Circuit Court for Baltimore City
Case No. 24-C-16-001867

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1683

September Term, 2016

BRIAN SHULMAN

v.

BENJAMIN ROSENBERG

Meredith,
Berger,
Friedman,

JJ.

Opinion by Berger, J.

Filed: November 8, 2017

This appeal arises from a decision of the Circuit Court for Baltimore City to grant summary judgment in favor of the defendants below, an attorney in Baltimore City and his law firm, in an action based on allegations of defamation and false light, among other claims. At all times relevant to the events of the underlying dispute, appellee Benjamin Rosenberg ("Rosenberg") was president of North Shore's condominium association ("North Shore") and the founding partner of Rosenberg Martin Greenberg, LLP ("RMG").[1] Appellants, and plaintiffs below, Brian Shulman ("Shulman") and Dr. Dorianne Feldman ("Feldman"),[2] are married and live together in the North Shore community. At the heart of the appellants' defamation and false light claims are two emails sent by Rosenberg in which Rosenberg discussed a break-in and burglary of the appellants' house in North Shore.

Appellants ask us to review primarily three issues, which we have reworded as follows:

1. Whether the circuit court erred by denying Shulman and Feldman's motion for removal.

2. Whether the circuit court erred by denying Shulman and Feldman's motion for summary judgment on the issue of whether Rosenberg's statements in two emails were defamatory as a matter of law.

3. Whether the circuit court erred by granting summary judgment in favor of Rosenberg on Shulman and Feldman's defamation and false light claims, rather than permitting the jury to decide the merits of those claims.

[1] We refer to Rosenberg and RMG collectively as the "appellees."

[2] We refer to Shulman and Feldman collectively as the "appellants."

Additionally, appellees ask that we affirm the circuit court's determination that RMG owed no duty to appellants, thereby precluding RMG's liability for the appellants' negligent supervision claim.

For the reasons explained below, we affirm the circuit court's decision to grant summary judgment in favor appellees on all claims.

FACTS AND PROCEDURAL HISTORY

The North Shore condominium community is located in a highly populated area near the Inner Harbor and downtown Baltimore City, Maryland. Rosenberg, as well as Shulman and Feldman together, own condominium units within the North Shore community. At the time of the events underlying this case, Rosenberg had served as president of North Shore for several years.

On November 13, 2015, Rosenberg received the following email, entitled "Break in," from Richard Lessans, a fellow resident in the community:

> Ben -- I tried reaching you at home, as it is the only number I have -- Dee was not receptive to my call, which shocked me, as I explained that the home behind me was broken into last night, ransacked and robbed. Joan found [out] about this and called me very upset. I wanted you to know, as you are the President and chief communicator to our community.
>
> I am not aware of this type of robbery occurring in the past. This crew entered from the balcony over the garage and broke through the sliding door. The estimated time was between 8 and 9 last night, certainly a time when many of us are home or coming home.
>
> I have copied Andy so that he can alert his neighbors. I assume that you will retrieve the facts and do likewise.

> As a side note, I have no idea what is going on between you and Brian -- not my business. As a resident of the community, I expect you to treat this as if your home was broken into. I also do not need to hear from Dee that I only call your house when there is a problem. This is a major problem and threatens all of our security.
>
> Richard

Within the hour, Rosenberg replied to Lessans with the following email, which he copied to several other North Shore board members:

> Why would you call me at home on a weekday, Richard? Are you not able to look up my phone number on the internet? What do you think I should do in response to your email? Should I ask to be appointed police commissioner so I can station cops in our community 24/7? Should I tell our neighbors not to associate with criminals who might want to cause them harm? Please share your thoughts with me and the board. If you would like to discuss this with me, I can be reached during business hours at 410 . . . .

The following day, however, Rosenberg sent the following email to the members of the North Shore community:

> Dear Neighbors
>
> As some of you know, a North Shore home was burglarized on Wednesday evening. This was not a random or opportunistic crime. Although I do not know the status of the Police Department's Investigation, it is apparent that this was a targeted crime in which the perpetrators knew the victim**.** They were able to gain entry to the second floor of the townhouse by climbing on top of an suv that was parked on a parking pad outside the unit and then climbing over the balcony. I understand that the security alarm was not on. While this incident is disturbing, it is not an indication that our neighborhood is becoming less safe. It is the type of crime that occurs frequently in some of the nicest suburban areas. Nevertheless, and particularly with the holidays approaching,

> we can all take some simple steps to keep North Shore safe and secure . . . .

Rosenberg continued by offering several tips to North Shore residents for maintaining security in the neighborhood, including recommendations that residents keep their outside lights on all night, keep vehicles locked and parked inside each unit's garage, use the security alarm system installed in each of the units, and report any suspicious activity to the police. Finally, Rosenberg concluded with the following:

> We owe it to ourselves and our neighbors to do what we can to keep our community safe and secure. But we all need to be proactive and alert.
>
> Please let me know if you have any questions.
>
> Sincerely,
>
> Ben Rosenberg
> President, North Shore at Canton, Inc.

An RMG logo, contact information, and Rosenberg's title as Chairman of the firm were located at the bottom of the email, which was sent from Rosenberg's RMG email address.

On March 25, 2016, the appellants filed a complaint in the circuit court for Baltimore City against Rosenberg, North Shore, and RMG alleging various claims relating to Rosenberg's statements in the two emails. Thereafter, on June 17, 2016, appellants filed an amended complaint, which included claims for defamation, false light, and negligent infliction of emotional distress claims against all three defendants below. In addition, the appellants included two separate negligent supervision claims against RMG and North Shore. The appellants requested a jury trial and nominal, actual and punitive damages. Rosenberg, North Shore, and RMG each filed separate motions to dismiss or in the

alternative for summary judgment. Shulman and Feldman filed a consolidated "Opposition to Defendants' Motions to Dismiss and or for Summary Judgment and Cross-Motion for Partial Summary Judgment," in which they asked the court to find as a matter of law that the statements contained in the emails were defamatory.

At the initial hearing on the appellees' motion, Judge Shannon Avery recused herself, citing her in-person interactions with RMG as part of the Baltimore City Sitting Judges Committee ("the Committee"), a political action committee advocating for reelection of certain sitting judges on the Circuit Court for Baltimore City. Judge Avery indicated that her decision was an effort to avoid the appearance of impropriety given the extent of her involvement with RMG while serving on the Committee, including a fundraiser hosted by RMG, as well as her friendships with certain individuals at RMG.

On July 20, 2016, the appellants filed a "Motion for Removal," "pursuant to the Maryland Constitution and Maryland Rule 2-505." The appellants primarily relied on two grounds for removal: First, the appellants cited Judge Avery's recusal and her statements explaining her involvement with the firm; second, the appellants noted that RMG had donated money to the Committee on May 8, 2007 in the amount of $250.00, and March 31, 2010 in the amount of $450.00. After each of the two elections, certain Baltimore City Circuit Court judges supported by the Committee were reelected. Appellants argued that "[b]ecause so many of the judges (nineteen in total!) in this Circuit are impacted, Plaintiffs do not believe that they can receive a fair and impartial trial in this matter."

Appellants went on to explain that, based on Judge Avery's statements regarding her own position, the appellants "[could not] at [that] time be sure how involved RMG, and

its founder, Mr. Rosenberg, were involved [sic] in past elections, above and beyond the express evidence of the contributions . . . ." Therefore, "in order to avoid even the appearance of [impartiality] . . . ," the appellants argued, the case should "be removed from this [c]ircuit." As support, the appellants offered a number of cases in which we upheld removal where the potential impartiality of the jury was in question because of extensive pretrial publicity. Early in the motions hearing on August 19, 2016, Judge Althea Handy, who was subsequently assigned to hear the parties' summary judgment motions following Judge Avery's recusal, denied the appellants' motion for removal.[3]

Regarding the appellees' motion to dismiss or in the alternative motion for summary judgment, Rosenberg and RMG argued that none of Rosenberg's statements in either email were defamatory, and RMG asserted that RMG owed no duty to Shulman or Feldman -- a required element of the appellants' negligent supervision claim against RMG. At the same August 19, 2016 motions hearing, appellants agreed to dismiss their claim against North Shore for negligent supervision, leaving only their claims against Rosenberg and RMG for defamation and false light, and against RMG for negligent supervision.

The circuit court granted summary judgment in favor of Rosenberg and RMG on the remaining counts. In its order dated September 7, 2016, the court found that "the statements were not defamatory, as the statements did not implicitly or explicitly

[3] During the hearing, Judge Handy and the parties discussed a separate case between the same parties in which the appellants had filed a similar motion, based on the same grounds, for removal to another circuit court. Judge Alfred Nance had previously denied that motion.

suggest that the Plaintiffs themselves engaged in criminal behavior, or that the Plaintiffs were responsible for the break-in [of] their home." The trial court continued,

> The statements, when read as a whole, could be interpreted to mean that the perpetrators knew the Plaintiffs' habits, routine, or schedules, and thus the statements would not be seen as accusing the Plaintiffs of being criminals. Moreover, when reading the statements in their entirety, the Court finds that the Plaintiffs were not exposed to public scorn, hatred, contempt, or ridicule.

Additionally, the circuit court found that the appellees did not portray the appellees in a false light as a matter of law, and that RMG owed no duty to Shulman and Feldman as is required to establish a claim for negligent supervision. Accordingly, the circuit court granted summary judgment in favor of Rosenberg and RMG on the appellants' claims of false light, and in favor of RMG on the appellants' claim of negligent supervision. Further, the circuit court denied the appellants' motion for partial summary judgment on the issue of whether Rosenberg's statements were defamatory as a matter of law.

Appellants timely appealed the circuit court's grant of summary judgment in favor of Rosenberg and RMG. Specifically, the appellants challenge the circuit court's decisions to deny appellants' motion for removal to another circuit court, to deny partial summary judgment in favor of the appellants on the issue of whether the statements contained in the emails were defamatory as a matter of law, and to grant summary judgment in favor of appellees on the appellants' defamation, false light, and negligent supervision claims. We discuss additional facts below as they become relevant.

DISCUSSION

I. Standard of Review

A circuit court's decision of whether to grant summary judgment is a question of law, which we review *de novo*. *See Torbit v. Baltimore City Police Dep't*, 231 Md. App. 573, 586 (2017) (citing *Roy v. Dackman*, 445 Md. 23, 39 (2015)) (explaining that appellate review of a circuit court's grant of summary judgment is *de novo*); *Piscatelli v. Van Smith*, 424 Md. 294 (2012) (citing *Rosenberg v. Helinski*, 328 Md. 664 (1992)) ("[T]he trial court decides issues of law, and not disputes of fact, when considering a motion for summary judgment."); Because we review the court's decision as a matter of law, "[t]he standard of appellate review . . . is whether it is legally correct." *Hines v. French*, 157 Md. App. 536, 550 (2004) (citations omitted).

Maryland Rule 2-501 governs the circuit court's decision whether to grant summary judgment, providing the following: "[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Md. Rule 2-501. The nonmoving party, however, has the burden to show that material facts remain in and dispute, and therefore, why judgment should not be granted in the nonmoving party's favor. *See Rite Aid Corp. v. Hagley*, 374 Md. 665, 684 (2003). As the Court of Appeals explained:

> The party opposing a motion for summary judgment must produce admissible evidence to show that a genuine dispute of material fact, i.e., one "the resolution of which will somehow affect the outcome of the case," . . . does exist . . . . This requires

> more than "general allegations which do not show facts in detail and with precision."

Id. at 684 (citations omitted).

We have previously explained that "[t]he purpose of summary judgment is to determine whether there are facts in dispute that must be resolved through a more formal resolution process, such as a trial on the merits." *Id.* at 549 (citing *Eng'g Mgmt. Servs. v. Md. State Highway Admin.,* 375 Md. 211, 229 (2003)). "If there is no dispute of material facts, then our role is to determine whether the trial court was correct in granting summary judgment as a matter of law." *Id.* at 549-50 (citing *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 386 (1997)). Further, we review all reasonable factual inferences in favor of the nonmoving party. *Shirley v. Heckman*, 214 Md. App. 34, 42 (2013) (citing *Piscatelli v. Van Smith*, 424 Md. 294, 305 (2012)).

In this case, we view the facts in the light most favorable to appellants -- although both sides moved for summary judgment, the circuit court denied appellants' motion and granted summary judgment in favor of the appellees. Additionally, we noted recently that although "summary judgment is typically inappropriate in a defamation case," the court is not obligated to send the issue to the jury where the defendant is, nevertheless, entitled to judgment as a matter of law.[4] *Lindenmuth v. McCreer*, 233 Md. App. 343, 353 (2017).

[4] We discuss our review of a circuit court judge's decision not to recuse herself or to deny a motion for removal on a similar basis below.

II. The Circuit Court Did Not Err by Denying the Appellants' Motion for Removal.

Appellants argue that the circuit court erred by denying the appellants' motion for removal of the case to another circuit court, based on what the appellants describe as RMG's "extensive contributions to the reelection of most of the judges sitting on that court's bench." Further, they aver that RMG's contributions to the Committee in 2007 and 2010 "trigger[s] the right of removal under Md. Rule 2-505(a)(2)," asserting "the fact that 18 of the 32 sitting judges . . . have received political contributions from one of the Appellees, which is run by another Appellee, which would have affected the Appellants in pretrial motions . . . ."

The Maryland Constitution, Article IV, §8(c) provides in pertinent part:

> [I]n all suits or actions at law . . . in this State which have jurisdiction over the cause or case, in addition to the suggestion in writing of either of the parties to the cause or case that the *party cannot have a fair and impartial trial* in the court in which the cause or case may be pending, it shall be *necessary for the party making the suggestion to make it satisfactorily appear to the court that the suggestion is true, or that there is reasonable ground for the same*; and thereupon the court shall order and direct the record of the proceedings in the cause or case to be transmitted to some other court, having jurisdiction in the cause or case, for trial.
>
> The right of removal also shall exist on suggestion in a cause or case in which *all the judges of the court may be disqualified under the provisions of this Constitution to sit*.

Md. Const. Art. IV, §8(c) (emphasis added).

Maryland Rule 2-505(a) embodies the two grounds provided in the constitutional provisions for the right to removal. Subsection (a)(1) provides the following, in pertinent part:

> (1) *Prejudice.* In any action that is subject to removal, . . . any party may file a motion for removal accompanied by an affidavit alleging that *the party cannot receive a fair and impartial trial in the county* in which the action is pending. *If the court finds that there is reasonable ground to believe that the allegation is correct*, it shall order that the action be removed for trial to a court of another county.

Md. Rule 2-505(a)(1) (emphasis added). Subsection (a)(2) provides the right of removal based on the disqualification of all judges on a particular court:

> (2) *Disqualification of All Judges.* In any action in which all the judges of the court of any county are disqualified to sit by the provisions of the Maryland Constitution, any party, upon motion, shall have the right of removal of the action to a court of another county or, if the action is not removable, the right to have a judge of a court of another county preside in the action.

Md. Rule 2-505(a)(2).

In *Hoffman v. Stamper*, we addressed our review of a circuit court's discretionary decision whether to remove a case and noted:

> The threshold question for the circuit court on a motion for removal -- whether there is reasonable ground to believe the allegation that the moving party cannot receive a fair and impartial trial in the county in which the action is pending -- is a mixed question of law and fact concerning a constitutional right. Accordingly, on appeal, we review that threshold determination *de novo*.

155 Md. App. 247, 284 (2004), *aff'd in part*, *rev'd in part on other grounds*, 385 Md. 1 (2005) (emphasis added).

Critically, in the circumstance in which a party suggests that he or she cannot have a fair and impartial trial in the county in which the action is pending, the party asserting the potentiality for prejudice bears the burden of providing reasonable grounds for that belief. *See* Md. Const. Art. IV, §8(c) ("[I]t shall be necessary for the party making the suggestion to make it satisfactorily appear to the court that the suggestion is true, or that there is reasonable ground for the same."); *see also Boyd v. State*, 321 Md. 69, 80–81 (1990) (holding that "where an allegation of actual bias or prejudice is made, the burden is upon the defendant to make that showing from the record").

Additionally, the Maryland Constitution and Maryland Rule 2-505(a)(2) provide a non-discretionary right of removal when all sitting circuit court judges in a particular county are disqualified. *See* Md. Const. Art. IV §8(c). Even if every judge on a court in a particular county is disqualified from presiding over the case, however, an out-of-county judge may be assigned to the case, which "in effect is likely to vitiate the 'right' to removal created by Article IV §8(c)." *See* John A. Lynch, Jr. & Richard W. Bourne, *Modern Maryland Civil Procedure* 2-136-37 §2.5(f)(3), n. 172 (2d ed. 2004). Indeed, the rule governing grounds for removal of judges based on disqualification has changed. Now, judges sitting on a court in another county may be brought in to hear the case where every judge on a court in the county where the action is pending is disqualified or unavailable, rather than requiring the case to be transferred to another county.[5]

[5] Compare former Md. Rule 542(a) to current Md. Rule 2-505(a). The current Rule provides for the assignment of a judge from another county to the case in the rare instance in which every judge on the court in a particular county is disqualified from presiding over

Notably, the appellants do not argue that Judge Handy, specifically, should have been disqualified, nor do they suggest that RMG's donations in 2007 and 2010 had any effect on Judge Handy's ability to preside over the case fairly and impartially. Instead, the appellants argue that because RMG's contributions to the Committee have influenced so many of the circuit court judges in Baltimore City, and because they cannot be sure that other judges in Baltimore City have not been "involved" with RMG, the appellants were entitled to removal to a circuit court in another county.

Rather than supporting their motion for removal with evidence of impartiality, however, the appellants provide only unsupported, conclusory statements -- e.g., "the idea that the judge hearing the case may owe their very job to the efforts of Appellees was extremely troubling and raised a heavy cloud of impartiality and impropriety." The appellants fail to articulate any factual basis for their contention that RMG's contributions to the Committee constituted grounds for the disqualification, and thus unavailability, of every sitting judge on the Circuit Court for Baltimore City. Appellants bore the burden of

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the case. *See* John A. Lynch, Jr. & Richard W. Bourne, *Modern Maryland Civil Procedure* 2-137 §2.5(f)(3), n. 954 (2d ed. 2004). As reviewed by Lynch & Bourne,

> [i]n its original form, Rule 2-505(a)(2) provided that in any action in which all of the judges of a county's circuit court were disqualified, the case was removable as of right on motion of any party. In 1996, effective January 1, 1997, the rule was revised to add that, if all the judges were disqualified, "any party shall have the right . . . *if the action is not removable to have a judge of a court of another county preside at the action*."

Id (emphasis added).

establishing that every sitting Baltimore City Circuit Court judge would be subject to mandatory disqualification. Clearly, therefore, the appellants' contention that they were entitled to the right of removal under Md. Rule 2-505(a)(2) is without merit. We, therefore, need not address whether the nineteen sitting judges that the appellants assert "had involvement with the Appellees in their various reelection campaigns" would have been disqualified from presiding over the case.

The appellants' argument that they were entitled to "discretionary removal" fails for similar reasons. Both the Maryland Constitution and Md. Rule 2-505(a)(1) require the party moving for removal to another county to provide "reasonable ground to believe the allegation that the moving party cannot receive a fair and impartial trial in the county in which the action is pending." *Hoffman*, *supra*, 155 Md. App. at 284; *see* Md. Const. Art. IV, §8(c); Md. Rule 2-505(a)(1). Whether or not these grounds exist is the "threshold question" upon our review of the circuit court's decision. *Hoffman*, *supra*, 155 Md. App. at 284.

Regarding Judge Avery's discretionary decision to recuse herself from the case, unless "the alleged disqualification of a judge . . . amount[s] to a constitutional or legal disqualification, the question is left to the enlightened conscience, delicacy of feeling, and sense of fairness possessed by the individual judge." *Bishop v. State*, 218 Md. App. 472 (2014). Judge Avery's decision was within her sound discretion, even if only to avoid the appearance of impropriety, and was based on her individual circumstances. *See Surratt v. Prince George's County,* 320 Md. 439, 464 (1990) ("When bias, prejudice or lack of impartiality is alleged, the decision is a discretionary one . . ."). Judge Avery's decision to

recuse herself, therefore, in no way suffices, as the appellants suggest, as a reasonable ground for the disqualification of other judges on the court in Baltimore City. *See Karanikas v. Cartwright*, 209 Md. App. 571, 580 (2013) (quoting *In re Turney,* 311 Md. 246, 253 (1987) ("We review a trial court's recusal decision pursuant to an objective standard; namely, '[w]hether a reasonable member of the public knowing all of the circumstances would be led to the conclusion that the judge's impartiality might reasonably be questioned.'").

The party seeking the disqualification of a trial judge bears a "heavy burden to overcome the presumption of impartiality." *Atty. Grievance Comm'n v. Blum,* 373 Md. 275, 297 (2003); *Reed v. Baltimore Life Ins. Co.,* 127 Md. App. 536, 556 (1999) (citing *Jefferson–El v. State,* 330 Md. 99, 107 (1993)) ("Maryland adheres to a strong presumption that a trial judge is impartial, thereby requiring a party requesting recusal to prove that the judge has a bias or prejudice derived from an extrajudicial-personal-source."). The appellants have not come close to providing a reasonable basis for the disqualification of Judge Handy, much less, the entire bench of the Circuit Court for Baltimore City. Accordingly, we affirm the circuit court's denial of the appellants' motion for removal.

III. The Circuit Court Did Not Err in Granting Summary Judgment in Favor of the Appellees on the Appellants' Claims for Defamation, False Light, and Negligent Supervision.

The merits of the appellants' case for the purposes of this appeal arise out of the statements made by Rosenberg in the two emails he sent on November 12 and 13 of 2015. Their claim that Rosenberg placed them in a false light flows out of the same facts as their claim for defamation. Similarly, the appellants' negligent supervision claim against RMG

is based on Rosenberg's two emails, and the claim is actionable only if the appellants can establish their underlying claims of defamation or false light. For these reasons, we begin with and focus primarily on the appellants' defamation claim and the circuit court's decisions surrounding that claim.

The appellants' defamation claim is centered on two statements contained in two separate emails, which Rosenberg sent to primarily two separate audiences -- i.e. the community member who contacted Rosenberg and North Shore board members, and members of the condominium community as a whole. In the first email, the appellants take issue with the following rhetorical question responding to Lessans's email: "Should I tell our neighbors not to associate with criminals who might want to cause them harm?" In the second email, sent to the members of the North Shore community, the appellants argue that the following statements were defamatory: "[The burglary] was not a random or opportunistic crime. Although I do not know the status of the Police Department's investigation, it is apparent that this was a targeted crime in which the perpetrators knew the victim."

The appellants claim that, through Rosenberg's first email, Rosenberg "effectively stat[ed] that the Appellants were responsible for the crime[] by association." According to the appellants, "the first statement did not even imply, but in fact outright said, that the Appellants associated with criminals or involved [sic] in criminal activity themselves." Similarly, the appellants interpreted the statements contained in the second email to community members as alleging "that the Appellants knew the perpetrators or otherwise associate with criminals." Regarding both emails, the appellants asserted at the trial court

level that Rosenberg's statements either "implied or expressly stated" that "[the appellants] associated with criminals and were otherwise responsible for the break-in in their home," and that "by placing the [appellants] in the light of being associated with criminals, [Rosenberg] therefore alleged that they were themselves engaged in criminal behavior." Curiously, the appellants go so far as to characterize Rosenberg's statements as "fake news" and aver that Rosenberg "inserted fake information in order to create an implication that Brian Shulman had something to do with the burglary of his own home."

In contending that the circuit court erred in its decisions below, the appellants argue that the circuit court should have found that Rosenberg's statements were defamatory as a matter of law -- i.e., his statements constituted defamation *per se*. The circuit court, according to appellants, should have granted partial summary judgment in favor of the appellees on the issue of whether Rosenberg's statements were defamatory as a matter of law. Alternatively, even if his statements were not defamation *per se*, the appellants contend that the circuit court should have allowed the jury to decide whether Rosenberg's statements were defamatory, because his statements were defamatory *per quod*.[6]

To establish a prima facie case of defamation in Maryland, "a plaintiff must establish four elements: (1) that the defendant made a defamatory statement to a third person, (2) that the statement was false, (3) that the defendant was legally at fault in making the statement, and (4) that the plaintiff thereby suffered harm." *Offen v. Brenner*, 402 Md. 191, 198 (2007) (citing *Smith v. Danielczyk*, 400 Md. 98, 115 (2007)); *see also Seley-*

[6] We address the distinction between defamation *per se* and defamation *per quod* later in this opinion.

Radtke v. Hosmane, 450 Md. 468, 513 (2016) (quoting *Gohari v. Darvish*, 363 Md. 42, 54 (2001)). More specifically, a statement is defamatory when it "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 associating with, that person." *Offen*, *supra*, 402 Md. at 199 (quoting *Gohari*, *supra*, 363 Md. at 55); *see also Batson v. Shiflett*, 325 Md. 684, 722-23 (1992) (articulating the same definition of a defamatory statement). Further, "the courts must consider the [statement] as a whole to arrive at the true meaning of the specific words and phrases." *Phillips v. Wash. Mag., Inc.*, 58 Md. App. 30, 36 (1984) (citations omitted). In making this determination, we cannot "separate words or phrases from the context." *Kilgour v. Evening Star Newspaper Co.*, 96 Md. 16 (1902).

As a required element of establishing a prima facie case of defamation, the plaintiff must demonstrate that the alleged defamatory statement was about the plaintiff. "[T]o maintain an action for libel or slander, it must appear that the defamatory words refer to some ascertained or ascertainable person, and that person must be the plaintiff." *Publish America, LLP v. Stern*, 216 Md. App. 82, 98 (2014) (citations omitted). More specifically, to maintain an action for libel, "it is necessary to show that the words used were not only untrue and injurious, but that they were concerned with and injurious to the character and integrity of the one complaining." *Prucha v. Weiss*, 233 Md. 479, 485 (1964) (citing *Foley v. Hoffman*, 188 Md. 273(1947)).

1. The Statements Contained in the Emails Do Not Constitute Defamation *Per Se*.

The appellants argue, first, that the circuit court should have found that Rosenberg's statements were defamatory as a matter of law -- i.e., defamatory *per se*. Thus, the appellants contend that the circuit court erred in denying partial summary judgment to the appellants. Had the circuit court granted summary judgment in their favor on this issue, the appellants would have avoided the burden of pleading and proving through extrinsic evidence that Rosenberg's statements carried a defamatory meaning.

A publication is *per se* (i.e. "by itself") defamatory where the statement "needs no explanation" because the statement's "injurious character is a self-evident fact of common knowledge of which the court takes judicial notice . . . ." *Samuels v. Tschechtelin*, 135 Md. App. 483, 549 (2000) (quoting *M & S Furniture Sales Co. v. Edward J. DeBartolo Corp.*, 249 Md. 540, 544 (1968); *Wineholt v. Westinghouse Elec. Corp.*, 59 Md. App. 443, 446 (1984) (citing *American Stores Co. v. Byrd*, 229 Md. 5, 12 (1962)). Put differently, "the words themselves impute the defamatory character" and "no innuendo -- no allegation or proof of extrinsic facts -- is necessary . . . ." *Indep. Newspapers, Inc. v. Brodie*, 407 Md. 415, 441 (2009) (quoting *Metromedia, Inc. v. Hillman*, 285 Md. 161, 172-73 (1979). "Even though this question is one for the court to decide as a matter of law . . . the accompanying circumstances should in some cases be considered." *Wineholt*, *supra*, 59 Md. App. at 447.

We have previously found that words or statements constitute defamation *per se* when the meaning of the words impute to the plaintiff the commission of a crime. *See Caldor, Inc. v. Bowden*, 330 Md. 632 (1993) (false accusation of theft against an employee

constituted actionable defamation); *Montgomery Ward & Co., Inc. v. Cliser*, 267 Md. 406 (1972) (false accusation of theft of merchandise against customer in parking lot constituted slander *per se*); *Simon v. Robinson*, 221 Md. 200 (1959) (allegation in a letter that the plaintiff had fraudulently diverted and converted funds for his own personal use constituted libel *per se*); *Lewis v. Accelerated Transp.-Pony Express, Inc.*, 219 Md. 252, 254 (1959) (allegation that the plaintiff's truck stop was "nothing but a whorehouse" was actionable as defamation *per se*); *Haines v. Campbell*, 74 Md. 158 (1891) (allegation of arson was actionable as defamation *per se*); *Padgett v. Sweeting*, 65 Md. 404 (1886) (allegation that the plaintiff had committed perjury -- "You dirty stinking liar. You got on the stand and swore false oaths against me"-- was actionable *per se*).

A second prominent category in which our courts have held statements to constitute defamation *per se* include statements that impute to the plaintiff the incapacity or unfitness for one's occupation, profession, office or position, or business.[7] *See*, *e.g.*, *Shapiro v. Massengill*, 105 Md. App. 743 (1995) (holding the defendants statements constituted defamation *per se* where the statement implicated characteristics valuable to one's fitness for the practice of law).

The appellants point out that Lessans forwarded Rosenberg's response to his inquiry to Shulman and included the comment, "Brian, FYI . . . . Read his words carefully!!" The appellants argue that Lessans's comment indicates that he understood Rosenberg's first

[7] For statements that injure one's professional reputation or character to be actionable, the meaning imputed by the statement must ordinarily be related and harmful to the plaintiff's particular profession, rather than merely disparaging, generally, to most any person. *See Heath v. Hughes*, 233 Md. 458 (1964).

email to "impute guilt" to the appellants. Unlike our previous case law, however, the appellants did not allege that Rosenberg made any statement that could reasonably imply that the appellants committed a crime. Even assuming *arguendo* that Rosenberg's statement -- "Should I tell our neighbors not to associate with criminals who might want to do them harm?" -- referred to either or both Shulman and Feldman and implied, on its face, that the appellants had "associate[d] with criminals who might want to do them harm," the appellants provide no authority to suggest that an allegation of a mere association with criminals, without any implication of criminal wrongdoing on the appellants' behalf, could constitute defamation *per se*.

Indeed, the authorities appellants cite to support their proposition that imputing an "association" with criminals is actionable *per se* are based on the laws of other states in which the defendant alleged that the plaintiff was connected to the mafia or other organized crime. *See Lynch v. N.J. Educ. Assoc.*, 735 A.2d 1129, 1134 (N.J. 1999) (examining statements that alleged that the plaintiff was a "mob-connected politician"); *Locricchio v. Evening News Assoc.*, 476 N.W. 2d 112, 132 (Mich. 1991) (holding that the defendant had implied that the plaintiffs had financial connections to organized crime figures who "contributed in financing" the plaintiffs' business); *Bufalino v. Associated Press*, 692 F.2d 266 (2nd Cir. 1982) (examining a statement by the associated press imputing to the plaintiff, an attorney, "ties to organized crime figures"). None of the authorities cited by the appellants held that a bare insinuation of some association with criminals, without any indication of criminal conduct on the plaintiff's behalf, was *per se* defamatory.

Additionally, in all of these cases, the plaintiff was named and readily identifiable in the statement itself.

The pertinent question we must address regarding whether the circuit court erred in denying partial summary judgment in favor of the appellants is whether the statements in question constituted defamation as a matter of law. The Second Circuit's holding in *Bufalino*, however, answered the question of whether the plaintiff, an attorney, met his burden of proof under Pennsylvania law to show that the statements in question, together with other extrinsic evidence, were "capable of defamatory meaning."[8] The Second Circuit's holding, therefore, which was based on more than the ordinary meaning of defendant's statements and the attending circumstances, is not equivalent to our Court's holding that a statement constitutes defamation *per se*, such that the plaintiff is relieved of the burden of proving with extraneous facts that a particular statement was defamatory.

In the case *sub judice*, the appellants did not establish that either of Rosenberg's statements, on its face, and without any evidence of "inducement, colloquium, and innuendo," referred to Shulman and Feldman, specifically, nor that his words implied that the appellants had committed a crime or engaged in conduct so morally reprehensible that the revelation of it would "tend[] to expose a person to public scorn, hatred, contempt or ridicule." *Offen*, *supra*, 402 Md. at 199. Accordingly, the circuit court did not err in denying partial summary judgment on this issue in favor of the appellants. The appellants,

[8] As we have explained, under Maryland law, for the circuit court to grant summary judgment, finding the meaning of the words in question to be defamatory as a matter of law, the statement must be defamatory on its face without requiring the court to consider extraneous facts. *Samuels*, *supra*, 135 Md. App. at 549.

therefore, carried the burden of setting forth extraneous facts that would reveal the defamatory nature of the statements.

2. The Circuit Court Did Not Err in Finding that the Statements Were Not Actionable, and Therefore, Appropriately Granted Summary Judgment in Favor of the Appellees.

Next, the appellants argue that, even if the circuit court concluded that Rosenberg's statements were not defamatory *per se*, the court should have found that the statements were defamatory *per quod* and permitted the jury to decide whether the statements were defamatory. The appellants interpret our case law to hold that "when the 'defamatory nature of the publication' [is] not 'apparent on its face,' . . . the case becomes one of defamation *per quod*." For this reason, the appellants contend that the circuit court was not permitted to grant summary judgment in favor of the appellees; instead, the circuit court should have permitted the jury to determine whether the statements were defamatory. The appellants, however, overlook the trial court's role of determining whether a statement is "capable of defamatory meaning" at all.

Under Maryland law, one of the few, but critical, distinctions between statements that are actionable *per se* and *per quod* "is that in an action for libel *per quod*, a private individual must allege and prove extrinsic facts showing that the publication is defamatory, whereas in an action for libel *per se*, no such allegation and proof is necessary." *Hearst Corp. v. Hughes*, 297 Md. 112, 136 (1983). We explained in *Samuels* that "[i]n the case of words or conduct actionable only *per quod*," the plaintiff must "plead and show that the words or actions were defamatory." 135 Md. App. at 549; *see also Brodie*, *supra*, 407 Md. at 441 (quoting *Metromedia, Inc.*, *supra*, 285 Md. at 172-73) ("[T]he only distinction

remaining in Maryland between a libel *per se* and a libel *per quod* is that *to recover the plaintiff must first show that the publication is defamatory*.") (emphasis and alterations in original). In other words, whereas a prima facie case of defamation, derived from defamation *per se* "needs no explanation," *Wineholt*, *supra*, 59 Md. App. at 446, a prima facie case of defamation based on defamation *per quod* can survive only if such explanation, in the form of specific facts indicating the statement's defamatory character, is given.

Not every statement that casts an unfavorable or unappealing light on the plaintiff, however, even when established to have been interpreted as disparaging, constitutes an actionable claim of defamation. To determine whether the trial court should attribute a defamatory meaning to the statement in question, the court must consider the entire publication and the context in which it was made.

Contrary to the appellants' assertions, determining whether a statement is capable of defamatory meaning is in the province of the trial court. *See Seley-Radtke*, *supra*, 450 Md. at 483 ("Whether a statement is defamatory is a question of law."). We provided the following in *Embrey v. Holly*:

> The law of Maryland is that the trial judge initially has the duty to determine whether a statement is capable of conveying a defamatory meaning. *Metromedia*, *supra*; *Cheek v. J.B.G. Properties, Inc.*, 28 Md. App. 29, 344 A.2d 180 (1975). Should the judge find that the publication is amphibolous in that it is capable of both defamatory and non-defamatory meanings, the resolution of the question must be put to the jury. *General Motors Corp. v. Piskor*, 277 Md. 165, 352 A.2d 810 (1976) . . . .

48 Md. App. 571, 581 (1981), *aff'd in part, rev'd in part*, 293 Md. 128 (1982) (some citations omitted); *see also Goldborough v. Orem & Johnson*, 103 Md. 671 (1906) ("[U]pon demurrer, it is always the province of the court to determine whether the words charged in the declaration amount in law to libel, or slander . . . . And it is equally a matter of law as to whether an innuendo . . . is fairly warranted by the language declared on . . . ."). Further, it is well established that "the innuendo cannot enlarge, or add to the sense . . . of the words declared on, or properly impute to them a meaning which the publication either in itself, or taken in connection with inducement and colloquium does not fairly warrant." *See Goldborough*, *supra*, 103 Md. 671.

To be sure, "[t]he determination of whether an alleged defamatory statement is *per se* or *per quod* is a matter of law." *Shapiro*, *supra*, 105 Md. App. at 773 (citing *Gooch v. Md. Mech. Sys., Inc.*, 81 Md. App. 376, 391 n. 8 (1990)). As the appellants point out, "[i]f the statement is *per quod*, then the jury must decide whether the statement does, in fact, carry defamatory meaning." *Id.* (citing *Helinski v. Rosenberg*, 90 Md. App. 158, 165, *rev'd on other grounds*, 328 Md. 664 (1992)). "Where extrinsic facts must be shown in order to establish the defamatory character of the words sued upon," however, and the plaintiff fails to allege extrinsic facts from which a jury could reasonably determine that the statement was understood as having the alleged defamatory meaning, judgment may be granted in favor of the defendant. *See Brodie*, *supra*, 407 Md. at 441 (quoting *Hillman*, *supra*, 285 Md. at 172-73); *see e.g.*, *General Motors Corp. v. Piskor*, 27 Md. App. 95 (1975) *aff'd in part*, *rev'd in part on other grounds*, 277 Md. 165 (1976) (holding that, due to the attendant circumstances, the conduct of the security guards was capable of bearing defamatory

meaning). In summary, only where the statement in question is *per se* defamatory, or where the statement can reasonably be understood to carry multiple meanings, at least one of which is innocent and one defamatory (i.e. defamation *per quod*), should the jury determine in which sense the statement was understood.

In this case, the only conceivable implication adverse to the appellants contained in either of Rosenberg's statements was that the appellants, as the most recent victims of burglary and the apparent impetus for Lessans's email, had "associate[d] with criminals." Even this statement, however, was included in a series of rhetorical "suggestions" for remedial action following the burglary. We reiterate, however, that Rosenberg did not name either of the appellants in asking Lessans, "What do you think I should do in response to your email? Should I ask to be appointed police commissioner so I can station cops in our community 24/7? Should I tell our neighbors not to associate with criminals who might want to cause them harm?" Even interpreting the statements might refer to the appellants, and as accusing them of having associated with criminals prior to the burglary, the appellants failed to allege any facts to demonstrate that the meaning imputed to the appellants could rise to the level of actionable defamation. The circuit court, therefore, correctly determined that the statement in Rosenberg's first email was not capable of defamatory meaning.

In Rosenberg's second email, which he sent to the community, he referred to the burglary at the appellants' home, specifically, and characterized the incident as "targeted," based on the attending facts. We have previously held that statements of opinion are generally not actionable. *See Piscatelli*, *supra*, 424 Md. 314. "We preserve the distinction

between assertions of fact on one hand and opinions, comments and criticism on the other hand because fair and honest commentary, by its very nature, deserves special protection in a free society." *Peroutka v. Streng*, 116 Md. App. 301, 316 (1997) (citing *Kapiloff v. Dunn*, 27 Md. App. 514, (1975).

When the facts upon which the publisher of the alleged defamatory statement based the opinion are not given alongside the opinion, however, the opinion itself may be interpreted as factual and, therefore, potentially actionable. *Peroutka*, *supra*, 116 Md. App. at 319 (citing *A.S. Abell Co. v. Kirby*, 227 Md. 267, 282 (1961)). Additionally, "[i]f the facts from which an individual forms a conclusion are given but are false, the defendant is potentially subject to liability for defamatory speech based on the false statement of facts." *Peroutka*, *supra*, 116 Md. App. at 319 (citing *Hearst Corp.*, 297 Md. at 131-32) (citations omitted). "If," however, "the facts from which a defendant forms his or her opinion are given or are readily available and those facts cannot be proved false, the defendant is not subject to liability for the opinion." *Id.* at 320 (citing *Kapiloff*, *supra*, 27 Md. App. at 532 n. 19).

Reciting the Restatement (Second) of Torts § 566 with approval, we clarified that "[i]t is the function of the court to determine whether an expression of opinion is capable of bearing defamatory meaning because it may reasonably be understood to imply the assertion of undisclosed facts that justify the expressed opinion about the plaintiff . . . ." *Samuels*, *supra*, 135 Md. at 548. If the court finds the statement in question to be "capable of bearing defamatory meaning," the jury has the subsequent task of "determin[ing] whether that meaning was attributed to it by the recipient of the communication." *Id.*

In Rosenberg's second email, which was sent to the North Shore community, he stated that the burglary of the appellants' home "was not a random or opportunistic crime." Further, he opined, "Although I do not know the status of the Police Department's investigation, it is apparent that this was a targeted crime in which the perpetrators knew the victim." Rosenberg, thereafter, explained the facts upon which he based his opinion that the burglary was "targeted." In concluding his message to community members, Rosenberg recalled that "in virtually all of [the past serious incidents over the past decade], the victims were known to the perpetrators."

In *Peroutka*, we held that the circuit court did not err in granting summary judgment in favor of the defendant where the defendant social worker stated to a woman and her daughter that the woman was an emotionally abused spouse. 116 Md. App. 301. As the statement expressed an opinion, and all persons who heard her statements had firsthand knowledge of conflicts within the family, the statement was not actionable defamation either by the woman or her current husband. *See id.* Additionally, under the circumstances such as those present in *Peroutka*, alleging that the plaintiff was the *victim* of emotional abuse "is not the type of statement 'which 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.'" *Id.* at 312. Further, as the implication that the husband had perpetrated "emotional abuse" against the wife was so ambiguous, and not a fact susceptible to proof of truth or falsity, the circuit court correctly granted summary judgment in favor of the defendant. *Id.* at 313.

None of the statements included in Rosenberg's second email implied that the appellants had engaged in criminal conduct or insinuated that the appellants had purposefully associated with criminals. Indeed, the statements suggested only that the appellants were "targeted" by the burglars and that the appellants were "known to the perpetrators." Being the victims of crime, however, "is not the type of statement which 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." *Id.* at 312 (internal quotations omitted).

Even assuming Rosenberg imputed to the appellants an association with criminals in his second email, however, Rosenberg simply stated the facts upon which he based his opinion that the most recent burglary was a "targeted" crime. In that context, Rosenberg identified facts that might indicate the burglars had prior knowledge of potential points of access into the home. Further, Rosenberg added the caveat that he "[did] not know the status of the Police Department's investigation," thereby indicating that his opinion -- that "it is apparent that this was a targeted crime in which the perpetrators knew the victim" -- was not based on the conclusions of an official investigation. Rosenberg's statement at the end of the email -- that in "virtually all cases" of serious crime in the neighborhood, "the victims were known to the perpetrators" -- imputes no more "guilt" to the appellants than that which may be attributed to any other crime victim in the neighborhood over the past decade. Given the context of the entire statement, therefore, the statements contained in Rosenberg's second email cannot reasonably be understood to impute guilt for the commission of a crime to the appellants. Since none of the statements

contained in either of Rosenberg's emails are capable of defamatory meaning -- even through the most strained interpretation -- the circuit court did not err in granting summary judgment in favor of the appellees on the appellants' claim of defamation.[9]

3. The Appellees Established that a Qualified Privilege Applied, and Appellants Failed to Allege Facts Sufficient to Demonstrate Abuse of that Privilege.

To the extent the appellants could have satisfied their burden of establishing all elements of a prima facie case of defamation, the appellees established that Rosenberg's statements were protected by a qualified privilege, and the appellants failed to allege facts that, if proved, would provide a reasonable basis for the jury to conclude that Rosenberg had abused the privilege. We explain.

We provided, recently, the typical burdens of proof required to hold a defendant liable for defamation:

> [o]nce the plaintiff demonstrates that a statement was defamatory, which is a matter of law for the court, then the defendant has the burden of proving that the defamatory statement was privileged. *Gohari,* 363 Md. at 73–74, 767 A.2d at 338. If the privilege is recognized, the plaintiff nonetheless may attempt to show that the privilege was abused, a question

[9] We note, however, that the circuit court included in its rationale that "[t]he statements, when read as a whole, could be interpreted to mean that the perpetrators knew the Plaintiffs' habits, routine, or schedules, and thus the statements would not be seen as accusing the Plaintiffs of being criminals." Where an alleged defamatory statement is susceptible to multiple interpretations, however, including both innocent and defamatory meanings, the determination of whether the statements are defamatory in a given context, based on the relevant extrinsic facts, would fall within the province of the jury. *See Hillman*, *supra*, 285 Md. at 164 (citation omitted). Instead, to grant summary judgment in favor of the defendants, the circuit court's first task was to determine whether the statements were capable of defamatory meaning.

> for the jury, and if successful, thus rendering the defendant liable for defamation.

Seley-Radtke, *supra*, 227 Md. App. at 24–25.

A "conditional" or "qualified" privilege is a "circumstance[] in which a person will not be held liable for a defamatory statement because the person is acting 'in furtherance of some interest of social importance, which is entitled protection," *Woodruff v. Trepel*, 125 Md. App. 381, 391 (1999) (quoting W. Page Keeton et al., PROSSER AND KEETON ON TORTS § 114, 815 (5th ed. 1984), but may be forfeited by the abuse of that privilege.[10] *Piscatelli*, *supra*, 424 Md. at 307 (citing *Hanrahan v. Kelly*, 269 Md. 21, 29–30 (1973)) (explaining that a qualified privilege may "defeat[] a claim of defamation, if the defendant did not abuse that privilege").

To evaluate a circuit court's decision to grant a defendant's motion for summary judgment, in which the defendant claims that his or her statements were protected by a privilege, "we consider first whether the asserted privilege applies" and "assume that the plaintiff's allegations of defamation are true." *Id.* at 307 (citations omitted); *see also Bagwell*, *supra*, 106 Md. App. at 512 (citing *Exxon Corp. v. Schoene*, 67 Md. App. 412, 421 (1986)) ("The question of whether a defamatory communication enjoys a qualified privilege is a matter of law for the court.").

[10] The forfeiture of the conditional privilege through abuse is in contrast to an "absolute privilege," which serves to provide complete immunity, "regardless of the purpose or motive of the defendant." *Piscatelli*, *supra*, 424 Md. at 307 (citations omitted); *see Gohari*, *supra*, 363 Md. at 55 n. 13.

Finally, "[o]nce a prima facie case for a privilege is adduced, the plaintiff must produce facts, admissible in evidence, demonstrating the defendant abused the privilege, in order to generate a triable issue for the fact-finder." *Piscatelli*, *supra*, 424 Md. at 307 (citing *Hanrahan*, *supra*, 269 Md. at 29) (citation omitted). The plaintiff can meet her or his burden of showing the defendant abused the privilege by "demonstrating that the publication is made for a purpose other than to further the social interest entitled to protection . . . or [by proving] malice on the part of the publisher." *Shirley*, *supra*, 214 Md. App. 34, 44 (2013) (quoting *Gohari*, *supra*, 363 Md. at 64) (alterations in original) (internal quotations omitted).

"Malice," for purposes of overcoming a qualified privilege, is often defined as "knowledge of falsity or reckless disregard for truth." *Carter*, *supra*, 153 Md. App. at 242 (quoting *Happy 40, Inc. v. Miller*, 63 Md. App. 24, 32-33 (1985)). Malice may be established by demonstrating the defendant's "actual knowledge that his or her statement is false, coupled with his or her intent to deceive another by means of that statement." *Seley-Radtke*, *supra*, 450 Md. at 474 (citing *Piscatelli*, *supra*, 424 Md. at 307–08) (alterations omitted); *see also Ellerin v. Fairfax Sav. F.S.B.*, 337 Md. 216, 240 (1995) (providing the definition of malice). It is sometimes easier to describe what is insufficient to demonstrate malice than to articulate what facts would satisfy the plaintiff's burden. In *Bagwell*, we explained that it will not suffice to establish only that the statement in question

> was erroneous, derogatory or untrue; the publisher acted out of ill will, hatred or a desire to injure . . . ; the publisher acted negligently; the publisher acted in reliance on the unverified statement of a third party without personal knowledge of the subject matter of the defamatory subject; or the publisher acted

> without undertaking the investigation that would have been made by a reasonably prudent person . . . . Malice is not established if there is evidence to show that the publisher acted on a reasonable belief that the defamatory material was "substantially correct" and "there was no evidence to impeach the [publisher's] good faith."

Bagwell, *supra*, 106 Md. App. at 512-13 (citations omitted).

As we explained in *Shirley*, "[a]buse of a conditional privilege is usually a question for the fact-finder, . . . but a court can decide the question as a matter of law if the plaintiff fails to allege or prove facts that would support a finding of abuse." 214 Md. App. at 44 (citing *Piscatelli*, *supra*, 424 Md. at 308); *see also Woodruff*, *supra*, 125 Md. App. at 402 (citations omitted) (explaining that the issue of abuse of the privilege is allocated to the jury, "subject to the censorial power of the judge where there is no evidence of malice"). Whether the defendant abused the privilege, therefore, "need not be submitted to the fact-finder when the plaintiff fails to allege or prove facts that would support a finding of malice." *Piscatelli*, *supra*, 424 Md. at 308.

In their motion for summary judgment, the appellees asserted that Rosenberg's statements, even if they were defamatory, were shielded by the "fair comment privilege." Under the fair comment privilege, a member of a community "may, without liability, honestly express a fair and reasonable opinion or comment on matters of legitimate public interest." *Kirby*, *supra*, 227 Md. at 272. The underlying policy for permitting such a privilege is "that such discussion is in furtherance of an interest of social importance, and therefore it is held entitled to protection even at the expense of uncompensated harm to the plaintiff's reputation." *Id.*

We hold that, as a member of the North Shore community, Rosenberg's statements are shielded by the qualified fair comment privilege in commenting on the incidence of crime within the community. In the first email, Rosenberg responded to a general request for remedial action -- a request that bore a critical tone regarding Rosenberg's response to the burglary at the appellants' home. Assuming, for the purpose of analyzing the privilege at issue, that Rosenberg's statement -- asking whether he should tell members of the community not to associate with criminals -- was directed at the appellants and carried a defamatory meaning, Rosenberg's statements were protected by the same qualified privilege that other members of the community enjoyed. Whether or not the appellants found his initial response to be appropriate, his email pertained to a recent incidence of crime within the community, an issue of public concern. He was permitted, therefore, under the fair comment privilege, to respond with his opinion of the cause of the safety concern within the community, provided he did not abuse that privilege.

Rosenberg's statements in his second email present an even clearer entitlement to the conditional protection of the fair comment privilege in that he addressed directly the steps that members of the community could take to improve security in the area and avoid becoming a victim of burglary in the future. Certainly, these statements concerned an issue important to members of the North Shore community. In addition to offering suggestions for preventing thefts, Rosenberg's statements indicated that crime in the neighborhood was not widespread or "opportunistic." Rosenberg's suggestion that virtually all of the serious incidences of crime over the past decade were "targeted," and that the appellants were known to the perpetrators, could have alleviated fears among other community members

that they, too, might become the next victim of a break-in by the same perpetrators who had robbed the appellants. Assuming Rosenberg did not abuse the conditional privilege he enjoyed by making these statements with "malice," Rosenberg was entitled to express his opinion, particularly where he included the facts upon which he based his opinion, none of which were, individually, defamatory or alleged to be false.

Having established that Rosenberg's statements were protected by a qualified privilege, the appellants carried the burden of alleging specific facts that could demonstrate that Rosenberg made the statements with malice. The appellants' only effort in this regard was to allege that Rosenberg conducted no investigation into the burglary on his own prior to making the statements, and that Rosenberg had a motive to defame both Shulman and Feldman because of a prior legal dispute. In opposition to the appellees' motion for summary judgment, the appellants argued, "[t]o infer, through false proffer of fake additional facts, that either of these people were responsible for the crime against them is the very definition of a 'defendant act[ing] in an ill-tempered manner or was motivated by ill-will.'"

As we explained *supra*, however, allegations that the "the publisher acted in reliance on the unverified statement of a third party without personal knowledge of the subject matter of the defamatory subject" or "without undertaking the investigation that would have been made by a reasonably prudent person" is insufficient to overcome a qualified privilege. *Bagwell*, *supra*, 106 Md. App. at 512-13. Moreover, the appellants aver that "[b]ecause [Rosenberg] conducted no investigation into the facts . . . it is indisputable that any statement as to the facts of the break-in was negligent," and that Rosenberg had

included in his email "fake additional facts" to "imply knowledge of the facts." Nevertheless, the appellants did not allege that any of the facts upon which Rosenberg based his opinion included in his second email were false.

Regarding the appellants' allegations that Rosenberg possessed a motive to defame the appellants, the appellants raise only a prior legal battle, previously dismissed, and the fact that Rosenberg had fined Shulman for violating a community rule. Again, establishing an existing animus between the parties, or a prior demonstration of "ill will" does not establish that the defendant acted with malice in making the statements in question. *Id.* Even assuming the statements carried the potential for interpretation as defamatory such that the issue should have been decided by a jury, the appellants failed to allege any facts or proffer any evidence to establish that Rosenberg acted with malice in making any of the statements contained in either email. The appellees established that a qualified privilege applied and the appellants failed to proffer any evidence of malice sufficient to overcome that privilege. Accordingly, the circuit court did not err in granting summary judgment in favor of the appellees on the appellants' defamation claim.

IV. The Circuit Court Did Not Err in Granting Summary Judgment in Favor of the Appellees on the Appellants' False Light Claim.

Based on its ruling that the statements contained in the emails were not capable of defamatory meaning, the circuit court granted summary judgment in favor of the appellees on the appellants' claim of false light. The tort of false light invasion of privacy safeguards an individual's interest in avoiding the publicity of false information. We described the required elements of a false light claim in *Bagwell*:

> [G]iving publicity to a matter concerning another that places the other before the public in a false light . . . if (a) the false light in which the other person was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

106 Md. App. at 513-14 (citing RESTATEMENT (SECOND) OF TORTS § 652E).

Critically, to maintain an action for false light, the plaintiff must establish that the defendant made a *public* disclosure, *see Furman v. Sheppard*, 130 Md. App. 67, 77 (2000), the statement in question was false, *see Bagwell*, *supra*, 106 Md. App. at 514, and the imputation or "light" in which the plaintiff would be placed given the nature of the information "would be highly offensive to a reasonable person." To establish a "public disclosure" or the "publicity" of a false statement of fact for the purposes of a false light claim, the plaintiff must demonstrate that the defendant published the statement to the public at large -- a publication "to a single person or even to a small group of persons" will not suffice. *Furman*, *supra*, 130 Md. App. at 78 (citation omitted).

Based on the publicity requirement, alone, the first email, which was a reply to one member of the community and copied to a few other North Shore board members, could not provide the underlying facts necessary for the appellants to establish a claim of false light. In contrast, although Rosenberg's second email was published to the North Shore community, the second email contained no statement imputing to the appellants an association with criminals or any other negative light that could reasonably be said to "be highly offensive to a reasonable person." *Bagwell*, *supra*, 106 Md. App. at 514.

We need not address the merits of the appellants' claim for false light in any more depth, however, as "[a]n allegation of false light must meet the same legal standards as an allegation of defamation." *Piscatelli*, *supra*, 424 Md. at 306. Further, the same conditional privilege that would shield Rosenberg's statements from a claim of defamation would serve to protect Rosenberg from liability for a claim of false light. *See Bagwell*, *supra*, 106 Md. App. at 514 (citing *Steer v. Lexleon, Inc.*, 58 Md. App. 199 (1984)). As we have already explained, the appellants failed to allege facts or proffer any evidence to establish that Rosenberg acted with "malice" in making the statements contained in either of the two emails. Accordingly, the circuit court did not err in granting summary judgment in favor of the appellees on the appellants' false light claim.

V. The Circuit Court Did Not Err in Granting Summary Judgment in Favor of the Appellees on the Appellants' Claim for Negligent Supervision.

In light of our affirming the circuit court's decision to grant summary judgment in favor of appellees, based on the appellants' failure to establish the underlying claims of defamation and false light, we need not address whether RMG owed a duty to the appellants, such as to monitor its employees outgoing email. We note, however, that the appellants rely only on their request that we reverse the circuit court's decision to grant summary judgment in favor of the appellees on the underlying claim of defamation and "find that those other counts also be remanded for further proceedings." Indeed, the appellants state, incorrectly, that "the court below did not reach a holding on the other counts, having improperly determined, in a case of judicial overreach, that the statements were not defamatory." The circuit court, however, provided in its order granting summary

judgment to the appellees "that as a matter of law, Rosenberg Martin Greenberg LLP [owed] no duty to the Plaintiffs Brian Shulman and Dorianne Feldman . . . ." Further, the circuit court added in a footnote that "[t]he remaining arguments for Count V for Negligent Supervision will not be addressed by the Court as there was no duty established."

The appellants, relying on their request that we remand the case for a trial on the merits, elected not to argue the circuit court's ruling that RMG owed no duty to the appellants -- a required element of the appellants negligent supervision claim. *See Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 256 (2015) (quoting *Latty v. St. Joseph's Soc. of Sacred Heart, Inc.*, 198 Md. App. 254, 272 (2011)) (listing the five primary elements of a negligent supervision claim). An employer owes a duty to supervise its employees to protect "members of the public who would reasonably be expected to come into contact with [the employee] in performance of [the employee's] duties." *Henley v. Prince George's Cnty.*, 305 Md. 320, 336 (1986). The appellants, however, failed to allege facts sufficient to establish, both before the circuit court and on appeal, that RMG had any duty to protect members of the public at large from any alleged or perceived defamation committed by its employees. Accordingly, we affirm the decision of the circuit court to grant summary judgment in favor of RMG on the appellants' claim of negligent supervision.

CONCLUSION

We, therefore, hold that the circuit court did not err in denying the appellants' motion for removal and denying the appellants' motion for partial summary judgment on the issue of whether Rosenberg's statements were defamatory *per se*. We further hold that

the circuit court did not err in granting summary judgment in favor of the appellees on the appellants' claims for defamation and false light, as well as in favor of RMG on the appellants' claim for negligent supervision. Accordingly, we affirm the decision of the circuit court on all counts.

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