[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 18-12577
Non-Argument Calendar

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D.C. Docket No. 1:17-cv-21204-KMM

REYNOLD F. DEEB,

Plaintiff - Counter
Defendant - Appellant,

versus

GEORGES SAMI SAATI,

Defendant - Cross
Defendant – Appellee.

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Appeal from the United States District Court
for the Southern District of Florida

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(June 20, 2019)

Before ROSENBAUM, BRANCH, and FAY, Circuit Judges.

PER CURIAM:

Reynold Deeb sued Georges Saati for defamation under Florida law. The district court granted summary judgment in favor of Saati, concluding that the statements at issue were not actionable defamation because they were protected either as "pure opinion" or "rhetorical hyperbole." Deeb now appeals. After careful review, we vacate the judgment and remand for further proceedings.

## I.

Deeb is a Haitian citizen and prominent businessman with connections to Haitian politicians. Saati is a former businessman and, at the time of the events at issue, was the owner, operator, and publisher of the website Moun.com, which he described as the "WikiLeaks of the Caribbean." Moun.com published articles on a broad range of topics primarily concerning Haiti. The website included original content authored by Saati as well as material republished from other sources. Over the years, Saati published several articles about Deeb and his brothers.[1]

This lawsuit arises out of one such article. On April 2, 2015, Saati published on Moun.com a headline in French that translated to "Deeb brothers arrested, other awaiting their turn." The headline was part of an article authored by another person that appeared in the *Haiti Observateur*, a well-known and widely read publication

[1] The parties have a history that predates the present dispute. Deeb and Saati have known each other since Deeb was a child. Saati was friends with Deeb's brother Eddy. At some point, Deeb and Saati both worked at the same organization. Later, the relationship between Saati and Eddy soured.

in the Haitian and Haitian-American communities. The article—an English translation of which was entered into the record—stated that Deeb and his brother Eddy had been "implicated in a series of illicit activities," including undisclosed money transfers, arms trafficking in exchange for cocaine, falsified travel documents, and embezzlement. Under the headline, Saati added pictures of Deeb and Eddy with comments calling Eddy the "Haitian Madoff" and Deeb "the friend of all politicians." The headline, photos, and comments remained prominently featured on Moun.com for approximately two years, until Moun.com was shut down.

The parties dispute whether the full text of the article was republished on Moun.com, but it's undisputed that the source article was accessible through Saati's website. Despite the statements in the *Haiti Observateur* article, Deeb and Eddy were not arrested for or questioned by authorities about any offense.

Nearly two years later, on March 28, 2017, Deeb's counsel sent Saati a pre-suit demand letter threatening a defamation lawsuit if Saati did not remove the *Haiti Observateur* article and post a retraction and apology. The next day, Saati authored and published a Facebook post in French regarding Deeb. The Facebook post—as translated into English by Facebook's translation software[2]—begins,

> Moun has just received a new letter of intimidation and threats of lawyers of the "big" Entrepreneur, "big" Financier, the famous "Nonol"

[2] Both parties submitted translations of the relevant Facebook statements. Their versions are not materially different, but we, like the district court, use Deeb's version, since Deeb was the non-moving party on summary judgment.

> either Mr[.] Reynold Deeb, dated 29 March 2017 to 8:40 of the night, who will soon be published on the net for the general public to be aware.
>
> History repeats itself, a day or the other corruption will end in Haiti, and the so-called Barons of the bleaching of the city, better known as owner of "dry cleaning" will be handcuffed and en route to the American prisons.
>
> It is claimed that the "great nonol" is the one who does the dirty deeds for his elder brother Eddy Deeb, the man, always hiding, while he's pulling the strings behind the scenes.

Saati followed these comments with a reproduction of his "answer to the first letter of intimidation dated 2005," regarding a similar kind of dispute between Eddy and Saati from 2005. And he promised to soon "publish our response" to the March 2017 demand letter, a copy of which he attached to the post.

One day later, on March 30, 2017, Saati posted several comments to the original Facebook post. His first comment opined on the nature of values and character. The second comment, a discussion on reputation, included these statements:

> I repeat, with all the money in the word, even with the drug money we can't buy a reputation.
>
> My old friends, nonol and didi must know that even if, they win a lot of money in dirt in Haiti as claimed certain, they will always be consider as thugs, thieves, pranksters who make products in China to understand [t]hat is made in Paris.

Another individual, not a party to this action, commented, "Allegedly according to rumors, these gentlemen are alleged money launderers and weapons dealers[.]" Saati then posted the following comments:

> My website was hacked, it will be temporarily under repair. This happened before, people who do not want the truth out, they do everything possible to boycott the news. Only in a poor nation like Haiti, Can 'The Truth' Disrupt alleged money launderers. Some people use 5 Haitian passports with different names. Now that Homeland Security is looking into these cases, it is very hard to do so. Why would a person use many different passports, identical photos with different names? The same gangsters, white collar criminals can hire a lawyer to go after you, to intimidate you, to threaten you.
>
> . . . .
>
> My grandfather . . . had a saying: "The more you stir shit, the more it stinks. You can stir it all day long if you want to, but shit is never going to smell any better. The best thing you can do, is to not stir the shit because you really going to smell it and get dirty. You remember we made you write one 10000 times on a piece of paper: "Je suis un voleur." You know that you are a crook, so do not try to intimidate me with lawyers.

Shortly after these comments were posted, Deeb sued Saati in federal court alleging two counts of defamation *per se* under Florida law. The first count was for posting the *Haiti Observateur* article on Moun.com with additional commentary. The second count was for Saati's comments on Facebook after Deeb threatened to sue Saati. Deeb moved for partial summary judgment as to the first count, while Saati moved for final summary judgment as to both counts. Finding that all of

Saati's statements were protected either as "pure opinion" or "rhetorical hyperbole," the district court granted summary judgment in favor of Saati on both counts.

Deeb now appeals the grant of summary judgment as to the second count. He does not address the first count, so we deem that count abandoned. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (issues not raised on appeal are abandoned).

## II.

We review *de novo* a decision to grant summary judgment, viewing the evidence and drawing all reasonable inferences in favor of the non-moving party. *Haynes v. McCalla Raymer, LLC*, 793 F.3d 1246, 1249 (11th Cir. 2015). Summary judgment is appropriate if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

### A.

Under Florida law, which governs this diversity suit[3], the tort of defamation has these elements: (1) publication; (2) of a false statement of fact about the plaintiff; (3) that is defamatory; (4) "with knowledge or reckless disregard as to the falsity on

[3] A federal court sitting in diversity applies the substantive law of the state in which the case arose. *Pendergast v. Spring Nextel Corp.*, 592 F.3d 1119, 1132–33 (11th Cir. 2010). Here, the district court exercised alienage diversity jurisdiction under 28 U.S.C. § 1332(a)(2), which permits federal courts to hear disputes between "citizens of a State and citizens or subjects of a foreign state." The court found that Saati was a citizen of Florida and that Deeb was a citizen of Haiti.

a matter concerning a public official, or at least negligently on a matter concerning a private person"; and (5) that results in actual damages.[4] *Turner v. Wells*, 879 F.3d 1254, 1262 (11th Cir. 2018) (citing *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008)); *see Bass v. Rivera*, 826 So.2d 534, 535 (Fla. Dist. Ct. App. 2002). The primary dispute in this case is whether Saati's statements can reasonably be construed as actionable false statements of fact about Deeb.

Both the First Amendment and Florida law place limits on the type of speech that may be the subject of a defamation action. The First Amendment protections "are rooted in the 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Horsley v. Rivera*, 292 F.3d 695, 701 (11th Cir. 2002) (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)). And they "reflect[] the reality that exaggeration and non-literal commentary have become an integral part of social discourse." *Horsley v. Feldt*, 304 F.3d 1125, 1131 (11th Cir. 2002).

In keeping with this principle, the Supreme Court has held that statements that "cannot reasonably be interpreted as stating actual facts about an individual" cannot be the subject of a defamation suit. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *see id.* at 21 (describing the inquiry as whether the statement "is sufficiently

[4] Deeb's claim is for defamation *per se*, which does not require proof of actual damages. *Lawnwood Med. Ctr., Inc. v. Sadow*, 43 So. 3d 710, 127 (Fla. Dist. Ct. App. 2010).

factual to be susceptible of being proved true or false"). This includes statements of "rhetorical hyperbole," which are non-literal statements "consist[ing] of the sort of loose, figurative language that no reasonable person would believe presented facts." *Feldt*, 304 F.3d at 1132–33 (quotation marks omitted).

If a statement can reasonably be interpreted as stating or implying actual facts about the plaintiff, however, the statement may be actionable even if it is phrased as an opinion. *Milkovich*, 497 U.S. at 18–19. That's because "expressions of 'opinion' may often imply an assertion of objective fact." *Id.* at 18. For example, "[i]f a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth." *Id.* Moreover, "[e]ven if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact." *Milkovich*, 497 U.S. at 18–19.

Similar principles are recognized in Florida case law. Statements of "pure opinion" are protected under Florida law. A "pure opinion" is "a comment or opinion based on facts which are set forth in the publication or which are otherwise known or available to the reader or listener as a member of the public." *Turner*, 879 F.3d at 1262. "[A] speaker cannot invoke a 'pure opinion' defense, [however,] if the facts underlying the opinion are false or inaccurately presented." *Lipsig v. Ramlawi*, 760 So. 2d 170, 184 (Fla. Dist. Ct. App. 2000).

In contrast to statements of "pure opinion," "mixed expressions of opinion" may be actionable in a defamation case. *Morse v. Ripken*, 707 So. 2d 921, 922 (Fla. Dist. Ct. App. 1998). "Mixed expression of opinion occurs when an opinion or comment is made which is based upon facts regarding the plaintiff or his conduct that have not been stated in the publication or assumed to exist by the parties to the communication." *Turner*, 879 F.3d at 1262. "Rather the communicator implies that a concealed or undisclosed set of defamatory facts would confirm his opinion." *Morse*, 707 So. 2d at 922 (quoting another source).

Whether a statement expresses or implies an assertion of fact and "whether a statement of fact is susceptible to defamatory interpretation are questions of law for the court." *Turner*, 879 F.3d at 1262–63. In making this assessment, we consider the totality of the circumstances in which the statement was expressed or published, including the medium by which the statement was disseminated, the audience to which it was published, and any cautionary terms used by the publisher in qualifying the statement. *Id*. at 1263; *Horsley*, 304 F.3d at 1131; *Demby v. English*, 667 So. 2d 350, 355 (Fla. Dist. Ct. App. 1995).

**B.**

Here, the district court concluded that Saati's Facebook postings—specifically his statements about "drug money," "money launderers," and "Barons of the bleaching of the city, better known as the owner of 'dry cleaning' will be

handcuffed and en route to the American prisons"[5]—were either "rhetorical hyperbole" or "pure opinion" and therefore were not actionable defamation. We agree that much of Saati's initial Facebook post and subsequent comments consisted of the sort of "loose, figurative, or hyperbolic language" that no reasonable reader would believe presented facts. *See Milkovich*, 497 U.S. at 21. A reasonable reader would understand the bulk of his writing—stream-of-consciousness sermonizing about values, character, and reputation—to simply be an expression of indignation in response to what Saati characterized as a "letter of intimidation and threats."

But the statements that Deeb and his brother are "alleged money launderers" and "Barons of the bleaching of the city, better known as the owner of 'dry cleaning' will be handcuffed and en route to the American prisons" are of a different sort. These statements could reasonably be interpreted not as impassioned rhetoric about alleged intimidation tactics but as asserting or implying facts "susceptible to being proved true or false"—that Deeb had either committed or been accused of committing acts of money laundering. *See id.* While the "general tenor" of the Facebook postings undermines to some degree the impression that Saati was seriously maintaining that Deeb had committed or been accused of the crime of

[5] Saati maintains that Deeb waived his right to proceed on the "Barons" comment by failing to include it in his pre-suit notice letter or to otherwise properly raise it below. Because the district court did not address this argument and instead evaluated the statement on the merits, we do the same.

money laundering, we cannot say as a matter of law that it negates this impression. *See id.* (concluding that the "general tenor" of an article did not negate the impression that the writer was maintaining that the plaintiff had perjured himself).

Contrary to Saati's argument, that Saati did not explicitly call Deeb a "money launderer" does not prevent the statements from being reasonably susceptible of a defamatory reading. *See Feldt*, 304 F.3d at 1137 ("The fact that Feldt's alleged comments on the CNN broadcast did not explicitly name Horsley does not stop them from being reasonably susceptible of a defamatory reading."). The Facebook post was expressly prompted by "a new letter of intimidation and threats of lawyers" for Deeb. In that post, Saati promised to "publish our response" to the letter soon, and the very next day he posted several comments referring to "nonol" and "didi"—which in context can be understood to refer to Deeb and Eddy, respectively—and the attempts to "intimidate [him] with lawyers." Given this context, a reasonable factfinder could conclude that the statements at issue either referred to Deeb alone or to Deeb and his brother.

Nor can we say as a matter of law that the statements at issue are protected as "pure opinion." A reasonable factfinder could conclude that Saati's statements were "mixed expressions of opinion"—that is, opinions "based upon facts regarding the plaintiff or his conduct that have not been stated in the publication or assumed to exist by the parties to the communication." *Turner*, 879 F.3d at 1262. Saati's

Facebook postings did not explain the basis for his opinion that Deeb is a money launderer.[6] And based on the current record, we cannot tell whether the March 2017 demand letter, which was attached to the original Facebook post and referenced the *Haiti Observateur* article, was legible to readers of the post. Thus, there is genuine issue of material fact regarding whether Saati provided an adequate factual foundation for his opinions. *See Zambrano v. Devanesan*, 484 So.2d 603, 606–07 (Fla. Dist. Ct. App. 1986) ("[W]here the speaker or writer neglects to provide the audience with an adequate factual foundation prior to engaging in the offending discourse, liability may arise.").

Saati's claim that the underlying facts were either known or readily available to his Facebook audience is unavailing. Saati contends that this case is like *Hay v. Independent Newspapers, Inc.*, 450 So. 2d 293 (Fla. Dist. Ct. App. 1984). In that case, the plaintiff sued over a letter to the editor of a local newspaper that called him a "crook" and a "criminal" after informing the reader that "Monday the state attorney's office announced its intention not to prosecute [the plaintiff] . . . , and the judge fines [the plaintiff] $5,000 and gives him 5 years probation." *Id.* at 295. The Florida appellate court concluded that the "crook" and "criminal" statements were pure opinion because they "were based in part upon facts disclosed in the article,

[6] In finding that the context for the statements was readily available, the district court cited Saati's comments regarding the prior dispute with Eddy from 2005, but it's not clear how these comments informed the reader of the factual context for Saati's current claims against Deeb.

[and] the fact that criminal charges had been filed against the appellant was either known or readily available to the reader as a member of the public." *Id.*

Two factual differences distinguish this case from *Hay*. First, in *Hay*, the factual basis for the author's opinion—that the plaintiff was a crook and a criminal—was disclosed in the communication itself. The communication informed the reader that the judge had fined the plaintiff $5,000 and had sentenced him to probation, and the state attorney's office had declined to further prosecute the plaintiff, implying that the plaintiff had been charged with criminal offenses, a fact the plaintiff did not dispute. Here, by contrast, Saati did not disclose the factual grounds for his opinion, such as a description of the *Haiti Observateur* article and its claims about Deeb's alleged arrest. Rather, Saati's statements required the reader to assume that a "concealed or undisclosed set of defamatory facts would confirm his opinion" that Deeb was a money launderer. *See Morse*, 707 So. 2d at 922.

Second, the circumstances of the *Hay* statements are much different than the circumstances here. The letter to the editor in *Hay* concerned matters of public record within De Soto County, Florida, where the newspaper was based, so it's reasonable to assume that the newspaper's audience either knew about or could readily have obtained information about the criminal charges. *Cf. From v. Tallahassee Democrat, Inc.*, 400 So. 2d 52, 57 (Fla. Dist. Ct. App. 1981) ("The statements were made in a tennis column in a local newspaper to an audience who

would be expected to be aware of the tennis pro's situation at the Winewood Country Club."). Here, though, Saati's Facebook page was "open," meaning it was accessible to anyone, and his postings presumably would have appeared on the feeds of his Facebook "friends," which can be numerous and diverse. On this record, we cannot say that the factual foundations of Saati's comments were either known to or assumed to exist by Saati's Facebook audience. *See id.*

For these reasons, we conclude that there is a genuine issue of material fact as to whether Saati made actionable false statements of fact about Deeb.

**III.**

As alternative grounds for affirmance, Saati makes other arguments that the district court did not address below. These arguments include the following: (1) that Deeb is a limited purpose public figure, so he was required, but failed, to show that Saati acted with "actual malice"; and (2) that several common-law privileges apply to bar Deeb's lawsuit whether he is a private or public figure.

We decline to consider these arguments for the first time on appeal. As he acknowledges, Saati "uses several exhibits Deeb sought to strike below" in connection with these arguments. But the district court denied the motion to strike as moot because it granted summary judgment on other grounds. Given that the decision to grant a motion to strike is discretionary, *Telfair v. First Union Mortg. Corp.*, 216 F.3d 1333, 1343 (11th Cir. 2000), and in light of our general preference

for district courts to resolve matters in the first instance, *Wilkerson v. Grinnell Corp.*, 270 F.3d 1314, 1322 & n.4 (11th Cir. 2001), we conclude that this case would benefit from further development on remand.

## IV.

In sum, we vacate the grant of summary judgment in favor of Saati and remand for further proceedings consistent with this opinion.

**VACATED AND REMANDED.**