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Pennsylvania Supreme Court Refuses to Reinstate Defamation Case



Angela M. Heim



John Ehmann

On September 27, 2016, the Pennsylvania Supreme Court denied the petition filed by plaintiffs seeking further appellate review of Superior Court's Order and Opinion of February 5, 2016, affirming the trial court's entry of summary judgment in favor of L.A. Fitness International, LLC (now known as Fitness International, LLC), thus effectively ending a defamation case in which plaintiffs claimed that employees of L.A. Fitness falsely and maliciously reported to the local police and others that they were involved in thefts at one or more L.A. Fitness facilities.

In *Nelson v. L.A. Fitness International, LLC*, an L.A. Fitness member reported a theft in the locker room of the Harrisburg facility on March 10, 2009. The local police commenced an investigation at which time they were advised by L.A. Fitness employees that plaintiffs were the only L.A. Fitness members checked into the Harrisburg facility at the time of the reported thefts who did not regularly attend that facility and that another member had reported "suspicious activity" by plaintiffs on another day. The police were further advised of a similar theft at the Lancaster facility on March 10, 2009.

During the investigation, an employee of the Harrisburg facility was told by a detective that plaintiffs were under investigation for thefts at multiple L.A. Fitness facilities and was shown a "paper" with the names and photographs of plaintiffs. According to this employee, copies of this paper were posted in the locker room at the Harrisburg facility on April 9, 2009, and remained in place for "two to three days" before being removed. Shortly thereafter, but still in the Spring of 2009, this employee, who was acquainted with one of the plaintiffs, alerted plaintiffs that they were being watched and investigated for the thefts at the L.A. Fitness facility in Harrisburg.



Carl D. Buchholz, III



John C. McMeekin II

Plaintiffs were never charged with the thefts at the Harrisburg facility, but were charged with the theft in connection with the Lancaster facility. The charges against plaintiffs were reported on a local news station on October 30, 2009, but were later withdrawn.

Plaintiffs initiated separate actions against L.A. Fitness in the Court of Common Pleas of Lancaster County, Pennsylvania, on October 26, 2010, and October 28, 2010, which were consolidated. In their Complaints, they raised three causes of action against L.A. Fitness: (1) libel, based upon alleged locker room postings at the L.A. Fitness facility in Harrisburg containing plaintiffs' names and pictures and suggesting that they were being investigated for the thefts; (2) slander, based upon alleged statements made by employees of the L.A. Fitness facility in Harrisburg to other employees suggesting that plaintiffs were involved in the thefts; and, (3) slander, based upon alleged statements made by employees of L.A. Fitness to the police during an investigation of the thefts that resulted in plaintiffs' arrests.

L.A. Fitness filed a summary judgment motion on the ground that the defamation claims were barred by the one-year statute of limitations set forth in 42 Pa.C.S. § 5523(1) because the undisputed evidence established that the alleged defamatory statements and/or publications by L.A. Fitness were made more than one year prior to institution of the litigation. In response, plaintiffs submitted affidavits stating that they had no "prior knowledge" that they were being investigated for thefts at the L.A. Fitness facilities until they watched a news report on October 30, 2009, about the charges filed against them, and per the "discovery rule," the statute of limitations did not commence running until the date of the news report. In its reply, however, L.A. Fitness pointed out that plaintiffs both testified at their depositions that they were told by an L.A. Fitness employee long before watching the news report on October 30, 2009, that employees of L.A. Fitness were accusing them of the thefts and that they were being investigated for the thefts, which contradicted the affidavits they prepared in response

to the summary judgment motion. The trial court granted the motion, and plaintiffs appealed.

In affirming summary judgment, the Superior Court held that plaintiffs testified at their depositions that they were informed by an L.A. Fitness employee that other employees conveyed their suspicions about plaintiffs with respect to the thefts to the police and about the posting of their pictures in the locker room of the Harrisburg L.A. Fitness facility at least several months before the newscast about the charges filed against them was aired. The Superior Court held that at that point, plaintiffs were on notice of any alleged defamation by L.A. Fitness to its employees or members, and more importantly, made aware of a possible injury to their reputation, and the limitations period was not tolled. The Court further held that a reasonable person, given that the content of the alleged defamatory communications clearly involved accusations of criminal conduct by plaintiffs, would have promptly investigated whether such defamatory communications were, in fact, made. The Superior Court held that plaintiffs could have and should have filed their lawsuit prior to the expiration of the one-year statute of limitations applicable to defamation claims since plaintiffs' failure to investigate in a reasonably prompt and diligent manner did not toll the statute of limitations. Additionally, as to the statements made to the police during the investigation, the Superior Court held that they are absolutely privileged, and cannot be considered legally defamatory.

John C. McMeekin II and **John Ehmann** represented L.A. Fitness before the trial court. **Carl D. Buchholz, III**, Chair of the Firm's Appellate Section, argued the appeal on behalf of L.A. Fitness and **Angela M. Heim**, a member of the Firm's Appellate Section, prepared the Brief of Appellee and the Response to the Petition for Allowance of Appeal.

The case, *Nelson v. L.A. Fitness International, LLC*, was docketed in the Pennsylvania Supreme Court at 336 MAL 2016, and in the Pennsylvania Superior Court at 367 MDA 2015.

WIDENER LAW VETERANS DAY

Rawle & Henderson LLP is one of six law firms that co-sponsored the **Widener University Commonwealth Law School's Veterans Day Ceremony** on Friday, November 11, 2016, in Harrisburg, Pennsylvania. Rawle & Henderson contributed a Bronze Star Donation to support the event, which included the donation of a scholarship to a worthy student veteran.

The ceremony honored veterans who have served and United States Army Captain Shane Mahaffee, a 1994 Widener Law Commonwealth alum who lost his life serving the U.S. in Iraq in 2006.



PBA YOUNG LAWYERS DIVISION

Rawle & Henderson attorney **Erin E. Lamb**, who is Chair of the Philadelphia Bar Association's Young Lawyers Division, organized and participated in a "Get Expunged" clinic held in various locations throughout the Philadelphia metro area on Saturday, November 12, 2016. This YLD initiative offered individuals advice on having previous arrests or convictions expunged or sealed. The clinic came days after Pennsylvania Act 5 went into effect. This new law expands criminal record-sealing in Pennsylvania.

Erin reviewed petitions and participated as part of a team of approximately 175 lawyers, paralegals, and law students. The clinics were held in partnership with Community Legal Services, the Office of the District Attorney, the Philadelphia Court of Common Pleas, the City of Philadelphia, and Rep. Jordan Harris. A total of 1,853 individuals signed up for the clinics. The program was offered at six different locations in Philadelphia, including a location staffed by Spanish-speaking volunteers.



Erin E. Lamb

Erin Lamb is an associate in the Philadelphia office of Rawle & Henderson LLP. She concentrates her practice in the areas of catastrophic loss, product liability, construction, premises liability, and general casualty matters. Erin is admitted to practice in Pennsylvania and New Jersey. She earned a J.D. from Temple University Beasley School of Law in 2010 and a B.A., *cum laude*, in International Affairs from George Washington University in 2006. Prior to joining Rawle & Henderson, Erin served as a law clerk to the Honorable Annette M. Rizzo in the Court of Common Pleas, Philadelphia County, for three years. She was an adjunct professor of clinical programs for the Temple University Beasley School of Law in the Spring of 2013 and 2014, during which time she created a hands-on introduction to the Philadelphia court system, emphasizing the Rules of Civil Procedure.

Erin can be reached directly at: (215) 575-4425 • elamb@rawle.com

PHOTOGRAPHY EXHIBIT



Eric K. Falk

Pittsburgh partner **Eric K. Falk** is an avid photographer. In particular, he enjoys “street photography.” Eric’s work was featured in a photography exhibit, “*Street Stories*,” which ran in November 2016 at Image Box Gallery in the Bloomfield section of Pittsburgh. “Street photography is simply the observation of life, mostly

in the public setting,” Falk said. “At its best, it captures the spontaneity, and often the uncertainty, of people, places, and objects, depicting the simple and sometimes powerful stories of both existence and a singular happening in the moment.”

Eric Falk focuses his practice on defending companies in toxic tort litigation. He is currently a member of the DRI Toxic Tort Committee and is a former chair of the DRI Industrywide Litigation Committee. He received his J.D. in 1984 from the University of Pittsburgh School of Law and his B.S. with Honors in 1981 from the American University in Washington, D.C. He is admitted to practice in Pennsylvania and West Virginia as well as the U.S. District Court for the Western District of Pennsylvania, the U.S. District Courts for the Southern and Northern Districts of West Virginia, and the U.S. Court of Appeals for the Fourth Circuit. He was selected as a 2013 Top Rated Lawyer in Mass Torts by Martindale-Hubbell, and he has been rated AV Preeminent by Martindale-Hubbell from 2005 to 2016.



“Ready, Set, Go!!—Pittsburgh, PA” is a photograph by Eric Falk that was featured recently among many of his photos at an exhibit at Image Box Gallery in Pittsburgh.

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