

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 98-761-CIV-MOORE

MARC M. HARRIS et Cie, S.A., a foreign
Corporation; THE FIRM OF MARC M. HARRIS,
INC., a foreign Corporation; and MARC M.
HARRIS, LTD., a foreign Corporation,

Plaintiffs,

vs.

DAVID E. MARCHANT and OFFSHORE
BUSINESS NEWS & RESEARCH, INC.,

Defendants.

FINAL JUDGMENT

**CLOSED
CIVIL
CASE**




THIS CAUSE came before the Court upon the claims of Plaintiffs Marc M. Harris et Cie, S.A., The Firm of Marc M. Harris, Inc., and Marc Harris Trust Company, Ltd. against Defendants David E. Marchant and Offshore Business News & Research, Inc. The Court having entered its findings of fact and conclusions of law upon trial without a jury, it is

ORDERED AND ADJUDGED that Final Judgment is entered in favor of Defendants David E. Marchant and Offshore Business News & Research, Inc. and against Plaintiffs Marc M. Harris et Cie, S.A., The Firm of Marc M. Harris, Inc., and Marc Harris Trust Company, Ltd. Plaintiffs shall take nothing.

LET EXECUTION ISSUE.

The Clerk of the Court is directed to mark this case as CLOSED. All pending motions not otherwise ruled upon are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of August, 1999.


K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: J.M. Guarch, Jr., Esq.
A.C. Strip, Esq.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No. 98-761-CIV-MOORE

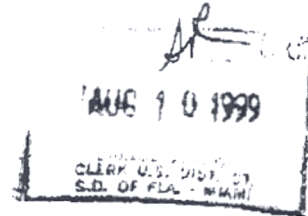
MARC M. HARRIS et Cie, S.A., a foreign
Corporation; THE FIRM OF MARC M. HARRIS,
INC., a foreign Corporation; and MARC M.
HARRIS, LTD., a foreign Corporation,

Plaintiffs,

vs.

DAVID E. MARCHANT and OFFSHORE
BUSINESS NEWS & RESEARCH, INC.,

Defendants.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE came before the Court upon the claims of Plaintiffs Marc M. Harris et Cie, S.A., The Firm of Marc M. Harris, Inc., and Marc Harris Trust Company, Ltd. against Defendants David E. Marchant and Offshore Business News & Research, Inc. Plaintiffs seek damages, including punitive damages, for libel and negligence related to an article published by Defendants regarding Plaintiffs' business.

THIS MATTER was tried before the Court without a jury on July 6-8 and July 28-30, 1999. Upon due consideration of the arguments and evidence presented at trial, the Court enters the following Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure. To the extent that Findings of Fact may be deemed Conclusions of Law, they shall so be considered. Similarly, to the extent that Conclusions of Law may be deemed Findings of Fact, they shall so be considered.

FINDINGS OF FACT

1. Plaintiff Marc M. Harris et Cie, S.A., is organized and does business by virtue of the laws of the British Virgin Islands. It is administered in Panama by La Firma de Marc M. Harris, S.A., a wholly-owned subsidiary organized and doing business by virtue of the laws of Panama.

2. Plaintiff The Firm of Marc M. Harris, Inc., is organized and does business by virtue of the laws of the British Virgin Islands.

3. Plaintiff Marc M. Harris Trust Company, Ltd., is organized and does business by virtue of the laws of Nevis.

4. Plaintiff entities, as well as their numerous non-party subsidiaries and affiliated organizations, are collectively known as "The Harris Organization." Plaintiff Marc M. Harris et Cie, S.A., is the parent company of The Harris Organization.

5. Defendant David E. Marchant ("Marchant") is an individual non-citizen resident of the Southern District of Florida.

6. Defendant Offshore Business News & Research, Inc. ("OBN&R") is a corporation organized under the laws of Florida in 1996, with its place of business in Miami, Florida.

7. Marchant was and is the president and sole shareholder of OBN&R. OBN&R publishes two newsletters, one of which is known as "Offshore Alert." Offshore Alert is distributed to subscribers on a monthly basis via ordinary mail, e-mail, Internet, and facsimile.

8. Marchant is an investigative journalist, and for all intents and purposes is responsible for operating OBN&R, including the research, writing, and publishing of its articles.

9. In addition to his journalistic activities, Marchant hires himself out to persons or entities interested in obtaining information and research regarding so-called offshore businesses, investments, and operations.

10. On March 3, 1998, Marchant was hired by James Bennett, a Texas attorney, to conduct research on The Harris Organization and their offshore investment products. Marchant had no previous knowledge regarding The Harris Organization at the time of this engagement.

11. In the course of his research, Marchant spoke with John Shockey ("Shockey"), the former head of the United States Department of the Treasury's Comptroller of the Currency office in Florida.

12. Marchant learned from Shockey that Marc M. Harris ("Harris"), the founder and de facto head of The Harris Organization, had operated several offshore shell banks in Monserrat in the 1980s. These banks were subsequently closed down in 1988 by British banking authorities for conducting "illegal and fraudulent activities." According to Shockey, these banks exhibited numerous financial and fiduciary improprieties. One of the banks, the Fidelity Overseas Bank, took fees from clients even though it never performed any services for them. Another bank, the First City Bank, doctored its financial statements. Finally, a third bank, the Allied Reserve Bank, was issued cease-and-desist orders for operating in the United States without authorization.

13. In the course of conducting research on The Harris Organization, Marchant also spoke with several former officers and managers of The Harris Organization, including Carl Dilley ("Dilley").

14. Dilley was nominally a "consultant" with The Harris Organization from approximately April 1996 to March 1997. For all intents and purposes, however, he was an employee of The Harris Organization, as the substitution of normal employee status with the

label of "consultant" was a common mechanism by which expatriates avoided Panamanian income taxes.

15. Dilley was hired to revamp the financial record-keeping system at The Harris Organization, as well as to oversee and monitor numerous special projects within the Organization, including the Infra-fit investment and the Latin American Real Estate ("L.A.R.E.") investment. Dilley was also the equivalent of the Chief Operating Officer of The Harris Organization. Dilley was therefore in a position to have intimate knowledge of the financial status of the Harris Organization, as well as its various operations and financial flows.

16. Dilley provided corroborative information to Marchant, including internal financial and management documentation.

17. Marchant learned from Dilley that financial record-keeping at The Harris Organization was in a state of extreme disorganization, and was not subject to any form of independent or objective oversight, such as through regular independent auditing of financial records. This conclusion was verified by internal memos provided by Dilley which described the accounting system at The Harris Organization as "completely chaotic."¹ Important documents went missing, and accounting procedures were haphazard, including arbitrary adjustments to financial records without any authorizing documentation. This state of affairs led one internal observer to remark as late as March 1997 that "[a] first-year accounting student from a US university would have known better than to make these entries," and "[c]learly the definition of 'CPA' does not carry the validity in [Panama] as it does in the USA."²

¹ Defs.' Impeach. Ex. A.

² Id.

18. Within The Harris Organization, this frolic and detour from accounting norms was rationalized by Harris in the following manner:

Rather than focusing on [a] strict legal concept of accounting, we have focused our accounting system on real economic processes and credit risks. Had we focused our accounting system by legal process, we would not be able to provide a clear identification of credit or liquidity risks.³

19. Despite such claims, Marchant was given additional evidence which revealed that the apparent chaos in the accounting system at The Harris Organization was deliberate, and not the innovative product of Harris's accounting genius, or even charitably, incompetence. Specifically, there was a serious on-going dispute within The Harris Organization between Harris and several officers and managers, including Dilley and Messrs. Derek Sambrook and Robin Bailey, the President and Vice President, respectively, of Trust Services, S.A., a Harris Organization entity. In numerous memos, they aired their concerns regarding the commingling and unauthorized use of clients' trust funds and the susceptibility of The Harris Organization's accounting system to abuse.⁴

20. Marchant learned from Dilley that according to financial records available to him, including The Harris Organization's "Consolidated Financial Statements"⁵ and the "Trustco Balance Sheet,"⁶ The Harris Organization had a net equity deficit of at least \$25 million as of November 1996.

³ Defs.' Ex. 38.

⁴ See Defs.' Ex. 5, 6.

⁵ Defs.' Ex. 2.

⁶ Defs.' Ex. 3.

21. Marchant learned from Dilley the mechanism by which The Harris Organization commingled the funds and assets in clients' trust accounts. Funds in client accounts were held in a common "pool account" called the Third World Trust Company ("Trustco"), along with funds from entities and persons affiliated with The Harris Organization, including Harris, the founder and majority shareholder of Marc M. Harris et Cie, S.A., and Larry Abraham ("Abraham"), a minority shareholder. It appeared to Marchant from an examination of the documents and discussions with Dilley that entities and persons affiliated with The Harris Organization were arbitrarily crediting amounts to their accounts within Trustco without disclosing these credits or transactions to clients. In sum, persons and entities affiliated with The Harris Organization were "borrowing" client funds that should have been kept in segregated accounts, using those funds without paying interest to the clients, and exposing those clients to the risk of illiquidity.

22. Marchant learned from Dilley that entities and persons affiliated with The Harris Organization were billing each other, and ultimately clients, so-called administrative and management fees that were not in fact correlated in any meaningful way with actual services rendered.

23. Marchant learned from Dilley that approximately \$500,000 in clients' money had been transferred to accounts in Chile belonging to Harris and Abraham. This was done by simply crediting Harris's and Abraham's accounts within Trustco, and then transferring the funds to bank accounts in Chile that were purportedly for investment in the "Infra-fit" project. The Infra-fit project was supposed to develop and produce exercise bicycles in Chile, but apparently failed without ever having produced a single bicycle. The funds were never recovered.

24. Marchant learned from Dilley that principals in The Harris Organization, including Harris and Abraham, purchased land in Argentina, and then promptly turned around and sold the land at an arbitrarily inflated price to the Latin American Real Estate ("L.A.R.E.") fund, an

Organization-affiliated entity, in an interested transaction without disclosing their prior interest to investors.

25. Marchant also learned from Dilley that the value of the land owned by L.A.R.E. was subsequently marked up on its financial statements, even though no substantial improvements had been made on the land, there were squatters on the properties who needed to be removed and otherwise presented a threat of possible claims on the property, and the land—essentially arid scrubland—had little apparent potential for generating positive returns.

26. Marchant learned from Dilley that The Harris Organization had issued \$20 million in preferred shares that were not supported by corresponding contributions of capital. Dilley's information was supported by internal memoranda which showed that managers within The Harris Organization had refused to cooperate in the issuance of these preferred shares because Organization-affiliated assets that were being transferred in exchange for the shares were overvalued.⁷

27. Marchant learned from Dilley that Messrs. Wallace Stull, James Sommerville, Joseph Vigna, and Bill Amos were either clients, shareholders, and/or directors of The Harris Organization. Marchant had previously learned from other sources that these individuals had been convicted of various criminal offenses, including drug trafficking.

28. Marchant learned from independent research that The Harris Organization maintained substantial links, either directly or indirectly, with persons and entities known variously as "PT Shamrock," "Peter Trevellian," and "Adam Starchild," that advocated in print and on the Internet offshore mechanisms for evading the payment of taxes, judgments, and other debts in the United States. That is, Marchant had reason to believe that The Harris Organization

⁷ See Defs.' Ex. 8.

was both directly and indirectly advertising its services for, in essence, tax evasion and fraudulent conveyance of funds to offshore locations.

29. Marchant also learned from internal materials provided by Dilley that The Harris Organization offered products and services that could reasonably be interpreted as mechanisms for tax evasion and fraudulent conveyances. Specifically, the so-called "Harris Matrix,"⁸ an internal document discussing the products offered by The Harris Organization, included numerous references to "black holes" in the context of strategies for avoiding payment of taxes to the IRS, or to judgments and other debts in the United States. Dilley told Marchant that a "black hole" was a term used within the Harris Organization to describe dummy offshore corporations that were set up to go out of business, permitting the shareholders to claim bogus capital losses to offset capital gains.

30. In March 1998, Marchant decided to write an article in *Offshore Alert* discussing the financial and fiduciary irregularities at The Harris Organization.

31. Before publishing the article, however, Marchant extended an opportunity for The Harris Organization to present its version of the situation. On March 22, 1998, Marchant delivered to Chris Davy, a member of the management within The Harris Organization, a detailed and specific list of the improprieties at issue.⁹ He further arranged to meet Harris and other senior officers of The Harris Organization in Nassau, the Bahamas, on March 25, 1998, to discuss these issues.

32. At the Bahamas meeting, the representatives of The Harris Organization denied the various allegations. They did not provide any evidence to support their denials. For an

⁸ Defs.' Ex. 9.

⁹ See Defs.' Ex. 31.

organization that claimed to administer over \$1 billion in assets, they provided no documentation or financial information to address the issues raised by Marchant.

33. On March 31, 1998, Marchant published an article in Offshore Alert titled "We Expose The Harris Organization's Multi-Million Dollar Ponzi Scheme."¹⁰

34. This article made a number of factual allegations, which substantively accused The Harris Organization of defrauding its clients and misappropriating clients' funds. Those allegations specifically at issue are:

- a. That The Harris Organization operates as a "Ponzi" scheme.
- b. That The Harris Organization was insolvent by \$25 million.
- c. That Harris used client funds to invest in the Infra-fit venture.
- d. That The Harris Organization inflated the land value of the LARE investment in their financial statements.
- e. That the properties held by the LARE investment were worthless.
- f. That LARE might not have proper and enforceable title to the land in question due to the presence of squatters.
- g. That The Harris Organization might be laundering the proceeds of crime.

¹⁰ Pls.' Ex. 1.

h. That The Harris Organization had issued \$20 million of worthless preference shares.

35. Marchant subsequently published additional articles regarding The Harris Organization, essentially repeating the allegations of the original March 1998 article.¹¹

36. The Harris Organization has demanded, and continues to demand, either a correction or retraction of the alleged inaccuracies printed in the articles. Defendants have to date refused the demand.

37. The Harris Organization did not provide any materials to rebut the allegations to Marchant until the institution of the present action and in the course of discovery.

38. Of the rebuttal materials generated to date, Plaintiffs have relied to a great extent on a letter of solvency and financial statements produced by Panamanian auditors for The Harris Organization for 1997 and 1998. Plaintiffs argue that in light of such evidence, Marchant should have corrected or retracted the alleged inaccuracies.

39. Luis Ovidio Rodriguez Brandao ("Rodriguez"), the head of this firm of auditors, Servicios Profesionales Asociadas, S.A. ("Servicios"), gave testimony to the effect that Servicios first began providing accounting services, including internal audits, to The Harris Organization in the early 1990s.

40. No record of such audits was ever produced by Plaintiffs to Marchant. Furthermore, if such accounting services were provided to The Harris Organization, they occurred at the same time that financial record-keeping at The Harris Organization was in a state of extreme disorganization.

¹¹ Pls.' Ex. 2.

41. Servicios was not engaged to conduct an independent consolidated audit of The Harris Organization until after Defendants published their Offshore Alert article in March 1998.

42. On August 26, 1998, Servicios issued a letter of solvency stating that upon a review of The Harris Organization's financial statements, the Organization was solvent as of March 31, 1998.

43. However, Servicios did not complete its consolidated audit of The Harris Organization and issue its consolidated financial statements for the year ended December 31, 1997 until November 12, 1998.

44. Plaintiffs argue that it is customary accounting practice for an accounting firm to issue letters of solvency without performing a prior audit. While that may be true and acceptable for companies that maintain adequate and acceptable financial records, it was a questionable practice in the context of The Harris Organization's notoriously poor financial record-keeping system.

45. The validity of the letter of solvency is further questionable in light of the fact that Servicios must have been aware of the unreliability of the information upon which the letter was based. Servicios had provided prior accounting services for The Harris Organization. At trial, Rodriguez himself gave testimony to the effect that until 1997, the financial record-keeping at The Harris Organization was "sloppy," and that Servicios had to "reconstruct" financial records for 1996.

46. The 1997 consolidated financial statements prepared by Servicios were also of questionable validity. They included an opinion letter whose language deviated substantially from the language normally used in an independent auditor's opinion letter. Servicios did not simply state that the financial statements were a fair and material representation of the financial

position of The Harris Organization, and that there was a reasonable basis for this opinion. Instead, Servicios opined rather unusually that the financial statements “present adequate solvency and equity that demonstrate the financial solidity” of The Harris Organization.¹²

45. In addition, the 1997 financial statements may not provide a completely accurate picture of the financial situation at The Harris Organization, since the audit did not include an audit of the numerous mutual funds and special projects managed by The Harris Organization. These mutual funds invest in The Harris Organization, and vice versa, in transactions that are not entirely transparent.

¹² See Pls.’ Ex. 4.

CONCLUSIONS OF LAW

1. A plaintiff seeking recovery under a claim for libel must show that: (a) the defendant published a false statement; (b) the statement was communicated to a third party; and (c) the plaintiff suffered damages as a result.¹³

2. In addition to proving these traditional elements of a libel cause of action, the plaintiff must also prove actual malice on the part of the defendant if the plaintiff is a public figure or a limited public figure and the defendant is a member of the media.¹⁴

3. If the plaintiff is not a public figure or a limited public figure, the plaintiff need not prove actual malice. However, he must still prove negligence as a necessary element of the libel claim.¹⁵

4. The parties have stipulated that Defendants Marchant and OBN&R are members of the media.¹⁶

5. The Court has already determined as a matter of law that Plaintiffs are not limited-purpose public figures.¹⁷ They are private figures.

¹³ See Parsons v. Nationwide Mutual Ins. Co., 889 F. Supp. 465, 469 (M.D. Fla. 1995) (citing Axelrod v. Califano, 357 So. 2d 1048 (Fla. Dist. Ct. App. 1978)).

¹⁴ See Silvester v. American Broadcasting Cos., 839 F.2d 1491, 1493 (11th Cir. 1988) (citing New York Times Co. v. Sullivan, 376 U.S. 254 (1964)).

¹⁵ See Miami Herald Publ'g Co. v. Ane, 458 So. 2d 239, 242 (Fla. 1984).

¹⁶ See Notice of Filing Pretrial Stipulation ¶ 5(e) (DE # 64).

¹⁷ See Omnibus Order of May 19, 1999 (DE # 74).

6. Therefore, Plaintiffs must prove by a preponderance of the evidence that Defendants were negligent in publishing and failing to retract the disputed statements in their articles.

7. Negligence in the context of a libel claim has been defined as publishing the allegedly libelous statements "without reasonable care as to whether the alleged false and defamatory statements were actually true or false."¹⁸

8. From the time he published the initial article to the present, Marchant had evidence which provided persuasive support for the truth of each of the allegations at issue.¹⁹ He spoke with numerous inside sources, including Dilley, and outside sources such as Shockey, who appeared credible and knowledgeable about Harris, The Harris Organization, and the financial situation within The Organization. Marchant was privy to internal financial and management documentation which supported the information learned from his sources.

9. At the March 1998 meeting in the Bahamas, Marchant provided Harris and the other senior officers of The Harris Organization with a full and fair opportunity to address the issues raised in his articles. Plaintiffs' representatives failed to take advantage of this opportunity. Plaintiffs' representatives offered no substantive information or explanation to rebut the allegations, apart from unsupported denials and claims of innocence.

10. Marchant was justified in discounting those explanations that Plaintiffs did provide in light of the fact that: (a) Plaintiffs' finances were in a state of complete disorganization during the relevant period; (b) Plaintiffs, through and including the de facto head Marc M. Harris, had been implicated in fraudulent and criminal activity in the past, and had a continuing association with persons and entities that had been involved in or advocated criminal activity; (c) Plaintiffs

¹⁸ Miami Herald Publ'g Co., 423 So. 2d at 378.

¹⁹ See supra Findings of Fact ¶ 34.

advertised products and services that were euphemistically referred to as "asset protection," but which could reasonably be interpreted as vehicles for tax evasion and fraudulent conveyance of funds out of the United States; and (d) Plaintiffs never produced any documentation or evidence to support their denials.

11. Marchant was justified in continuing to discount the validity of the information subsequently provided by Plaintiffs, including the letter of solvency and the 1997 audited financial statement, due to circumstances which reasonably cast doubt on their independence, objectivity, and comprehensiveness.

12. Plaintiffs have failed to prove by a preponderance of the evidence that Defendant Marchant did not act with reasonable care in determining whether the statements made in the articles were true or false, in light of the information known to him at the time of the original publication in March 1998 to the present. Defendants were therefore not negligent in publishing the disputed statements, and subsequently refusing to correct or retract them.

13. Because Plaintiffs have been unable to demonstrate that Defendants were negligent in publishing the disputed statements, their claim for libel must fail, and it is unnecessary to address the other elements of the claim, i.e., that (1) defendant published a false statement; (2) the statement was communicated to a third party; and (3) the plaintiff suffered damages as a result.

14. As Plaintiffs have failed to prove the element of negligence in the context of their claim for libel, they have also failed to prove their claim for common law negligence.

15. As Plaintiffs are unable to prevail on their claims for libel and negligence, their claim for punitive damages is moot.

CONCLUSION

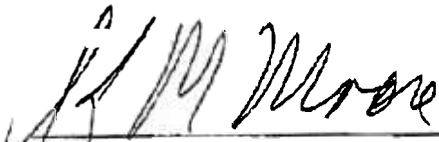
Accordingly, upon due consideration of the evidence presented at trial, the arguments of counsel, the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. Final Judgment is entered in favor of Defendants David E. Marchant and Offshore Business News & Research, Inc. and against Plaintiffs Marc M. Harris et Cie., S.A., The Firm of Marc M. Harris, Inc., and Marc Harris Trust Company, Ltd. The Court will enter a separate final judgment in accordance with this Order.

2. All pending motions not otherwise ruled on are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of August, 1999.


K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

copies provided:

J.M. Guarch, Jr., Esq.
A.C. Strip, Esq.