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Librarian Falsely Accused of Pulling Fire Alarm Can Sue for Defamation

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A federal judge on Monday refused to dismiss a former Parker McCay law librarian's suit alleging the firm defamed and falsely imprisoned her by having her arrested on a charge of setting off a fire alarm last year.

Judge Robert Kugler said in *Ciemniecki v. Parker McCay*, 1:09-CV-06450, that he could not hold as a matter of law that the firm's comments to police about plaintiff Sheila Ciemnicki were not "highly offensive."

But he dismissed Ciemniecki's libel claim against *The Central Record*, a Medford newspaper that printed a short news item about the arrest.

The case stems from an alarm activation on the third floor of the firm's Marlton offices on June 2, 2009, after which the fire department determined the alarm was unfounded.

The next day, Ciemniecki was called into a conference room by the firm's director of finance, Ray DiSanto. There she was met by two police officers, who said security camera footage showed her pull the alarm. She was dismissed, led away in handcuffs, charged with activating a false public alarm in violation of N.J.S.A. 2A:33-3 and released.

Ciemniecki, a nine-year veteran of the firm, denied pulling the alarm. And on July 21, the Burlington County Prosecutor's Office dismissed the charge after reviewing the evidence.

Her suit, which also names Evesham Township and its police department, says her arrest was in retaliation for complaining to the firm's human resources director about getting a small raise and for arguing with her supervisor about her work schedule. Ciemniecki claims she was on the fourth floor at the time and that the alarm could have been pulled by a participant in one of several contentious groups at the office for mediations and arbitrations.

As it turns out, the firm's surveillance cameras produced two videotapes. One, a series of still images captured at regular intervals, appears to show Ciemniecki near the alarm just beforehand, says William

Tambussi of Brown & Connery in Westmont, who represents Parker McCay. DiSanto called police the day afterward and showed them the video.

Later, DiSanto learned of a second tape, a "continuous feed" that showed a man pulling the alarm, says Tambussi. On July 16, 2009, the firm contacted the Burlington County Prosecutor's Office about the second video and took steps to say there was no substance to the charges, says Tambussi.

Tambussi says if anyone is liable to Ciemniecki, it's the Evesham Township Police Department because it charged Ciemniecki based on a review of the videotape then available. Evesham and the police have asserted cross-claims for indemnification against Parker McCay.

Parker McCay says that Ciemnicki's defamation claim was not pleaded with sufficient specificity, that absolute and qualified privilege attach to the alleged defamatory statement, that the statement is not defamatory and that the complaint does not allege actual malice.

Tambussi maintained that the plaintiff was subject to the heightened New Jersey pleading standard for a libel action. But the pleading standard for the circumstances was articulated by Rule 8(a) of the Federal Rules of Civil Procedure, which requires "a short and plain statement of the claim showing that the pleader is entitled to relief," Kugler wrote.

"Despite their protestations to the contrary, the Parker McCay defendants are on notice of what Ms. Ciemniecki believes Mr. DiSanto said about her to the police (that she committed the crime of falsely pulling a fire alarm), and why she believes Mr. DiSanto bears fault for allegedly having made it (because Mr. DiSanto either lied to the police to frame Ms. Ciemniecki or purposefully ignored the videotape evidence exonerating her for a similar reason)," Kugler said.

Kugler also rejected Tambussi's assertion that absolute privilege applies to statements made to a police officer for the purpose of bringing a criminal to justice, citing case law in which the state Supreme Court declined to offer such immunity. Kugler also said Ciemniecki's statements that she was falsely implicated in retaliation, if believed, "are sufficient to support to a finding that the qualified privilege does not apply (because Mr. DiSanto did not accuse Ms. Ciemniecki in good faith and with the purpose of helping solve crime) or that the privilege had been abused (because Mr. DiSanto knew the accusation to be false)," Kugler wrote.

Left standing in the case are two counts each of defamation and infliction of emotional distress, and one count each of false imprisonment and invasion of privacy.

As for the claim against *The Central Record*, a weekly newspaper published by Journal Register Corp., Kugler found the article, while sloppily written, did not relay information alleged to be false. The newspaper's lawyer, Gerald Hughes of Fenningham, Stevens & Dempster in Trevese, Pa., did not return a call.

Ciemniecki's lawyer, Laura Mattiacci of Stephen Console's office in Moorestown, declines to comment, as does the lawyer for Evesham and its police department, Betsy Ramos of Capehart & Scatchard in Mount Laurel.