

4-20-1992

Bailey v. Dell Pub. Co., Inc.

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KeyCite Yellow Flag - Negative Treatment

Declined to Follow by [Coviello v. Berkley Publishing Group](#), M.D.Pa.,
January 19, 2017

790 F.Supp. 101
United States District Court,
W.D. Pennsylvania.

Donald BAILEY, Plaintiff,

v.

DELL PUBLISHING COMPANY, INC., Daring Books,
Charles J. Patterson and G. Lee Tippin, Defendants.

Civ. A. No. 88–1398.

I

April 20, 1992.

Synopsis

Public figure brought libel action against book publishers. On motions for summary judgment, the District Court, Lewis, J., held that: (1) publisher's filing of Chapter 7 petition and automatic stay provision of Bankruptcy Code had no impact on instant case; (2) fact issues precluded summary judgment on statute of limitations question; and (3) plaintiff failed to show actual malice.

Judgment for defendants.

West Headnotes (7)

[1] **Bankruptcy** Judicial proceedings in general

51 Bankruptcy

51IV Effect of Bankruptcy Relief; Injunction and Stay

51IV(B) Automatic Stay

51k2394 Proceedings, Acts, or Persons Affected

51k2395 Judicial proceedings in general

Publisher's filing of Chapter 7 petition, and automatic stay provision of Bankruptcy Code, had no applicability to, or impact on, district court's decision to grant publisher's motion for summary judgment in libel action against publisher because it could not be construed to

be action or proceeding "against the debtor." Bankr.Code, 11 U.S.C.A. §§ 362, 701 et seq.

[2] **Limitation of Actions** Filing pleadings

241 Limitation of Actions

241II Computation of Period of Limitation

241II(H) Commencement of Proceeding;
Relation Back

241k117 Proceedings Constituting

Commencement of Action

241k118 In General

241k118(2) Filing pleadings

Under Pennsylvania law, filing praecipe for writ of summons pursuant to rule of civil procedure governing commencement of actions is sufficient to toll running of statute of limitations. [Rules Civ.Proc., Rule 1007](#), 42 Pa.C.S.A.

1 Cases that cite this headnote

[3] **Removal of Cases** Jurisdiction acquired by United States court in general

334 Removal of Cases

334VIII Proceedings in Case After Removal

334k111 Jurisdiction acquired by United States court in general

Exclusive jurisdiction vests in federal court once state court action has been removed.

[4] **Removal of Cases** Validity and effect in general

334 Removal of Cases

334VI Proceedings to Procure and Effect of Removal

334k96 Proceedings in State Court After Removal

334k97 Validity and effect in general

Plaintiff's filing of praecipe in state court to reinstate complaint in state action and filing of affidavits in state action purporting to show that service of reinstated complaint was made on defendants, who had not been served with process at time of removal, was improper, where

plaintiff's filings in state court occurred after removal.

[5] **Libel and Slander** 🔑 By same person

237 Libel and Slander

237I Words and Acts Actionable, and Liability Therefor

237k26 Repetition

237k27 By same person

(Formerly 237k26.1, 237k26)

Purpose of Pennsylvania's single publication rule is to protect publishers from multitude of lawsuits based on one tortious act. 42 Pa.C.S.A. § 8341(b).

1 Cases that cite this headnote

[6] **Federal Civil Procedure** 🔑 Tort cases in general

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C)2 Particular Cases

170Ak2515 Tort cases in general

Genuine issues of material fact existed as to when allegedly libelous book was offered for sale in Pennsylvania book stores and when, through exercise of reasonable diligence,

plaintiff should have discovered defamatory statements, precluding summary judgment on statute of limitations issue in libel action. 42 Pa.C.S.A. §§ 5523, 8341(b).

2 Cases that cite this headnote

[7] **Libel and Slander** 🔑 Criticism and comment on public matters and publication of news

237 Libel and Slander

237II Privileged Communications, and Malice Therein

237k51 Existence and Effect of Malice

237k51(5) Criticism and comment on public matters and publication of news

Public figure who was allegedly libeled by passage in book failed to show actual malice on part of publishers; there was no showing that authors were inherently unreliable sources, and fact that publisher retracted certain statements made in previous edition of book concerning person unrelated to plaintiff did not establish actual malice.

All Citations

790 F.Supp. 101, 20 Media L. Rep. 1257