

COPY

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

LIBERTY UNIVERSITY, INC.,)
)
Plaintiff,)
)
 v.)
)
 THE NEW YORK TIMES COMPANY,)
 d/b/a The New York Times, a New York)
 Corporation,)
)
 ELIZABETH WILLIAMSON,)
)
 and)
)
 JULIA RENDLEMAN)
)
Defendants.)

Case No.: CL20 000657

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW, the Plaintiff, Liberty University, Inc. (“Liberty”), by counsel, and files this Complaint against defendants The New York Times Company (“New York Times”), Elizabeth Williamson (“Williamson”), and Julia Rendleman (“Rendleman”) (collectively, “defendants” and, each, a “defendant”), and in support thereof states as follows:

PRELIMINARY STATEMENT

1. In 2006, the managing editor of the New York Times was asked on national television, “how does it feel to be the managing editor of a paper that makes stuff up?” Fourteen years later, Liberty University has the same question.

2. On March 29, 2020, defendants published an article that intentionally misrepresented that Liberty had “reopened” its campus after spring break and suffered a COVID-19 outbreak as a result. That message was apparent to every reader from the article’s plain

language. The online article announced that “Liberty Brings Back its Students, and Coronavirus, Too.” The print edition likewise proclaimed that “A University Reopened, and Students Got Sick.” Both versions stated explicitly that Liberty University “partly reopen[ed] . . . Then students started getting sick” including “nearly a dozen Liberty students . . . sick with symptoms that suggest COVID-19.” Defendant New York Times made the same claims in an official tweet about the story: “Jerry Falwell, Jr., president of Liberty University, reopened the school’s campus last week. By Friday, nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.”

3. And Williamson even more bluntly blamed these reported COVID-19 sicknesses on the purported decision to reopen in a tweet claiming the reported infections showed the “consequences” of reopening the campus during the COVID-19 pandemic: “Just posted: I visited Liberty U. as the consequences of Jerry Falwell’s decision to reopen the campus amid a pandemic *came home to roost.*” (emphasis added).

4. These asserted COVID-19 “consequences” of reopening the campus rested on the assertions that when Liberty “reopened” after spring break, “students started getting sick” and that “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.” Defendants claimed their source for this assertion was Dr. Thomas W. Eppes, Jr. (“Dr. Eppes”), who they described as the doctor who “runs Liberty’s student health service.” But defendants misrepresented both Dr. Eppes’ position and, more critically, the information he provided.

5. First, contrary to defendants’ story, Dr. Eppes did not “run Liberty’s student health service,” was not even directly involved in providing student healthcare, and had explicitly told the defendants this and instructed them to contact Dr. Joanna Thomas (“Dr. Thomas”), who actually had such direct responsibility and involvement. Williamson, however, never contacted Dr. Thomas despite reporting on the story for days, visiting the campus, taking photos, and

interviewing students, politicians, local residents and many others not officially associated with the university.

6. Second, and much more important, Dr. Eppes did not tell defendants that after returning from spring break “students started getting sick” or that “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.” In fact, he told them just the opposite: there were no known cases of COVID-19 and the bulk of the “nearly twelve” examined students *did not* have symptoms that “suggest” COVID-19, but instead symptoms of an “upper respiratory infection” – that is, a cold – not the lower respiratory infection COVID-19 and, consequently, they were not even sent for testing because they did not have COVID-19 symptoms and did not meet the criteria for testing.

7. Simply put, defendants’ claim that “Liberty Brings Back its Students, and Coronavirus, Too” was made up. Their claim that Liberty “Reopened, and Students Got Sick” was made up. Their claim that after purportedly reopening, “students started getting sick” with “nearly a dozen Liberty students . . . sick with symptoms that suggest Covid-19” was made up. And their claim that the “consequences” of reopening had “come home to roost” in the form of a COVID-19 outbreak was made up.

8. Indeed, contrary to defendants’ story, when Liberty ended classes two months after allowing students to return from spring break, not a single on-campus student had been diagnosed with COVID-19.

9. As intended, defendants’ “made up” narrative of an outbreak caused by a reopening spread rapidly throughout local and national news outlets, on social media, and among Liberty students, parents, alumni, donors, and potential applicants. For example, the Financial Times told its readers that, according to the New York Times, after Liberty’s decision to “stay open . . .

[t]welve students promptly came down with coronavirus.”¹ Other news organizations likewise republished defendants’ “made up” narrative in stories uniformly reflecting what all those who read the story understood: that after purportedly reopening, Liberty “promptly suffered a COVID-19 outbreak” (The Nation)² with “numerous students now hav[ing] the coronavirus” (Delaware County Daily Times).³ And the New York Times itself ran an opinion piece based on its own false reporting entitled, “This Land of Denial and Death,” in which it accused Liberty University’s President of “hav[ing] create[ed] his own personal viral hot spot.”⁴

10. None of this was true. There was *never* an on-campus student diagnosed with COVID-19. The only actual “viral” element of this narrative that existed was the intense “viral” internet attention it generated for the New York Times’ website and for those paying to advertise on that website.

11. There is overwhelming evidence that defendants published this false and defamatory story knowing their claims were made up and untrue. First, and most important, the story’s central COVID-19 claims were the exclusive by-product of defendants misrepresenting Dr. Eppes’ statement. Defendants falsely reported that Dr. Eppes had told them “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19,” when they knew he had told them that the bulk of the students examined had symptoms of a cold. This is why they paraphrased this part of his interview instead of quoting his actual words – even though this was the story’s lynchpin, defendants had a purported verbatim transcript of his words, and they quoted him extensively elsewhere on far less important points that nevertheless reinforced their false narrative.

¹ Edward Luce, *Let's keep God out of this, shall we?*, FINANCIAL TIMES, April 3, 2020.

² Sasha Abramsky, *The COVID-19 Crisis is Exposing Trump's Criminality*, THE NATION, April 3, 2020.

³ Chris Freind, *Chris Freind: What We Must Do Now to Stop Coronavirus*, THE DELAWARE COUNTY DAILY TIMES, April 1, 2020.

⁴ Paul Krugman, *This Land of Denial and Death*, THE NEW YORK TIMES, March 30, 2020.

To have used his actual words would have utterly contradicted their claims to any reader remotely informed about COVID-19 or capable of googling.

12. For the same reason, they omitted entirely Dr. Eppes' further explanation that these students were not tested for COVID-19 because they did not meet the symptomatic criteria for COVID-19 testing. This omission was necessary for defendants to spread their false narrative in a cohesive way because, if the omitted information had been included, it would have been apparent that the students did not, in fact, have symptoms that "suggest" COVID-19. This dual misrepresentation and omission created the additional false and negative impression, ultimately expressed by others quoted in the story, that Liberty not only had a COVID-19 outbreak, but was recklessly not testing students with COVID-19 symptoms.

13. Second, Williamson, a veteran reporter who had reported and commented extensively on the pandemic, was fully aware of the distinction between symptoms of an "upper respiratory" illness like a cold, and the symptoms of a lower respiratory illness like COVID-19. Moreover, the New York Times has devoted substantial resources to investigating and informing its readers about COVID-19, including on the differences between the symptoms of COVID-19 and those of a cold and the testing criteria to distinguish between the two.

14. In addition, even if Williamson was completely unaware of the difference between the cold symptoms Dr. Eppes described and COVID-19 symptoms, when a state health official told her that Liberty should be testing students with symptoms, she would have been alerted that her purported understanding was questionable. Yet, she made no further inquiry because Dr. Eppes had already explained that distinction to her, and her intent was to misrepresent what he said. She also, obviously, did not tell the expert, like she did not tell the readers, what Dr. Eppes had actually said because, if she had, the expert would not have been puzzled and concerned about

why Liberty had not tested those students. The expert was only puzzled and concerned because she repeated to him the misrepresented account that would appear in the story.

15. Third, defendants scrupulously avoided contacting the doctor actually responsible for student health services as Dr. Eppes had instructed and otherwise avoided any effort to corroborate their claim that “nearly a dozen Liberty students were sick with symptoms that suggest Covid-19.” They did not take these most basic journalistic steps to confirm the lynchpin of their story despite the fact they had ample time to do so and had otherwise taken the time and trouble to travel to the school, visit and photograph the campus, and interview in-person and by phone many other students, local residents, politicians, health care officials, and experts. Defendants elected not to take these most basic steps for the same reason they rewrote Dr. Eppes’ words. They knew doing so would contradict the false claims that were the lynchpin of their story. By avoiding the direct source, and only talking to Dr. Eppes, they sought the plausible deniability of claiming he and they misunderstood each other when he inevitably denied (as he did) the story. Misunderstanding two physicians is far less credible than one.

16. Fourth, defendants also did not even try to make a meaningful inquiry of Liberty itself despite actually visiting the school and interviewing its students and many others on campus and in Lynchburg. When defendants did contact Liberty, it was the Sunday the online story was published, the story was already written, and defendants then rushed to publish the story to prevent Liberty from providing accurate information from Drs. Thomas and Eppes. Defendants knew the story’s central message misrepresented what Dr. Eppes told them, and this would become clear as soon as someone spoke to Drs. Eppes or Thomas. Indeed, Dr. Eppes denied the relevant COVID-19 statements attributed to him immediately upon reading them in the story. Again, misunderstanding Dr. Eppes, while not credible for such an experienced investigative journalist,

seems more credible than misunderstanding him, another physician, and Liberty University. Thus, defendants waited to reach out to Liberty until there would not be time for it to comment on this claim in any informed way, and then quickly published before the claimed “deadline” when defendants realized Liberty was pressing to quickly secure and provide accurate first-hand information. This faux deadline is particularly incriminating given that Williamson took the time to travel to Lynchburg (from an actual viral hot spot) and violate Liberty’s pandemic protocols excluding visitors from campus, but did not bother to arrange to talk to a single school official until about an hour before publishing the story she had worked on for over a week.

17. Fifth, the intentional misrepresentation of Dr. Eppes’ statement is further evidenced by the other obvious intentional misrepresentations defendants made in their story. For example, defendants reported that Liberty’s President had “assured [government officials] that he fully intended to comply with Virginia’s public health directives . . . Then he changed his mind,” and otherwise ignored “pleas” from the governor and local officials to “reverse course” and comply. In fact, Liberty had always abided by those directives and defendants knew this. Indeed, in making these misrepresentations, defendants omitted from the story that Liberty had been subject to two separate “surprise” inspections by the Central Virginia Health District during and immediately after spring break, each of which found the school in full compliance with all applicable state restrictions concerning the pandemic. Defendants were aware of these facts from their reporting, and from the fact that Liberty and other media outlets publicly reported the results of the second inspection on March 24 (the day after spring break ended and five days before defendants published their story). Thus, defendants were aware that Liberty had, in fact, taken all steps necessary to comply with state health directives when they falsely reported that the school had

“changed [its] mind” about doing so and ignored “pleas” from officials to “reverse course” and comply.

18. Likewise, defendants reported that Liberty had “encouraged” students to return to campus after spring break, when they knew from the communications they reviewed that this was categorically untrue. And they misrepresented that “for critical weeks in January and February, the nation’s far right dismissed the seriousness of the pandemic,” and cited President Falwell as an example of this uniquely “far right” attitude, when, in fact, the New York Times itself, as well as liberal politicians in the nation’s viral hotspots, made the very same claims more often and more strenuously than anyone during that very period.

19. Sixth, defendants’ knowledge that they had misrepresented Dr. Eppes’ words is also reflected in their post-publication behavior. After publication, defendants asked Dr. Eppes if Liberty was correct that he did not run the student health services, but they inexplicably avoided asking about his claim that they had misrepresented what he said about ill students. In possession of a verbatim transcript of what he actually said, defendants risked him asking to see it and pointing to proof he had been misrepresented. Consistent with this intent, Williamson declined to provide Dr. Eppes a copy of the transcript when he asked to see it after publication even though she, presumably, should have wanted to know if she misunderstood his words and even though he had been so gracious and forthcoming in getting her information that he had no obligation to provide. Moreover, defendants never even updated their story to note that Dr. Eppes disputed their account of what he said, even though they did update to include other information reinforcing their misrepresented version of his comments.

20. Similarly, the day after defendants published the story and made it go “viral” with the sensational headline, “Liberty Brings Back its Students, *and Coronavirus, Too*,” they changed