

Circuit Court of Baltimore City
Case No. 24C18004825

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1063
September Term, 2019

BALTIMORE SCRAP CORP.,

v.

TIMOTHY B. WHEELER, et al.

Nazarian,
Friedman,
Sharer
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 27, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The Bay Journal published an article in 2017 that discussed Maryland Department of the Environment’s (MDE) approach to enforcing pollution laws. The article described MDE’s enforcement strategy as a two-tiered approach and used, as an example, MDE’s then-ongoing investigation of Baltimore Scrap Corporation’s recycling yard in South Baltimore. Baltimore Scrap brought an action for defamation against the publisher, author, and several individuals quoted in the article. The defendants moved to dismiss. The circuit court granted the motion. Thus, the issue before us is whether Baltimore Scrap’s complaint identified statements in the article that are capable of defamatory meaning. We find that Baltimore Scrap’s complaint failed to do so and affirm the circuit court.

BACKGROUND

The Bay Journal published an article written by journalist Timothy B. Wheeler reviewing MDE’s approach to enforcing pollution laws. The article described MDE’s approach as “two-tiered,” in that some entities are fined for environmental violations while others received “compliance assistance”—a chance to fix violations before being sanctioned. As part of this review, the article quoted various community members, including an environmental law professor at the University of Maryland School of Law, and competitors in the local recycling industry.¹ The article used the then-ongoing MDE investigation of Baltimore Scrap as an illustration of MDE’s two-tiered enforcement strategy. The full text of the Bay Journal article reads:

¹ Wheeler contacted Baltimore Scrap’s officers and lawyer to interview them for the article, but apparently they did not return his communications.

Baltimore scrapyards' case raises concerns about MD oversight

Environmentalists, competitor seek stronger enforcement and action on stormwater

On a gray, drizzly morning in March 2016, two inspectors from the Maryland Department of the Environment showed up unannounced at Baltimore Scrap Corp., a metal recycling yard just off the city's busy harbor.

In a report written later, the inspectors described their visit as a routine check of the facility's stormwater pollution controls. It was anything but routine, though.

Following up on a tip from an environmental group, they ultimately wrote up the company for 11 violations after seeing sediment, oil and possibly other contaminants washing off the cluttered, debris-strewn site into storm drains that eventually reach the Patapsco River just south of Fort McHenry.

Nineteen months later, the case remains unresolved, even though documents obtained under Maryland's Public Information Act show that follow-up inspections by the MDE found new and continuing violations there for months after the initial visit — and the state considered imposing a half-million-dollar penalty.

The case raises questions about Maryland's vigilance in enforcing anti-pollution laws. The state has long had a two-tiered approach to violators, with some getting hit with citations and stiff penalties, while others get what the MDE calls "compliance assistance."

Under the Hogan administration, MDE regulators have been opting more frequently to give violators time to fix problems, without fining them or hauling them into court. In 2016, nearly six times as many water pollution violations were handled through compliance assistance as were subject to formal enforcement action, an increase of 21 percent over the previous year, according to MDE data sent to the Maryland General Assembly. For the subset of violations involving surface

discharge permits, the number of compliance assistance cases jumped from none four years ago to 78 last year, more than the number of enforcement actions taken against such permit holders.

That kind of forbearance bothers some environmental advocates, who complain it undermines the Chesapeake Bay cleanup by failing to deter polluters.

“It’s like a cop watching cars speed by, and instead of ticketing them, he drives after them, pulls them over, gets them into conversation for an hour explaining all the dangers of speeding and then he lets them go,” said Rena Steinzor, an environmental law professor at the University of Maryland School of Law. “We don’t have the resources to sit around and jawbone with a company. We need deterrence-based enforcement, big tickets and big fines.”

And one of Baltimore Scrap’s competitors complains that it’s unfair to let such violations go unpunished for so long.

“It just seems like a very uneven playing field when they can be as dirty as they are and not really paying attention to the environmental regulations,” said Paul Tharp, information officer for EMR Smith Industries, which operates scrapyards in Halethorpe south of Baltimore and in Capitol Heights outside the District of Columbia. “And MDE has not for a long time been cracking down on them for anything.”

Tharp said their Capitol Heights scrapyard, in contrast, paid Maryland a \$12,600 fine three years ago after state inspectors found a minor problem with a storm drain filter at its facility.

Continuing negotiations

MDE spokesman Jay Apperson said that the Baltimore Scrap Corp. case remains an “active enforcement matter.” He declined to provide any details or make anyone available to answer questions. He said state regulators have been negotiating with the company and with the Environmental Integrity Project, the group that initially tipped off state officials.

Apperson did say that the company “has taken steps toward complying” with its permit requirements since problems were found there, but he offered no further information.

Company representatives wouldn’t speak at all. David Simon, Baltimore Scrap’s president, did not return phone calls seeking comment. Michael Lupco, the scrapyards’ operations manager, declined to comment when reached by phone. The company’s lawyer, Todd Chason, also did not return a phone call seeking comment.

Sylvia Lam, an attorney with the Environmental Integrity Project, wasn’t much more forthcoming when contacted, citing the continuing negotiations. Lam’s organization is representing Blue Water Baltimore, a local watershed watchdog group.

Nearly nine months after MDE inspectors found problems at Baltimore Scrap, Blue Water formally notified the company in early January of its intent to sue for “serious and ongoing violations” that were allowing sediment and oily runoff to pollute the harbor — which is already impaired by sediment and heavy metals, among other pollutants.

The suit was never filed. Lam declined to discuss why or what’s happened since, other than to say, “if they were in compliance, we wouldn’t be in negotiations.”

Angela Haren, director of advocacy for Blue Water Baltimore, defended the group’s decision not to sue Baltimore Scrap, saying, “Our goal is to come to a resolution as quickly as possible and as efficiently as possible. That often can only come in negotiations, and not enforcement.”

Despite the transformation of Baltimore’s Inner Harbor to an entertainment and tourist mecca over the last 50 years, industrial pollution remains a big concern, according to Haren.

There are 47 wastewater plants and industrial facilities with permits to discharge into the harbor, as well as 423 other facilities which, like Baltimore Scrap, have so-called “general” discharge permits, according to an MDE online database. As the term suggests, general permits do not impose as many site-

specific requirements on facilities, or subject them to the same degree of scrutiny as individual discharge permits.

Only one in five facilities with any kind of water discharge permit got inspected in 2016, and the number had declined nearly 20 percent from the previous year, according to data in the MDE’s annual reports to the state legislature. Facilities with general stormwater discharge permits — like Baltimore Scrap — are expected to inspect their own runoff controls regularly and report their compliance annually to the state.

Uncorrected violations

Baltimore Scrap Corp. began operating on the southeast side of the city in 1991. According to documents on file with the MDE, it buys scrap metal from industry, government, auto salvage yards, demolition contractors, farms and the general public. The facility operates five days a week and sometimes on Saturdays, nearly round-the-clock.

Before the MDE’s surprise visit in 2016, the scrapyard’s stormwater controls hadn’t been inspected since 2010, documents show. At that time, inspectors had written up the company for lacking a legally required plan for preventing and minimizing polluted runoff from its property. Instead of a fine, the company got “compliance assistance” — repeat visits from inspectors until it had developed a plan deemed satisfactory.

The two MDE inspectors who visited Baltimore Scrap in March 2016, though, reported seeing nothing in place to capture the muddy stormwater collecting in a drainage ditch and dribbling into a storm drain. They also said they found the following:

- An oily sheen on stormwater flowing into a storm drain from an area where junked vehicles were stored;
- “Fluff” from the shredding of non-metallic vehicle parts, such as dashboards and seat covers, scattered throughout the property, including in a drainage ditch; and
- A “dark, oil-like substance” in a drainage ditch that ran through the middle of the scrapyard.

The inspectors cited 11 items out of compliance in all, including failure to perform required self-inspections and maintain records that the state uses to judge compliance. In April, and again in May of last year, MDE inspectors returning to Baltimore Scrap found that the violations initially detected were still largely uncorrected. Analysis of water samples taken from runoff entering the storm drains found excessive levels of metals that could potentially harm aquatic life.

It's not clear how much pollution the scrapyards may have released, because businesses with general stormwater permits aren't required to monitor their effluent as closely as factories or sewage plants that discharge directly into streams and rivers. But stormwater runoff is considered a significant source of nutrient pollution of the Bay, and the only one that's still growing as more of the watershed gets developed.

Initially, the MDE seemed intent on acting swiftly after follow-up inspections of Baltimore Scrap found continuing violations. In May 2016, Lynn Buhl, then MDE's director of water management and now assistant secretary, wrote the department's deputy counsel urging formal enforcement action. She reiterated her request two months later, even after meeting with company representatives. They had outlined a plan for bringing the scrapyards into compliance over time, but Buhl noted it lacked any schedule or timeline for resolving the violations.

In August 2016, Buhl formally referred the case to the attorney general's office for legal action. The MDE's files for Baltimore Scrap contain a draft legal complaint and consent order detailing violations found at the facility and spelling out a timeline for changes needed to correct them. The draft proposed the company pay a penalty of \$500,000.

The complaint and consent order was never signed nor filed, for reasons not spelled out in records that the MDE provided to the *Bay Journal*. A spoke[s]woman for Attorney General Brian Frosh referred questions about the case back to the MDE.

Steps taken

In September 2016, Todd Chason, the company’s lawyer, wrote the assistant attorney general handling the case, saying “the facility has undertaken substantial upgrades and improvements to address its challenging stormwater issues.”

The letter listed five steps Baltimore Scrap had taken, including the “massive armoring” of a drainage swale that collected large volumes of stormwater from the scrapyard. A steel box had been installed at the end to settle out sediment and other pollutants before they could get offsite. Retaining walls were built that were meant to keep fluff and “residual fluids” on site. Storm drain inlets near the shredding equipment were raised and booms added to straw bales helped to prevent oil from being discharged.

Chason wrote that the company had done everything it could in the short term and planned to hire an engineering firm for other, longer-range upgrades.

“Baltimore Scrap looks forward to continued cooperation and coordination with MDE,” Chason’s letter concluded.

That same month, the MDE conducted a “multi-media” inspection of Baltimore Scrap, including staffers responsible for regulating air quality, trash and hazardous waste and water quality. They found “several new control measures on-site” to prevent polluted runoff, but also saw oil spilled on the ground in a pool of stormwater near a pile of crushed vehicles. And while the site appeared less cluttered and cleaner, they said they still saw pulverized “fluff” from shredded vehicles scattered along the yard’s northern boundary, where it could get offsite.

MDE inspectors also cited the company for violating its air quality permit. They said that company personnel were not removing all of the potentially harmful material from junked vehicles before putting them through the shredding equipment, and that records kept of the pollution controls on the shredder indicated it was not performing properly at times.

Inspections in late December 2016 and February of this year found conditions improved but that the company was still having trouble keeping the non-metallic fluff from blowing around, along with other litter and debris.

Then, on March 24, a fire broke out at Baltimore Scrap, with billowing smoke visible for miles. The *Baltimore Sun* reported that images posted on Twitter by the Baltimore Fire Department “appeared to show a large pile of crushed cars burning.” The blaze was extinguished after a few hours; months afterward, the cause remained under investigation, according to a fire department spokeswoman.

The wrong incentives

It’s not clear whether the MDE will wind up requiring Baltimore Scrap to pay a penalty for its violations, or whether it has used the threat of legal action to get the company moving toward compliance more quickly.

Even if that is the case, Steinzor, the Maryland law professor, argued that it’s a financial benefit to companies to be able to delay coming into compliance, as well as a misallocation of the state’s limited inspection staff to spend so much time repeatedly visiting one wayward industrial site.

“This seems like it’s taking a really long time,” she said. “The solutions are simple and straightforward...it’s a housekeeping kind of thing: run a clean facility.” Instead, she said, “some people are complying and others are not, which is a very bad situation. It gives the wrong incentives.”

Executives of Smith Industries Inc., Baltimore Scrap’s competitor, said that they are spending significant sums to comply with environmental requirements. At its Capitol Heights scrapyard, spokesman Tharp said, the company spent \$3 million to pave the entire site to help capture runoff — Baltimore Scrap’s site was only partially paved. Kelly Boyle, the company’s environmental compliance officer, estimated that Smith spends \$100,000 a year on monitoring and testing.

“Obviously, if you’re not spending money on elements of stormwater (prevention) that’s money you can put in your

pocket,” said John McGarvey, a Smith vice president who manages the Recovermat yard in Halethorpe, just south of Baltimore.

Jenn Aiosa, Blue Water Baltimore’s executive director, said ongoing negotiations prevented her from discussing the Baltimore Scrap situation. But she suggested it was not an isolated case. “The laws we pass are only as good as the enforcement,” she said. “That’s why the permits exist — to level the playing field.”

The MDE acknowledged in a report earlier this year to the General Assembly that inspecting facilities for water pollution compliance “continues to be a challenge” with the staffing it had. The department had 41 inspectors assigned for all of its water programs, and 14 positions unfilled in 2016, with nearly 27,000 permits or licenses to monitor.

Lawmakers responded by designating \$200,000 in the MDE’s budget for this fiscal year to be spent on filling vacant compliance and enforcement positions.

“Relying on some hot tip here or hot tip there,” Aiosa concluded, “is not the most efficient way to get compliance.”

Following the article’s publication, Baltimore Scrap brought suit for defamation.

The defendants moved to dismiss. The circuit court granted the motion, finding that Baltimore Scrap had failed to plead that any statements in the article were defamatory.²

This timely appeal followed.

² The circuit court also granted the motion to dismiss based on Baltimore Scrap’s failure to sufficiently plead the necessary element of falsity. Although that ground is urged by several of the defendants quoted in the article (the “Smith Defendants”) as a separate and independent ground for affirmance, for the reasons discussed in note 4, we decline to reach it.

DISCUSSION

We review the grant of a motion to dismiss to determine whether the trial court was “legally correct.” *Davis v. Frostburg Facility Operations, LLC*, 457 Md. 275, 284 (2018). In such a review, we “accept all well-[pleaded] facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party.” *Converge Services Group, LLC v. Curran*, 383 Md. 462, 475 (2004) (citing *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003)).

“Under Maryland law, to present a *prima facie* case for defamation, a plaintiff must ordinarily establish that the defendant made a defamatory statement to a third person; that the statement was false; that the defendant was legally at fault in making the statement; and that the plaintiff thereby suffered harm.” *Seley-Radtke v. Hosmane*, 450 Md. 468, 472 n.1 (2016) (quoting *Gohari v. Darvish*, 363 Md. 42, 54 (2001)); PAUL MARK SANDLER & JAMES K. ARCHIBALD, *PLEADING CAUSES IN MARYLAND* 486 (6th ed. 2018). If the defendant’s statement is not defamatory, that is the end of the inquiry.

We determine, as a threshold question of law, whether a publication is defamatory by reading the allegedly defamatory publication as a whole. We read the publication in this manner because words have different meanings depending on the context in which they appear. *Piscatelli v. Van Smith*, 424 Md. 294, 306 (2012) (quoting *Chesapeake Publ’g Corp. v. Williams*, 339 Md. 285, 295 (1995)); *Batson v. Shifflet*, 325 Md. 684, 723 (1992) (citations omitted); *Phillips v. Washington Magazine, Inc.*, 58 Md. App. 30, 36 (1984) (affirming grant of motion to dismiss amended pleading). “A defamatory statement is one [that] tends to expose a person to public scorn, hatred, contempt or ridicule, thereby

discouraging others in the community from having a good opinion of, or from associating or dealing with, that person.” *Batson*, 325 Md. at 722-24 (quoting *Bowie v. Evening News*, 148 Md. 569, 574 (1925)). The test we apply is “whether the words, taken in their common and ordinary meaning, in the sense in which they are generally used, are capable of defamatory construction.” *Chesapeake Publ’g Corp.*, 339 Md. at 295 (quoting *Batson*, 325 Md. at 724 n.14).

We must decide whether the circuit court was legally correct in finding that Baltimore Scrap failed to plead a claim of defamation.³ Baltimore Scrap makes the general allegation that the article, as a whole, portrays it as a “flagrant polluter.” Baltimore Scrap also identifies six specific passages from the article that it alleges defame it: the first eight paragraphs of the article; a quote from Paul Tharp, a competitor’s employee; a quote from John McGarvey, another employee of the same competitor; an unattributed statement about a fire; the photograph at the top of the article; and the omission from the article of the competitor’s environmental violation history. We will address each of the seven allegations

³ It is important to note that many of the familiar questions of defamation law, which concern the role of the press in a democratic society, such as whether the plaintiff is a public figure or if actual malice existed on the part of the defendant when they made the challenged statements, are not before us. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (holding public officials who wish to recover in defamation for statements related to their official conduct must prove the statement was made with actual malice); *Curtis Pub. Co. v. Butts*, 388 U.S. 130 (1967) (expanding *Sullivan* to include public figures). There can be no doubt, however, that articles such as this one, which allow a public review of government policies, are necessary to a functioning democracy.

in turn. Because we find none of the seven allegations capable of defamatory meaning, we affirm the circuit court.⁴

1. The “Flagrant Polluter” Allegation

In reviewing the complaint, we note first that Baltimore Scrap makes the general allegation that the article, as a whole, portrays it as a “flagrant polluter.” Neither Baltimore Scrap’s complaint nor its arguments on appeal specify a particular passage in which it thinks the article says or even implies this. We think the case law is clear that to allege a cause of action, a plaintiff must identify specific passages that defamed it. *See generally*

⁴ We decide this case solely on the grounds that Baltimore Scrap failed to sufficiently plead that the article contained defamatory statements. The Smith Defendants also urge us to affirm the circuit court’s finding that Baltimore Scrap failed to sufficiently plead falsity. Under that alternative theory, the Smith Defendants argue in four steps:

1. That an exception permits Maryland courts to consider some limited extrinsic evidence as if it was included as an exhibit to the complaint;
2. That MDE’s investigative file regarding Baltimore Scrap is discussed in Baltimore Scrap’s amended complaint and is, therefore, the type of evidence that a Maryland court can consider pursuant to #1;
3. That the settlement agreement between MDE and Baltimore Scrap, despite being reached after publication of the Bay Journal article, is part of MDE’s investigative file described in #2; and therefore
4. That the settlement agreement described in #3 is evidence that the court can consider in determining, on a motion to dismiss, whether Baltimore Scrap sufficiently pleaded falsity.

Each of these steps is a problem: the exception is limited, it is not clear that the investigative file would fall within the exception, it is even less clear that the settlement agreement would fall within the exception, and even if all of those were true, that these would demonstrate Baltimore Scrap’s failure to sufficiently plead falsity rather than creating a jury question as to falsity. Fortunately, however, we need not reach this alternative theory.

Koren v. Capital-Gazette Newspapers, Inc., 22 Md. App. 576 (1974) (analyzing specific passages of an allegedly defamatory newspaper article). Moreover, we see nothing about the article as a whole—and are certain that an ordinary reader would see nothing—that suggests that Baltimore Scrap is a “flagrant polluter.”⁵

2. The First Eight Paragraphs of the Article

Baltimore Scrap also alleges the first eight paragraphs of the article, reproduced above, imply that it was ignoring environmental problems for 19 months. That is not, however, what those paragraphs say. Rather, they describe the existence of an investigation of Baltimore Scrap by MDE. No one disputes that MDE was investigating Baltimore Scrap. As a result, we see nothing defamatory.

3. The Paul Tharp Quote

The Paul Tharp Quote:

And one of Baltimore Scrap’s competitors complains that it’s unfair to let such violations go unpunished for so long.

“It just seems like a very uneven playing field when they can be as dirty as they are and not really paying attention to the environmental regulations,” said Paul Tharp, information officer for EMR Smith Industries, which operates scrapyards in Halethorpe south of Baltimore and in Capitol Heights outside the District of Columbia.

“And MDE has not for a long time been cracking down on them for anything.”

⁵ We observe that Baltimore Scrap does not allege that the article said it engaged in polluting or would have been defamed by the allegation of polluting. Rather it has alleged only that it was called a “flagrant polluter.”

Paul Tharp said that Baltimore Scrap is “dirty,” and Baltimore Scrap claims that using that word to describe it was defamatory. We disagree.

We understand that the primary meaning of the word “dirty,” according to dictionary definitions, is that something has dirt on it or is not clean. *See, e.g.*, THE OXFORD ENGLISH DICTIONARY (1933) (“characterized by the presence of dirt; soiled with dirt; foul, unclean, sullied”); AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE ONLINE, <https://perma.cc/DR27-S3LW> (last visited Apr. 22, 2021) (“covered or marked with dirt or an unwanted substance; unclean”); MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2014) (“not clean or pure”); THE NEW OXFORD AMERICAN DICTIONARY (3d ed. 2010) (“covered or marked with an unclean substance”); WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY (2003) (“soiled with dirt; foul; unclean”); WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (2002) (“characterized by the presence of dirt or impurities”). That’s the primary meaning of the word “dirty” and quite possibly the one that Tharp meant. All scrapyards are “dirty” in this sense. Scrapyards have dirt, are soiled with dirt, and are unclean. There is nothing defamatory about calling a scrapyard “dirty” if one means it has dirt on it. We hold, as a matter of law, that saying that a scrapyard has dirt on it is not defamation.

In context, it seems reasonably clear that Tharp meant more when he described Baltimore Scrap as “dirty.” We think that the juxtaposition of “dirty” with “not really paying attention to the environmental regulations” in the Tharp quote suggests, in context, that he meant, and a reasonable reader would understand, “dirty” to mean “polluting.” Moreover, “polluting” is sometimes listed as a secondary meaning for the word “dirty.”

AMERICAN HERITAGE DICTIONARY (“spreading dirt; polluting”). Here, however, if a reasonable reader would understand “dirty” to mean “polluting” it cannot be defamatory of Baltimore Scrap because Baltimore Scrap did not allege in its complaint that “dirty” meant “polluting.” It is telling that Baltimore Scrap’s complaint carefully conceded that Baltimore Scrap was working to address MDE’s environmental concerns with Baltimore Scrap, but did not say that “dirty” meant “we are polluting, and that defames us.” Therefore, if when Tharp said Baltimore Scrap is “dirty,” an ordinary reader would have understood it to have meant that Baltimore Scrap “pollutes,” engages in “polluting,” or is a “polluter,” it was not defamatory in this case.⁶

Rather, Baltimore Scrap alleges that, in context, Tharp’s use of the word “dirty” would necessarily be understood to mean either “morally unclean or corrupt” or “acquired by disreputable means.” Neither of these proposed meanings makes any sense in the context of the Tharp quote or the article as a whole. Tharp was not discussing Baltimore Scrap’s morality, let alone how it was acquired, but rather, whether it was polluting the environment. We hold, as the trial court found, that no reasonable reader would have thought that Tharp’s use of the word “dirty,” meant any of the defamatory meanings that Baltimore Scrap’s complaint alleged.

⁶ As we noted above, Baltimore Scrap seems to admit that it was polluting, but takes umbrage only at the suggestion that it was a “flagrant polluter.” *See, infra*, n.5

4. The John McGarvey Quote

The John McGarvey Quote:

“Obviously, if you’re not spending money on elements of stormwater (prevention) that’s money you can put in your pocket,” said John McGarvey, a Smith vice president who manages the Recovermat yard in Halethorpe, just south of Baltimore.

Baltimore Scrap claims that the John McGarvey quote is defamatory because it implies that Baltimore Scrap profited (“put [money] in [its] pocket”) from a “purposeful derogation of its environmental responsibilities.” We read the McGarvey quote differently. We read it—and we hold that any ordinary reader would read it—to simply state a fact of life. Anytime anyone spends less on one thing, they have more money to keep or spend on something else. That’s true in life and also in the recycling business. The United States District Court for the District of Maryland found as much when Baltimore Scrap sued a competitor over Baltimore Scrap’s installation of a new scrap metal shredder: “In such a low margin business, shredders have an economic disincentive to spend money controlling and containing the non-salable byproducts.” *Baltimore Scrap Corp. v. David J. Joseph Co.*, 81 F. Supp. 2d 602, 604-05 (D. Md. 2000) We hold that the McGarvey quote is simply not capable of defamatory meaning.

5. The Scrapyard Fire Quote

The Scrapyard Fire Quote:

Then, on March 24, a fire broke out at Baltimore Scrap, with billowing smoke visible for miles. The *Baltimore Sun* reported that images posted on Twitter by the Baltimore Fire Department “appeared to show a large pile of crushed cars burning.” The blaze was extinguished after a few hours;

months afterward, the cause remained under investigation, according to a fire department spokeswoman.

Baltimore Scrap asserts that in reporting that there had been a fire at Baltimore Scrap, the Bay Journal implied that the fire was set purposefully by Baltimore Scrap, or was caused by Baltimore Scrap’s environmental practices.

This just isn’t what the article says. It says there was a fire at Baltimore Scrap’s scrapyard. It neither says nor implies a single thing about what caused the fire. The language is simply not capable of defamatory meaning. The paragraph discussing the fire describes its occurrence, describes the response to the fire, and describes the aftermath of the fire—and specifically states the opposite of what Baltimore Scrap has alleged: that the “cause [of the fire] remained under investigation.” It is worthwhile trying to imagine the opposite result. What would happen if a newspaper was unable to report the occurrence of a fire for fear that the statement would be regarded as defamatory to the owner of the property on which the fire occurred? Such a result would be incompatible with a free press. We hold that the description of the fire was not defamatory.

6. The Picture of the Scrapyard and Its Caption

Baltimore Scrap complains that the picture at the top of the article was misleadingly cropped so that it does not show environmental controls, and that the caption suggests the photo depicts environmental violations. The caption states:

Metal scrap and auto parts are piled high at Baltimore Scrap Corp. Repeated state inspections found problems with controlling stormwater runoff, failure to control “fluff” and general lack of housekeeping in the scrapyard.

Unaltered photographs, however, cannot be defamatory. An unaltered picture shows its subject as it was when the picture was taken. The picture shows the scrapyards as they appeared when Wheeler took the picture: there are stacks of metal and machinery for moving that metal. We are not sure whether the picture was “cropped” or simply taken from an angle that doesn’t show what Baltimore Scrap wants it to show. Either way, the picture shows viewers a mundane picture of a scrapyards. In other words, the picture shows *exactly* what an ordinary person would expect to see at a scrapyards. No person would think ill of Baltimore Scrap for having metal and machinery in their yard.

Even in the context of the caption the picture is not defamatory. The second sentence, (“Repeated state inspections found problems with controlling stormwater runoff, failure to control ‘fluff’ and general lack of housekeeping in the scrapyards.”), which is what Baltimore Scrap is really complaining about, is merely a summary of what MDE had found at Baltimore Scrap. We think it clear that the ordinary reader would understand that the second sentence is setting up the rest of the article and not describing specific things in the picture. Moreover, even if the reader thought the picture depicted those things, it is not defamatory because MDE found those things at Baltimore Scrap. And, in any event, an unaltered photograph cannot be defamatory.

7. The Omission of a Competitor’s Environmental Violation History

Finally, Baltimore Scrap complains that the article defames it by omitting the full environmental violation history of a competitor who is quoted in the article. Defamation is, as we explained above, a statement that brings someone into disrepute. Baltimore Scrap alleges that the absence of a statement defamed it. That is not possible. Failure to say

something is not defamation. Moreover, requiring the Bay Journal to include information in its article that it chose not to include is editorial control. We will not use the tort of defamation to tell an editor what must be included in the newspaper's articles.

CONCLUSION

We hold that the words of the Bay Journal article were not capable of defamatory meaning as a matter of law. We hold that none of the passages of which Baltimore Scrap has complained is capable of defamatory meaning and, as a result, the article as a whole is not capable of defamatory meaning. We hold that the circuit court was legally correct in dismissing the lawsuit.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY THE
APPELLANT.**