

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION
CIVIL ACTION NO.: 6:06-CV-02723-RBH**

Rita Cantrell)
)
Plaintiff,)
)
vs.)
)
Target Corporation a/k/a)
Target Stores, Inc.)
)
Defendant.)
_____)

**MEMORANDUM IN SUPPORT OF
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

I. FACTUAL BACKGROUND

On February 23, 2006, at approximately 11:40 a.m., the Plaintiff Rita Cantrell was in the checkout line of the Target Store located on Woodruff Road in Greenville, South Carolina. Ms. Cantrell attempted to pay for her purchases with a \$100.00 bill. The cashier in the checkout line did not have change and took the \$100.00 bill to another cashier who believed the bill did not appear “real”. That cashier showed the bill to Mr. Jeffrey Hemric, the Target Protection Specialist on duty at the time. Mr. Hemric contacted his supervisor by telephone, Ms. Kristie Guerry, advising that he believed the guest was attempting to use a counterfeit bill. Ms. Guerry instructed Mr. Hemric to partner with the Lead on Duty, Kyle Lockee, regarding a decision as to whether or not the bill would be accepted or declined. After discussing the matter with one another and examining the bill, finding none of the normal security features common to United States currency, the lead on duty, Kyle Lockee handed the bill back to Ms. Cantrell and asked “ma’am do you have another form of payment?” Ms. Cantrell did not respond whatsoever to Mr. Lockee’s question but simply reached into her cart, removed the merchandise, shook her head no

and walked out of the store. Later that day, Asset Protection Specialist Michael Proctor arrived for his shift and was advised by Jeffrey Hemric that a guest had attempted earlier that day to use a \$100 bill that appeared to be counterfeit. Hemric relayed to Proctor that the bill appeared to be printed off-center, that the ink appeared fresh and vibrant although the bill was a 1974 Series, and that the paper “felt funny”. Hemric gave Proctor a photo-copy of the bill Hemric made while the bill was in his possession. Hemric also showed Proctor a picture of the guest taken by Target’s security video camera. The following day, February 24, 2006, Michael Proctor forwarded a copy of the picture of the guest with the following e-mail, “Douglas, the lady pictured attempted to use a counterfeit \$100.00 bill today at 11:40 a.m., it was an older style bill, Series 1974. She had a large Belk’s bag with her so she may have hit the mall today.” (a copy of Mr. Proctor’s e-mail is attached hereto and incorporated by reference as Exhibit 1) The aforementioned e-mail was forwarded by Target’s Michael Proctor to Mr. Douglas Guerry an employee of Macy’s. Mr. Guerry was the communications liaison for an organization known as CORTTF. CORTTF stands for “Carolina Organized Retail Theft Task Force” and was an organization founded by Mr. Guerry for purposes of sharing information within the retail loss prevention arena, primarily in the Upstate of South Carolina.

On February 24, 2006 Mr. Guerry forwarded the original e-mail from Target’s Michael Proctor to the other members of CORTTF. Among the individuals receiving the e-mail from Douglas Guerry were Michelle Barton and Dennis Caruso of the Loss Prevention Department of Belk, Inc. located at the Haywood Mall office of Belk in Greenville, South Carolina. Upon examining the picture of the guest, Ms. Barton and Mr. Caruso believed they recognized their own employee, Rita Cantrell, as the individual in the picture. It was ultimately determined by Michelle Barton of Belk that the person in the picture was Ms. Rita Cantrell an employee of the

Belk store at Haywood Mall. Ms. Barton of Belk contacted local law enforcement regarding the e-mail relative to a counterfeit \$100.00 and was advised that the United States Secret Service was the most appropriate resource regarding issues of counterfeit United States currency. Ms. Barton then contacted the Secret Service office in Greenville and two agents were dispatched to Belk where they interviewed Ms. Cantrell concerning the \$100.00 bill. Ms. Cantrell presented the bill to the Secret Service agents who determined that the bill was valid United States currency. Upon information and belief, the Secret Service interview took place on March 1, 2006.

At 10:53 a.m. on March 1, 2006 Michelle Barton of the Belk Loss Prevention Department forwarded to Douglas Guerry with a carbon copy to all other members of CORTTF regarding "Subject: re: CORTTF: counterfeit bills Target Greenville, SC" the following email: "Secret Service, Agent Greg Johnson, has tested this bill and found it to be real. Please disregard any prior e-mails on this customer. Destroy any pictures relating to this message." Approximately an hour later, at 11:33 a.m., Douglas Guerry forwarded to all members of CORTTF an e-mail with the subject "CORTTF: counterfeit note" stating as follows: "Disregard the counterfeit note e-mail sent out recently. It has been investigated and resolved." (the two "corrective" e-mails are attached hereto and incorporated by reference as Exhibit 2)

On September 27, 2006, the present action was instituted in the United States District Court for the District of South Carolina, Greenville Division, asserting causes of action for defamation and negligence. In response to the Plaintiff's Complaint, Target has asserted a number of defenses to the present action. With reference to Target's Motion for Summary Judgment, its defense of qualified privilege is the grounds upon which such motion is based.

II. LEGAL ANALYSIS

The tort of defamation allows a Plaintiff to recover for injury to his or her reputation as the result of the Defendant's communications to others of a false message about the Plaintiff. Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514, S.E. 2d 126 (1999) The elements of defamation include: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of a publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Holtzscheiter v. Thompson Newspapers, Inc., 332 S.C. 502, 506 S.E. 2d 497 (1988)

In a defamation action, the Defendant may assert the affirmative defense of conditional or qualified privilege. Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged; and (2) the privilege is not abused. Bell v. Bank of Abbeville, 208 S.C. 490, 38 S.E. 2d 641 (1946)

In general, the question of whether an occasion gives rise to a qualified or conditional privilege is one of law for the Court. 50 Am. Jur. 2d *Libel and Slander* §276 (1995). A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable. Constant v. Spartanburg Steel Products, Inc., 316 S.C. 86, 447 S.E. 2d 194 (1994) In a defamation action, if defendant proves qualified privilege, plaintiff may not recover unless he overcomes privilege

by proving actual malice. In South Carolina, “actual malice” means that the defendant acted “with ill will toward the plaintiff or that he acted recklessly or wantonly, meaning with conscience indifference towards the plaintiff’s rights.” Padgett v. Sun News, 278 S.C. 26, 32, 292, S.E. 2d 30, 34 (1982) South Carolina law also requires, in order to prove actual malice, that “at the time of his act or omission to act, the tortfeasor be chargeable with consciousness of his wrongdoing.” Id. Both ill-will and consciousness of wrongdoing must be shown by more than a scintilla of evidence. *See* Austin v. Torrington Company 810 F. 2d 416, 425 (4th Cir. 1987) (applying South Carolina law) Likewise, under South Carolina law, in the absence of a controversy as to facts, it is for the Court to say whether the privilege has been abused or exceeded. Woodward v. South Carolina Farm Bureau Insurance Company, 277 S.C. 29, 282 S.E. 2d 599 (1981)

With regard to the undisputed facts in the present case, Defendant Target submits, as a matter of law, the publication by its employee Michael Proctor of the alleged defamatory e-mail to Mr. Douglas Guerry of the Loss Prevention Department of Macy’s and communications liaison for CORTTF, enjoyed a qualified privilege which, as a matter of law, was not exceeded. Target further submits that Plaintiff can adduce no evidence, or even a scintilla of evidence, that Mr. Proctor’s actions were motivated by malice or ill-will towards the Plaintiff, Rita Cantrell.

III. QUALIFIED PRIVILEGE

A communication on a subject in which the person communicating has an interest, or in reference to which he has a duty, is qualifiedly privileged if made in good faith, limited in its scope to the requirements of such interest or duty, and made to a person having a corresponding interest or duty. Bell v. Bank of Abbeville, 208 S.C. 490, 38 S.E. 2d 641 (1946) A communication thus qualifiedly privileged is not actionable, even though it contains a charge of

a crime, unless malice in fact be shown. As noted in Bell v. Bank of Abbeville, supra “ordinarily, proof of a defamatory publication, charging another with the commission of a crime, makes out a prima facie case of malice in the author. But a privileged communication is an exception to the rule. In such case the presumption of malice is rebutted. The effect is to cast upon the plaintiff the necessity of showing malice in fact – that is, that the defendant was actuated by ill-will in what he did and said, with the design to causelessly and wantonly injure the plaintiff.”

The South Carolina Courts have consistently recognized the existence of privilege where the parties have a common business interest. Cornwell v. Spur Oil Co., 240 S.C. 170, 125 S.E. 2d 270 (1962). See also Thorton v. New South Life Insurance Company, 262 S.C. 651, 207 S.E. 2d 88 (1974) (granting summary judgment for credit agency based upon finding that credit report by credit agency to prospective employer was qualifiedly privilege); Prentess v. Nationwide Mut. Ins. Co., 256 S.C. 141, 181 S.E. 2d 325 (1971) (granting summary judgment for insurer and holding that statement by insurer canceling automobile policy that insured’s wife was mentally retarded, was qualifiedly privileged)

As to the issue of the communication, it is undisputed that the communication by Michael Proctor of Target to Douglas Guerry of CORTTF was a privileged communication. The testimony of Mr. Proctor on the foregoing issue is instructive:

Q. Who was it or, well, strike that and let me ask you this. You have testified a little bit about the creation and sending of the e-mail, but I wanted to ask you specifically whose idea was it or how did you come up with the idea of sending this e-mail and this photograph to Mr. Guerry?

A. I guess it was my idea. You can put that one on me. Because we try to share information whenever we think something might affect one of the other stores in the area or if it's a, like such as this case, when I thought it was a counterfeit bill and or like if a shoplifter gets away or something like that and we, sometimes we even call another store if we, if we have a reason to call a specific store.

(Deposition of Michael Proctor, Page 29 lines 7 through 19) (Exhibit 3)

Q. So you were aware that Mr. Guerry was somehow or other involved with this CORTTF association?

A. As far as I know. He is the guy that organized it.

Q. Well, how did you come to know that?

A. I am trying to remember. I know we had, we had a meeting downtown. I don't know if it was at, I think it was a CORTTF meeting, in the Greenville City and County might have had somebody come from the Police Department and just different CORTTF members or different retailers. I don't know if it was an open invitation or if was people already on his contact list, but I think we had two meetings I can remember going to just talking about theft problems and, you know, how we can, basically he was trying to start a grass roots thing where he could organize everybody or get people better sharing information to where it would impact the whole Upstate and not just, you know, Target or Wal-Mart or whatever so we could, you know, basically, make a bigger impact. Because just doing it store by store, case-by-case doesn't make a dent.

(Deposition of Michael Proctor, Page 30 line 17 through Page 31 line 11) (Exhibit 4)

Q. What was, what was the specific purpose of you sending the e-mail to Mr. Guerry? What were you hoping to accomplish?

A. That, assuming the bill was counterfeit, that to be on the lookout. Basically it's a BOLO. That means be on the lookout. Now, here's a lady that, to my knowledge, had a counterfeit bill. She had a Belk's bag with her, as it states in the e-mail, so that linked her to the Haywood Mall or to a Belk's store, so be on the lookout. That's all it was.

Q. Okay. At the time that you sent the e-mail did you, in fact, know that the bill was counterfeit?

A. Based on what I knew about it, I thought it was counterfeit. I didn't know because, like I say, I didn't see the bill. But I, I was comfortable enough with Jeff's you know, description to me and everything that I saw, I thought it was counterfeit.

(Deposition of Michael Proctor, Page 32 line 11 through Page 33 line 2) (Exhibit 5)

Q. Michael let me ask you a couple of questions. The CORTTF that we talked about, what did that stand for again?

A. Carolina Organized Retail Task, Retail Theft Task Force.

Q. And did I understand you to say that something that Douglas Guerry sort of spearheaded to try and get a lot of different retailers in the upstate to share information on loss prevention and things?

A. Yes sir. And some of them were not just the upstate but, you know, maybe Georgia, North Carolina. I don't know. I don't know how far it stretched, but it was mainly upstate.

Q. Okay and I am trying to remember the phrase you used. Oh what was it, not CORTTF. You were talking about the reason you sent the e-mail to Mr. Guerry was sort of for your information but you didn't use ...

A. BOLO.

Q. BOLO?

A. Be on the lookout.

Q. I assume you didn't know that the lady in the picture was Rita Cantrell?

A. No sir.

Q. Did you understand that Guerry may have an interest in being provided information about potential loss prevention issues in the retail establishment?

A. Yes.

(Deposition of Michael Proctor, Page 61 lines 23 through Page 62 line 24) (Exhibit 6)

One of the founders of CORTTF, Douglas Guerry, also addressed during his deposition the purpose and function of CORTTF:

Q. Tell me what CORTTF is.

A. CORTTF was a retailer's organization to share information concerning groups that had committed some sort of crime within our building or suspected of committing something.

(Deposition of Douglas Guerry, Page 8 lines 3 through 7) (Exhibit 7)

Q. And you said that there was a discussion about the type of information that people wanted to share. What was the decision, if any, as to the type of information?

A. We originally started to merchandise theft cases. That's where we originally started out.

Q. And when you say "merchandise theft" what exactly do you mean by that?

A. People that were shoplifting, refund fraud, those types of situations.

Q. And what sort of information about those types of people were you intending to share?

A. The information we were intending to share was any photos that we had of individuals that we had detained or that shoplifted but gotten away from us, names and contact information, who would be the best contact to follow up on this individual.

Q. And so in that context then what was it that the members of CORTTF were asked to do?

A. Just to submit information about any groups or individuals that were either stole a large amount of merchandise or were repeat offenders.

Q. And was the intent that this would be information shared about people who had actually been apprehended and known to have committed offenses?

A. Not necessarily.

Q. So the intent was even suspicious activity would be reported?

A. Activity where – an example would be if someone came in and grabbed a large amount of merchandise and ran out of the store, which we call it grab and run. We didn't apprehend that individual, but we do have video pictures of them. We would share that information and see if anyone else had dealt with that individual so that we could gain information.

(Deposition of Douglas Guerry, Page 9 line 21 through Page 11 line 4) (Exhibit 8)

Q. Do you know who Michael Proctor is?

A. Yes sir.

Q. Tell me what you know about Mr. Proctor.

A. That he was employed with Target Stores as an Asset Protection Specialist.

(Deposition of Douglas Guerry, Page 15 lines 5 through 9) (Exhibit 9)

Q. If any member of the CORTTF organization wanted to provide or share information about a particular incident, who are they supposed to send that to?

A. They would e-mail the information to me.

Q. To you?

A. Yes.

Q. So you are the gate keeper, so to speak?

A. Yes sir.

(Deposition of Douglas Guerry, Page 16 line 23 through Page 17 line 5) (Exhibit 10)

Q. Was everyone in CORTTF and in the e-mail distribution list of CORTTF in either the security or loss prevention business?

A. Yes sir.

(Deposition of Douglas Guerry, Page 40 lines 7 through 10) (Exhibit 11)

Q. When CORTTF sort of expanded the areas of the topics about which the members would communicate, and by that I mean, as I understood initially it was we'll share information on shoplifting or suspected shoplifting. Then at some point later financial crimes become a part of CORTTF's mission to share information about. I guess my question is did I fairly characterize what started off as far as the types of information and how it expanded as far as CORTTF was concerned.

A. Yes sir.

Q. And I don't know if it's a term of art in the loss prevention arena or not, financial crimes. Is that a term of art in the industry?

A. It's a law enforcement term. Its referred to as white collar crimes or financial crimes.

Q. Okay would financial crimes include things like attempting to pass a forged check?

A. Yes sir.

Q. Would it include attempts to pass a bogus travelers check?

A. Yes sir.

Q. Would it encompass counterfeit currency?

A. Yes sir.

(Deposition of Douglas Guerry, Page 40 line 25 through Page 41 Line 22) (Exhibit 12)

It is undisputed that the purpose of CORTTF was to share information relative to the broad category of loss prevention. Whether the loss prevention related to suspected shoplifters, counterfeiters, or individuals attempting to pass bogus checks, the intent was to share information which may be mutually beneficial to CORTTF members. Among the members of CORTTF were Michael Proctor of Target who disseminated the e-mail regarding a guest which turned out to be Rita Cantrell, as well as Mr. Guerry with the Loss Prevention Department of Macy's and the communications liaison of CORTTF. Thus, it is abundantly clear that the communication at issue related to a subject in which not only Mr. Proctor had an interest, but in which Mr. Guerry had an interest as well. Both were in the loss prevention field and the communication between them related to a possible criminal act by a shopper at a retail establishment in Greenville, South Carolina. Further to the extent the defamatory e-mail was republished by Mr. Guerry to the other members of CORTTF, such members were all likewise involved in the law enforcement or loss prevention arena. All members of CORTIF had a mutual interest in sharing information of the type submitted by Target's Michael Proctor.

IV. MALICE

As previously noted, proof of a defamatory publication, charging another with the commission of a crime, ordinarily makes out a prima facie case of malice in the author.

However, as also noted, a privileged communication is an exception to the rule and the presumption of malice is rebutted. As this Court is aware from the recent decision in James Floyd v. WBTW and Florence Morning News, (2007 U.S. Dist. Lexis 92482) the proper analysis of a claim for defamation varies depending upon whether the defamed individual is a public figure, public official or private figure and whether the subject matter of the alleged defamatory statement is a matter of public or private concern. Likewise, the analysis also depends upon whether the Defendant is a “media” Defendant. In the case at bar, it is undisputed that the Plaintiff, Rita Cantrell, is a private Plaintiff and it is likewise undisputed that the Defendant Target Corporation is not a media Defendant. Thus, the analysis with regard to the elements of defamation, qualified privilege, and the various attendant shifts in the parties burden of proof must be analyzed by a review of South Carolina law and the “malice” that must be shown by a Plaintiff regarding a qualifiedly privileged communication.

In Austin v. Torrington, 810 F. 2d 416 (4th Cir. 1987) the United States Court of Appeals for the Fourth Circuit analyzed a defamation action between private Plaintiffs and a non-media Defendant and, significantly, addressed the specific issues of whether the challenged statements were qualifiedly privileged as a matter of law and the “malice” necessary to overcome a qualified privilege.

In its opinion, the Fourth Circuit Court of Appeals quoted extensively from prior decisions of the Supreme Court of South Carolina regarding the privilege enjoyed by an otherwise defamatory statement and the requirement of malice as it relates to a privileged communication. Reversing the District Court’s decision to deny a directed verdict in favor of the Defendant and remanding with directions to enter judgment for the Defendant, the Court noted that the malice necessary to defeat the defense of a qualified privilege must be “express or actual

malice, sometimes referred to as ‘malice in fact’, requiring that the actor was ‘actuated by ill-will in what he did and said, with the design to causelessly and wantonly injure the Plaintiffs’”. See Bell v. Bank of Abbeville, 208 S.C. 490, 495, 368 S.E. 2d 641, 643 (1946). Approximately a year after its first pronouncement regarding “malice in fact” the Supreme Court addressed that very issue again in Bell v. Bank of Abbeville 211 S.C. 167, 44 S.E. 2d 328 (1947) (Bell II) The original decision in Bell by the Supreme Court resulted in a holding that the employee’s complaint stated a cause of action for slander against the employer and was not subject to dismissal by way of a demurrer. On remand, the jury found in favor of the employee, awarded damages and the employer, Bank of Abbeville, appealed. In Bell II. The court stated “we are inquiring into the far more limited question whether there is in the record any evidence for submission to a jury on the question in the case upon which the respondent has the burden of proof, to wit, the showing of malice in fact – that is, that the defendant was actuated by ill-will in what he did and said, with the design to causelessly and wantonly injure the plaintiff.” Bell v. Bank of Abbeville, 211 S.C. 167, 44 S.E. 2d 328 (1947).

Defendant Target submits there is no evidence, no real, material, pertinent and relevant evidence, that Michael Proctor was guilty of “malice in fact” towards the Plaintiff, Rita Cantrell. Mr. Proctor was clearly not actuated by ill-will in what he did and said, with the design to causelessly and wantonly injure Ms. Cantrell. According to Mr. Proctor:

Q. Did you have any ill-will or malice towards Rita Cantrell?

A. No.

Q. Did you think you were doing anything wrong when you sent the e-mail to Doug Guerry?

A. No, no sir.

(Deposition of Michael Proctor Page 63, lines 19 through 24) (Exhibit 13)

The Plaintiff herself addressed during her deposition the specific actions of Mr. Proctor.

Q. Okay, I got you. Alright. Anything wrong with Belk's doing that, for instance?

Their security from one store calling another Belk's and telling them to be on the lookout for a person, giving a description of that person, then your own store security sharing with you, a floor employee, hey, we just got a call, be on the lookout for a person who meets this description?

A. Do I see anything wrong with that?

Q. Yes.

A. No sir.

Q. Do you think that passing on suspicious activity should be encouraged within retail stores?

A. Sure. Yes sir.

Q. Do you think it helps minimize loss and theft in a retail environment?

A. Yes sir.

Q. When Michael Proctor sent the e-mail about you, do you think that he did that because he didn't like you personally?

A. I think he did it thinkin' he was doing his job.

(Deposition of Rita Cantrell Page 117, lines 25 through Page 118 line 18) (Exhibit 14)

In Prentiss v. Nationwide Mut. Ins. Co., 256 S.C. 141, 181 S.E. 2d 325 (1971), the South Carolina Supreme Court directly addressed the issue of qualified privilege and the malice necessary to overcome the defense of qualified privilege. Affirming the trial courts granting of a directed verdict in favor of Nationwide, the court stated, "to overcome the defense of qualified privilege, the appellant had to prove express malice or malice in fact on the part of the

respondent toward her.” Prentiss v. Nationwide Mut. Ins. Co., 256 S.C. 148, 181 S.E. 2d 325, 327 (1971). The court focused on the fact that Mrs. Prentess, the Plaintiff, testified that she did not know any of the agents or employees who had any connection with the writing of the alleged defamatory letter and she further testified that she knew of no reason why any of them would have any animosity, ill-will or malice toward her. In the case at bar, Rita Cantrell testified that she did not believe Michael Proctor had any animosity toward her and Mr. Proctor likewise testified that he did not know the lady in the picture (transmitted with his e-mail) was Rita Cantrell. Thus, he clearly could not have been motivated by any personal animosity towards Ms. Cantrell. As such, there is simply no evidence in the record before this Court that Mr. Proctor had any animosity, ill-will or malice towards Ms. Cantrell.

V. NEGLIGENCE

In addition to Plaintiff’s First Cause of Action alleging libel per se, Plaintiff has asserted a Second Cause of Action for negligence. The operative facts alleged in the Complaint as to the negligence claim are the same as to the libel per se claim, to wit, that due to this Defendant’s negligence in training its employee, Michael Proctor, Proctor composed an e-mail falsely accusing Rita Cantrell of attempting to purchase merchandise with a counterfeit \$100.00 bill.

Target submits, as a matter of law, that the defense of qualified privilege is applicable to Plaintiff’s claims of negligence just as such defense is applicable to Plaintiff’s claims for libel per se. By asserting the defense of qualified privilege and establishing such defense, the burden shifts to the Plaintiff to establish this Defendant’s conduct was predicated upon malice in fact and that such conduct was actuated by ill-will with the design to causelessly and wantonly injure the Plaintiff. The precise issue before this Court (i.e. qualified privilege as a defense to negligence) was addressed by the United States District Court for the District of South Carolina,

Columbia Division in the case of Serino v. Dunn & Bradstreet, Inc., 267 F. Supp. 396 (D.S.C. 1967) in which Judge Simons was called upon to address the question of whether the defense of qualified privilege applied to a cause of action for negligent publication of false information. In reversing the jury's verdict in favor of the Plaintiff and entering a judgment notwithstanding the verdict in favor of Defendant Dunn & Bradstreet, it was noted "all of the policy reasons giving rise to the defense of qualified privilege in a defamation action are equally applicable to a negligence action. It would be anomalous if a mercantile agency could defame a plaintiff with impunity (absent actual malice), yet be liable for a negligent misstatement." Serino, 267 F. Supp. at 399. As further noted by Judge Simons in Serino, the holding in Cullum v. Dunn & Bradstreet, Inc., 228 S.C. 384, 90 S.E. 2d 370 (1955), that a communication qualifiedly privileged is not actionable, even though it contains a charge of a crime, unless malice in fact is shown, does not limit the privilege to defamation actions and implies the existence of the privilege for any communication. As such, Defendant Target submits the communications about which Plaintiff complains enjoys a qualified privilege, which privilege was not exceeded, and Plaintiff's inability to present any reliable, probative or substantive evidence that this Defendant's conduct was actuated by ill will with the design to causelessly and wantonly injure the Plaintiff, mandates Target be granted judgment in its favor as a matter of law.

VI. SUMMARY JUDGMENT STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). Once the moving party makes the showing, however, the

opposing party must respond to the motion with “specific facts showing there is a genuine issue for trial.” Fed. R. Civ. P. 56 (e).

When no genuine issue of any material fact exists, summary judgment is appropriate. Shealy v. Winston, 929 F.2d 1009, 1011 (4th Cir. 1991). The facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the non-moving party. Id. However, “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. Id., quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S. Ct. 2505, 91 L. 2d 202 (1986).

VII. CONCLUSION

In conclusion, it is undisputed that Target’s Michael Proctor had a good faith belief that the lady in the picture accompanying his e-mail had attempted to pass a counterfeit \$100.00 bill at the Target store location on Woodruff Road in Greenville, South Carolina and that communicating the information contained in his e-mail to Douglas Guerry of CORTTF was in furtherance of, and a reasonably related to, the common interest of the members of CORTTF to share information concerning actual or suspected retail theft or crime. The fact that the bill ultimately was determined to be valid United States currency is irrelevant to the analysis, just as the falsity of any defamatory statement is irrelevant to the analysis of whether a qualified privilege protects the communication. The establishment of a qualified privilege shifts the burden to the Plaintiff to overcome the privilege by proving actual malice, that the Defendant was actuated by ill-will in what he did and said with the design to causelessly and wantonly injure the Plaintiff. On the facts before the Court in this matter, Target submits Plaintiff, as a matter of law, is unable to present evidence that Mr. Proctor was actuated by ill-will with the

design to causelessly and wantonly injure Rita Cantrell. As such, Target respectfully submits it is entitled to judgment in its favor as a matter of law.

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