

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

JOSEPH P. MICHAEL,

Plaintiff-Appellant,

v

JAMES CLARKSON, JOSEPH LEUTZE and  
KAREN RUSSELL-CORACE, jointly and  
severally,

Defendants-Appellees.

---

UNPUBLISHED  
August 23, 1996

No. 169181  
LC No. 90386322 NZ

Before: Marilyn Kelly, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Plaintiff appeals as of right from a grant of summary disposition for defendants, pursuant to MCR 2.116(C)(8) and (C)(10), in this defamation and civil conspiracy action.

He argues that his due process rights were violated when he was not given an opportunity to defend against defendant Clarkson's motion for summary disposition. He claims that the judge erred in finding that defendant Clarkson was entitled to a qualified privilege. He urges that the judge erred in finding no genuine issue of material fact concerning whether the statements he complained of were made with malice. Finally, he asserts that evidence exists that defendants acted as a group in making their defamatory statements about him and, as a result, the judge improperly dismissed the conspiracy count. We affirm.

All the parties involved in this action were employed with First Federal Savings Bank and Trust. Plaintiff was senior vice-president of lending; Clarkson was the president, CEO and chairman of the board; Leutze was the senior vice-president branch administrator; Russell-Corace was in-house legal counsel and first vice-president.

In the fall of 1989, the First Federal board of directors' audit committee was informed that Clarkson was engaged in questionable activities. The board took the advice of outside counsel to make

a criminal referral to the appropriate governmental agency and conduct an internal investigation. On October 30, 1989, Clarkson resigned.

During the course of the investigation, defendants gave statements to the FBI and to the Office of Thrift Supervision (OTS) regarding the bank's practices. In those statements, defendants allegedly slandered plaintiff. As the result of the statements, plaintiff was subjected to investigations by the bank and the FBI. Plaintiff alleged that the defamatory statements destroyed his banking career.

## I

Plaintiff argues that his due process rights were violated when the judge granted summary disposition to defendant Clarkson without providing him an opportunity to defend against the motion. Plaintiff has failed to properly present this issue for review, because it was not identified in the statement of questions presented. MCR 7.212(C)(5); *Hammack v Lutheran Social Services*, 211 Mich App 1, 7; 535 NW2d 215 (1995). Moreover, he neglected to provide us with authority to support his position. *Winiemko v Valenti*, 203 Mich App 411, 415; 513 NW2d 181 (1994). Therefore, review is inappropriate.

## II

Next, plaintiff argues that the judge improperly determined that defendant Clarkson was entitled to a qualified privilege.<sup>1</sup> Whether a statement was privileged is a question of law for the court. *Shannon v Taylor AMC/Jeep, Inc.*, 168 Mich App 415, 419; 425 NW2d 165 (1988). In order for a qualified privilege to apply, the communication must be: (1) bona fide; (2) made by a party who has an interest; and (3) made to a party who has a corresponding interest or duty. *Id.*

We agree with the trial judge that defendant Clarkson was entitled to a qualified privilege. As an employee of the bank, Clarkson had the duty to cooperate with the investigation of his bank's practices. Moreover, the FBI, OTS and First Federal, to whom the statements were made, had a corresponding interest to conduct investigations into alleged improprieties.

## III

Plaintiff argues that, even if defendants were entitled to a qualified privilege, there was a genuine issue of material fact whether the statements were made with actual malice. We disagree.

A statement made with actual malice is one made with knowledge that it is false or in reckless disregard of whether it is false. *Peterfish v Frantz*, 168 Mich App 43, 53; 424 NW2d 25 (1988). Recklessness is measured by whether the publisher, in fact, entertained serious doubts concerning the truth of the statements. *Id.* General allegations of actual malice will not suffice to establish a genuine issue of material fact. A plaintiff must support his allegations with facts from which the existence of malice might be inferred. *Reed v Metro Michigan Girl Scout Council*, 201 Mich App 10, 13-14;

506 NW2d 231 (1993); *Peterfish, supra*. After reviewing the record, we find that plaintiff has failed to provide specific facts from which a jury could infer that the statements were made with actual malice.

#### IV

We find, also, that summary disposition was properly granted to defendants with respect to the conspiracy count. A civil conspiracy exists when two or more, by some concerted action, combine to accomplish an unlawful purpose, or to accomplish a lawful purpose by unlawful means. *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992). A claim for civil conspiracy may not exist in the abstract. Rather, it is necessary that a separate, actionable tort be shown. *Id.*; *Early DetectionCenter, PC v NY Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986). Having previously concluded that plaintiff's defamation claim failed as a matter of law, we find no actionable tort to support the civil conspiracy claim.

Affirmed.

/s/ Marilyn Kelly

/s/ Myron H. Wahls

/s/ Roman S. Gribbs

<sup>1</sup> Plaintiff does not argue that the trial judge erred in determining that defendants Leutze and Russell-Corace were entitled to a qualified privilege.