] Therefore, for example, "repetition of a defamatory statement in a later edition of a book, magazine or newspaper may give rise to a new cause of action."[31]

In light of this well-settled jurisprudence, the *Firth* court expressed that "[t]he mere addition of unrelated information to a Web site cannot be equated with the repetition of defamatory matter in a separately published edition of a book or newspaper."[32] The court reasoned that "[t]he justification for the republication exception has no application at all to the addition of unrelated material on a [w]eb site, for it is not reasonably inferable that the addi-

25. *Firth*, 98 N.Y.2d at 370.

26. *Id.* at 370. (citing Lori A. Wood, Note, *Cyber-Defamation and the Single Publication Rule*, 81 B.U. L. REV. 895, 912-913 (2001)).

27. *Id.*

28. *Id* at 371.

29. *Id.* at 368.

30. *Id.* at 365. (citing Rinaldi v Viking Penguin, Inc., 52 N.Y.2d 422, 435 (1981); Restatement [Second] of Torts § 577A, Comment d, at 210).

31. *Firth*, 98 N.Y.2d at 371.

32. *Id.*

tion was made either with the intent or the result of communicating the earlier and separate defamatory information to a new audience."[33] As such, the modification to a portion of the web site unrelated to the alleged defamatory statement does not constitute a republication.[34]

C. *Future Concerns Based upon Firth*

As a result of the *Firth* court's holding, the complaint filed by the plaintiff was dismissed based upon the statute of limitations for defamation. However, it is important to note that the court left open for future resolution the exact parameters concerning the modification of a web site. It remains an open question as to what level of modification would be enough to constitute republication.

IV. CONCLUSION

In *Firth*, the court of appeals determined that the single publication rule applied to the allegedly defamatory statements posted about the plaintiff.[35] Additionally, the *Firth* court determined that the modification of the web site by the defendant was insufficient to constitute republication.[36] As such, the plaintiff's claim was dismissed pursuant to the statute of limitations.[37] Therefore, it is now New York state law that the single publication rule is applicable to information published on the Internet and that the addition of material unrelated to the allegedly defamatory publication to a web site does not constitute republication of the entire web site.

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33. *Firth*, 98 N.Y.2d at 371.
34. *Id.*
35. *Id.* at 370.
36. *Id.* at 371.
37. *Id.*