

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

RURAL MEDIA GROUP, INC., a Delaware Corporation, and RFD-TV, LLC a Delaware Limited Liability company,  
Plaintiff,

vs.

JOSEPH F. SIEDLIK, an individual,  
MARTY SIEDLIK, an individual,  
JOSEPH F. SIEDLIK d/b/a POLKA  
CASSETTES OF NEBRASKA and d/b/a  
BIG JOE POLKA SHOWA and d/b/a BIG JOE  
SHOW,  
Defendants.)

DOC. 1110 NO. 252  
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FINDING AND ORDER

**THIS MATTER** came on for hearing on the 20<sup>th</sup> day of July, 2011 on Defendants Motion for Summary Judgment and Plaintiffs Motion to Reconsider Dismissal of Marty Siedlik After receiving exhibits into evidence, the Court took the motions under advisement pending submission of briefs.

Defendants argue there was not a false and defamatory statement concerning the Plaintiffs in Joe Siedlik's email that stated "After 9 ½ years, RFD-TV will be terminating the Big Joe Polka Show." Defendants further argue that repeating Plaintiff's own statement to the Defendants that the Big Joe Polka Show would be terminated was not a fault amounting to negligence. Defendants argue that the statement was true, the show did not appear on RFD-TV network in 2011 and, thus, Plaintiffs were not defamed. Defendants further argue that Plaintiffs suffered no damages because the subscribers would have been upset eventually when they would have learned that the big Joe Polka Show would no longer air.

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Defendants further argue that there can be no claim for breach of contract when the parties did not come to a complete agreement. Defendants wanted an exclusivity agreement and Plaintiffs did not.

Plaintiffs argue that the Memorandum of Understanding was the entire agreement of the parties and the Defendants breached said agreement when they set out the "inaccurate email" regarding the termination of RFD-TV's airing of the Big Joe Polka Show at the end of 2010, an alleged violation of 9. Cooperations and Non-Disparaging Comments) of the Memorandum of Understanding.

Summary Judgment is proper when the pleadings and evidence admitted at the hearing disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. Schlatz Vs. Bahensky, 280 Neb. 180, 785 N.W.2d 825 (2010).

A claim of defamation requires (1) a false and defamatory statement concerning the Plaintiff(s); (2) an unprivileged publication of a third party; (3) fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by publication. Norris Vs. Hathaway, 5 Neb. App. 544, 561 N.W.2d 583 (1997). The Court finds that, unlike Norris, the Defendants email does not impute a question of moral turpitude or criminal activity on the part of the Plaintiffs, only that the Big Joe Polka Show would no longer be aired on RFD-TV in 2011, nor does the statement say Plaintiffs did anything wrong. At most it might infer a unilateral decision on Plaintiffs part and that the Defendants would like the help of the email contacts to the ask Plaintiffs to reconsider.

The Court further finds that Plaintiffs have failed to establish any special damages – there is no evidence of loss of viewers and is likely in the industry Defendants fans would likely have contacted Plaintiffs when the shows were no longer aired in 2011 and Plaintiffs would have had to respond to those inquiries during normal course of business.

The Court further finds that prior to June 30, 2010 the parties reached an agreement which resolved the lawsuit (Exhibits 8 and 9) but that Defendants then tried to renegotiate the agreement, specifically, wanting an exclusivity clause to which Plaintiffs refused to agree. Because Plaintiffs are unable to show the alleged violation of Paragraph 9 of the Memorandum of Understanding caused a negative impact on Plaintiffs, the Court finds there has been no breach.

**IT IS, THEREFORE, ORDERED** that Defendants Motion for Summary Judgment is sustained and this matter is dismissed.

**IT IS FURTHER ORDERED**, having reviewed the matter, that Plaintiffs Motion to Reconsider the Dismissal of Marty Siedlik is overruled, and said Defendant stands dismissed.

**DATED** this 3rd day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Joseph S. Troia", written over a horizontal line.

Joseph S. Troia  
District Judge

CC: James R. Place  
Patrick S. Cooper