

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

JAMES R. SWIEZY, and GREENLEAF
DEVELOPMENT & CONSTRUCTION, LLC,

Plaintiffs,

VERIFIED COMPLAINT

v.

INVESTIGATIVE POST, INC., and DANIEL
TELVOCK,

Index No.

Defendants.

Plaintiffs James R. Swiezy and Greenleaf Development & Construction, LLC (“Greenleaf”), by their attorneys, Phillips Lytle LLP, for their Verified Complaint (“Complaint”) against defendants Investigative Post, Inc. (“Investigative Post”) and Daniel Telvock, allege upon information and belief, as follows:

INTRODUCTION

1. This case arises out of false statements that Investigative Post and its Reporter, Mr. Telvock, made about the business activities and reputations of Greenleaf, a private developer, and its President, Mr. Swiezy. On television and on the internet, Investigative Post and Mr. Telvock expressly described Mr. Swiezy’s and Greenleaf’s reputations as property managers as “unsavory,” intentionally ignored verifiable facts concerning Mr. Swiezy’s and Greenleaf’s construction of student housing, and falsely implied that Mr. Swiezy and Greenleaf gained a commercial advantage by bribing a public official and otherwise engaged in a commercial relationship in violation of public

procurement laws. These statements are all false, and are all causing Greenleaf and Mr. Swiezy to incur substantial damages.

2. At all times relevant hereto, Greenleaf owned an assemblage of properties adjacent to the SUNY College at Buffalo campus ("Buffalo State"). Four years ago, due to a student housing shortage, Buffalo State approached Mr. Swiezy about the possibility of having Greenleaf build the needed student housing because the assemblage of properties owned by Greenleaf was ideally and uniquely situated for that purpose. BSCR Corporation ("BSCR"), a private foundation that raises funds to support Buffalo State, also owned properties adjacent to Buffalo State. BSCR desired to acquire certain of Greenleaf's properties so BSCR could build a visitor center at Buffalo State. Consequently, complex and protracted arms' length negotiations ensued over a three-year period among BSCR, Greenleaf, Buffalo State, and the State University of New York ("SUNY"). Each party in such negotiations was represented by sophisticated counsel.

3. In 2016, BSCR and Greenleaf, through Mr. Swiezy and the commonly owned affiliate Campus Walk One, LLC ("CW"), entered into a Contract for Transfer of Real Property ("Contract"), through which BSCR and CW exchanged certain parcels of real property in the neighborhood surrounding Buffalo State so that (i) CW could acquire from BSCR certain parcels needed to be added to Greenleaf's properties to accommodate a student housing complex adjacent to Buffalo State called Campus Walk (the "Project"), and (ii) BSCR could acquire from Greenleaf certain parcels that were necessary to accommodate other Buffalo State facilities to be built by BSCR. Simultaneously, CW entered into an Affiliation Agreement with SUNY, through which CW obtained certain rights regarding the

rental of Campus Walk units to Buffalo State students (collectively, the Contract and the Affiliation Agreement are the “Agreement”).

4. While the Agreement was being negotiated, Investigative Post and Mr. Telvock interviewed a handful of Greenleaf’s former tenants, some of whom made negative remarks about the conditions of certain Greenleaf properties. Even though Mr. Swiezy spoke with Mr. Telvock, and provided emails disputing the former tenants’ allegations line-by-line and giving context about their complaints, Investigative Post aired a one-sided, negative story on WGRZ-Channel 2 in November 2015 portraying Greenleaf and Mr. Swiezy in a false light and attacking and damaging their business and personal reputations.

5. On February 21, 2017, Investigative Post and Mr. Telvock targeted Greenleaf and Mr. Swiezy again. With the bottom ticker of WGRZ Channel 2’s news screen emblazoned with the unsupported statement “BUFF STATE HOUSING DEAL RAISES RED FLAGS,” and using the false and misleading November 2015 report as a pretext to deem Greenleaf’s reputation “unsavory,” Investigative Post falsely characterized the Agreement as an “unusual deal” that does not follow the “usual rules” pertaining to “competitive bidding.” Investigative Post and Mr. Telvock further attacked and damaged Greenleaf’s and Mr. Swiezy’s business and personal reputations through false statements and narratives as set forth in detail below.

PARTIES

6. Plaintiff Mr. Swiezy is an individual who resides at 25 Lincoln Parkway, Buffalo, New York 14222.

7. Plaintiff Greenleaf is a limited liability company organized under the laws of the State of New York, with its principal place of business at 1131 Delaware Avenue, Buffalo, New York 14209.

8. Defendant Investigative Post is a not-for-profit corporation incorporated under the laws of the State of New York, with its principal place of business at 487 Main Street, Suite 300, Buffalo, New York 14203.

9. As a not-for-profit newsroom, Investigative Post relies on donations to financially support its “watchdog journalism.”

10. Defendant Mr. Telvock is an individual who resides at 907 Schopper Road, East Aurora, New York 14052, and is Investigative Post’s Environmental Reporter.

FACTS

I. Investigative Post airs a misleading, one-sided report about Greenleaf

11. On November 11, 2015, Investigative Post aired a report on WGRZ Channel 2 concerning Greenleaf (<http://www.investigativepost.org/2015/11/11/housing-firm-has-checkered-history/> (last accessed April 3, 2017)) (“First Report”).

12. In the First Report, Mr. Telvock interviewed a handful of former Greenleaf tenants who made allegations about the condition of certain Greenleaf properties, including “plumbing problems, electrical hazards, and insufficient heat,” and stated that “there are a lot of unhappy former Greenleaf tenants.”

13. Before the First Report, Mr. Swiezy gave Investigative Post detailed emails refuting Greenleaf’s former tenants’ contentions about the condition of certain Greenleaf properties, and gave references of satisfied Greenleaf tenants, contractors, neighbors, and vendors, both current and past.

14. Notwithstanding Mr. Swiezy's statements to Mr. Telvock that he was "focusing on a very small subset in relation to the total number of tenants we have," and notwithstanding interviews of several individuals who have had positive experiences with Greenleaf, the First Report repeatedly attacked Mr. Swiezy's reputation and Greenleaf's business reputation as a property manager.

15. In the First Report, Mr. Telvock and Investigative Post selectively edited and aired an approximately five-second second clip of an interview of Louis Petrucci, Assistant Director of City of Buffalo Department of Permit and Inspection Services. In the selectively edited clips, Mr. Petrucci purports to agree with Mr. Telvock's statement that "Greenleaf is not always willing to address code violations." Upon information and belief, that interview, in which Mr. Petrucci spoke positively about Greenleaf's reputation for addressing housing code issues, lasted for more than 20 minutes, and the selected clip was edited out of context.

16. By intentionally ignoring information Mr. Swiezy provided to Investigative Post that explained, contextualized, and refuted Investigative Post's false narrative that Greenleaf was an irresponsible landlord, and by selectively editing an interview with a City of Buffalo Inspector, Investigative Post and Mr. Telvock falsely implied a negative impression about Mr. Swiezy's and Greenleaf's property management reputation, and have maliciously created a negative implication designed to damage Mr. Swiezy's and Greenleaf's reputations.

II. Investigative Post's false and misleading report about Campus Walk

17. On February 21, 2017, Investigative Post aired a report on WGRZ Channel 2 concerning Campus Walk ("Second Report")

[\(http://www.investigativepost.org/2017/02/21/buff-states-deal-with-greenleaf-raises-red-flags/](http://www.investigativepost.org/2017/02/21/buff-states-deal-with-greenleaf-raises-red-flags/) (last accessed April 3, 2017)).

18. The Second Report has been available in its entirety on Investigative Post's website at all times since February 21, 2017 through the date of this Complaint.

19. The Second Report was also rebroadcast and served as the subject of a five-minute and twenty-three second long report that aired within the first five minutes of WGRZ Channel 2's February 21, 2017 six o'clock news.

20. For almost the entire duration of the Second Report, the heading "BUFF STATE HOUSING DEAL RAISES RED FLAGS" was emblazoned across the news ticker visible to all television viewers.

21. Branding the Second Report with the title "BUFF STATE HOUSING DEAL RAISES RED FLAGS" falsely implies that Agreement was the product of some illegal or improper conduct by Greenleaf and Mr. Swiezy, which it clearly was not.

22. The Second Report contains many other false statements and false implications that Investigative Post and Mr. Telvock maliciously and intentionally published via broadcast television and Investigative Post's website to damage Mr. Swiezy's and Greenleaf's reputations.

A. The Second Report falsely claims that the Agreement is "unusual" and falsely implies an improper relationship between Greenleaf and Buffalo State

23. Mr. Telvock began the Second Report by stating that:

Buffalo State College has a student housing shortage. It's so bad the college has spent \$2.5 million dollars over the past two years to house students at neighboring schools. The college struck a deal with private developer Jim Swiezy of Greenleaf Development and Construction that

made it easier for him to build this 318 bed student housing complex to fill the demand. The unusual deal would not be possible without the support of Michael LeVine, the College's Vice-President for Finance and Management.

24. The statement that the deal is "unusual" is false.

25. Transactions for privatized student housing are increasingly common, and routinely include incentives, in various forms, to attract private developers.

26. As Investigative Post and Mr. Telvock knew or should have known through the exercise of proper journalistic standards, there are dozens of similar relationships throughout the country in which universities and private developers enter into agreements to provide for privatized student housing, many of which offer significantly more support to the developer than was offered to Greenleaf in connection with the Agreement. For example, universities often provide the developer with a "master lease" and agree to completely fill the housing complex with students; Greenleaf sought a "master lease" in connection with the Project, but Buffalo State refused.

27. By falsely stating that the deal memorialized in the Agreement is "unusual," Investigative Post and Mr. Telvock have maliciously created a negative implication designed to support their erroneous narrative that the Agreement could only be the product of inappropriate dealings between Mr. Swiezy and Mr. LeVine, thereby damaging Mr. Swiezy's and Greenleaf's reputation.

28. The statement that the "deal would not be possible without the support of Michael LeVine, the College's Vice President for Finance and Management" fails to mention others who were integral to the Agreement.

29. Dr. Katherine S. Conway-Turner, Buffalo State's President, and Robert E. Ruggieri, SUNY's Senior Managing Counsel, were also integrally involved in the negotiation and approval of the Agreement.

30. Indeed, the Agreement could not have been entered into without the express approval of Dr. Conway-Turner on behalf of Buffalo State and Mr. Ruggieri on behalf of SUNY.

31. By failing to report the integral involvement of Dr. Conway-Turner and Mr. Ruggieri and their respective staffs with the Agreement, Investigative Post and Mr. Telvock have falsely implied an improper relationship between Mr. LeVine and Greenleaf, and have maliciously created a negative implication designed to damage Mr. Swiezy's and Greenleaf's reputations.

B. The Second Report repeats and rebroadcasts the misleading and false claims about Mr. Swiezy's and Greenleaf's "unsavory reputation"

32. Mr. Telvock then stated that:

You may remember I reported fifteen months ago about the unsavory reputation of Swiezy and his company, Greenleaf. Greenleaf was prosecuted in Housing Court at least twenty times for code violations. Tenants including Buffalo State Students complained of water leaking from ceilings and apartments lacking sufficient heat.

33. The stigmatizing statement that Mr. Swiezy's and Greenleaf's reputations are "unsavory" is false, one-sided, and based upon incomplete reporting, and has maliciously created a negative implication designed to damage Mr. Swiezy's and Greenleaf's reputations.

34. Investigative Post's statement that "Greenleaf was prosecuted in Housing Court at least twenty times" intentionally omits the time period in which those proceedings occurred, the number of properties and rental units owned and managed by Greenleaf over that period, the numerous instances when Greenleaf acquired properties with pending housing code violations and promptly repaired the subject conditions, and the damage done to some of the subject rental units by certain irresponsible tenants, all of which information was provided to Investigative Post prior to its reports.

35. The referenced proceedings occurred under varied circumstances over a period of more than 10 years, which, for a manager of properties located in areas with an aging housing stock who has maintained approximately 400 to 700 rental units over that time period and rented apartment units to approximately 1,200 tenants each year, is not an unusual or uncommon occurrence. Instead, these complaints reflect typical landlord-tenant problems, many of which arose out of properties that Greenleaf acquired with existing liens, fines, housing code violations, or other problems.

36. By intentionally omitting the time period in which those proceedings occurred, Investigative Post and Mr. Telvock falsely implied a negative impression about Mr. Swiezy's and Greenleaf's property management reputations, and have maliciously created a negative implication designed to damage their reputations.

C. The Second Report falsely mischaracterizes the Agreement

37. After attacking Mr. Swiezy's and Greenleaf's reputations, Mr. Telvock stated that:

Yet Buffalo State still negotiated an exclusive deal with Greenleaf and that's where things get interesting. The agreement requires the College to market only Greenleaf's complex to students

but it also prohibits seniors from living on campus through the 2021 school year unless Swiezy's complex is fully leased, a condition Swiezy said he needed to secure financing. No money was exchanged but nearly \$1,000,000 in real estate changed hands and the agreement could provide Greenleaf some \$800,000 in rents for the first four years while the college steers students to his project.

38. The use of the words "yet" and "still" in the opening four words of the above quoted statement, particularly when it immediately follows an attack against Mr. Swiezy's and Greenleaf's reputation, creates a false negative implication about Mr. Swiezy and Greenleaf and its Agreement with Buffalo State, and has maliciously created a negative implication designed to damage Greenleaf's reputation.

39. Investigative Post knew or should have known by exercising proper journalistic standards that the statement that "nearly \$1,000,000 in real estate changed hands" is false and misleading.

40. The true total market value of the properties exchanged among Greenleaf and BSCR under the Agreement was far less than \$1,000,000. Under the Agreement, Greenleaf conveyed to BSCR title to the properties known as 663 Grant Street, 144 Rees Street, and 148 Rees Street ("Greenleaf Properties"). Greenleaf, through an affiliate, acquired 11 properties near Buffalo State in 2011 for \$400,000, an acquisition that included as two components 663 Grant Street and 144 Rees Street. (663 Grant Street and 144 Rees Street were acquired by their previous owners in 2008 for \$95,000 and \$120,000, respectively.) Greenleaf, through an affiliate, acquired 148 Rees at a tax foreclosure auction in 2007 for \$500. Inasmuch as 663 Grant Street and 144 Rees Street were just two of a total of 11 properties acquired by Greenleaf for \$400,000, which same two properties had been

bought individually by the prior owner three years earlier for \$95,000 and \$120,000, respectively, and 148 Rees was acquired by Greenleaf for \$500, the total value of the Greenleaf Properties transferred to BSCR under the Agreement was at the very most \$250,000.

41. Under the Agreement, BSCR conveyed to a Greenleaf affiliate title to five properties known as 649 Grant Street, 651 Grant Street, 136 Rees Street, 137 Hawley Street, and 139 Hawley Street (“BSCR Properties”). BSCR acquired 649 Grant Street in 2008 for \$28,000; 651 Grant Street in 2000 for \$1; 136 Rees Street in 2007 for \$22,000; and both 137 and 139 Hawley Street in 2001 for \$15,000. Thus, the total value of the BSCR Properties transferred to Greenleaf under the Agreement was \$65,001.

42. In total, the Greenleaf Properties and the BSCR Properties exchanged under the Agreement had an aggregate value of \$315,000, at most, which is (and obviously was before the Second Report aired) readily ascertainable in the Erie County Clerk’s Office. As Investigative Post knew or should have known by exercising proper journalistic standards, the value of the properties exchanged under the Agreement by Greenleaf and BSCR was less than one-third of the value that Mr. Telvock and Investigative Post misleadingly assigned to them in the Second Report. Investigative Post and Mr. Telvock used the false phrase: “nearly \$1,000,000” to intentionally deceive and shock its viewers.

43. Moreover, the Greenleaf Properties transferred to BSCR under the Agreement exceeded the value of the BSCR Properties Greenleaf received by nearly four times.

44. Mr. Telvock knew or should have known this because transactions concerning the Greenleaf Properties and the BSCR Properties are a matter of public record, and are easily accessible at the Erie County Clerk's Office.

45. By intentionally exaggerating the value of the properties exchanged under the Agreement, Investigative Post and Mr. Telvock have maliciously implied that the Agreement is somehow improper in an attempt to damage Mr. Swiezy's and Greenleaf's reputations.

D. The Second Report's false claims about the negotiation of the Agreement

46. After attacking Mr. Swiezy's and Greenleaf's reputations, and mischaracterizing the Agreement and subject properties' value, Mr. Telvock stated that:

But emails obtained by Investigative Post under the Freedom of Information Law showed that LeVine did not maintain an arms' length relationship while negotiating with Swiezy. Their "chummy" relationship morphed into an agreement that facilitated the construction of the Project without competitive proposals or independent review by the State.

47. Investigative Post's statement that it obtained emails "under the Freedom of Information and Law" is intentionally false and intended to further its false narrative of wrongdoing in connection with the Agreement, as, upon information and belief, those emails were voluntarily provided to Investigative Post.

48. The statements that Mr. LeVine and Mr. Swiezy's relationship was "chummy" and not at "an arm's length" are false.

49. As noted above, Mr. LeVine approached Greenleaf in 2013 because Greenleaf owned properties near Buffalo State that it believed were strategically located for student housing adjacent to campus. In fact, Mr. LeVine went to Mr. Swiezy's office, and

advised that Buffalo State: (a) wanted student housing built on the property adjacent to Buffalo State, most of which Greenleaf already owned; and (b) wanted certain Greenleaf properties near Buffalo State so that it could build a visitor center.

50. At a very early stage in discussions concerning Greenleaf's properties near Buffalo State, Buffalo State and SUNY engaged counsel.

51. The Agreement was the product of extensive and sometimes contentious arms' length negotiations over a period of several years. As noted above, the properties to which Greenleaf conveyed title to BSCR under the Agreement were acquired for nearly four times the prices of the properties Greenleaf acquired through the Agreement.

52. Mr. Telvock knew or should have known of these extensive and sometimes contentious negotiations because, upon information and belief, he was provided with Mr. LeVine's emails pertaining to the Agreement and interviewed Mr. LeVine before the Second Report aired.

53. Plesantries in emails exchanged by counter-parties during protracted negotiations are not unusual and do not evidence the absence of arms' length negotiations.

54. Investigative Post's and Mr. Telvock's selective reporting of email plesantries falsely implies that the Agreement was not the product of arm's length negotiations, and is a malicious attempt to damage Mr. Swiezy's and Greenleaf's reputations.

55. The statement that the Agreement "facilitated the construction of the Project without competitive proposals" implies that "competitive proposals" were required for the Project, which is false.

56. Investigative Post knew or should have known by exercising proper journalistic standards that neither the law nor SUNY procurement guidelines require “competitive proposals” for transactions of the nature memorialized by the Agreement.

57. By falsely implying that Mr. Swiezy and Greenleaf engaged in a transaction that violated the law concerning “competitive proposals,” Investigative Post and Mr. Telvock have maliciously attempted to damage Mr. Swiezy’s and Greenleaf’s reputations.

58. The statement that the Agreement lacked “independent review by the State” is false.

59. Buffalo State and SUNY are both “State” entities.

60. Buffalo State and SUNY both conducted extensive independent reviews of the Agreement with the benefit of sophisticated counsel.

61. The process of obtaining SUNY’s approval of the Agreement was arduous and protracted, and clear evidence that review of the Agreement was “independent.”

62. By falsely implying that Mr. Swiezy and Greenleaf violated the law concerning “independent review by the State,” Investigative Post and Mr. Telvock have maliciously attempted to damage Mr. Swiezy’s and Greenleaf’s reputations.

E. The Second Report falsely implies that the Agreement is subject to the “usual rules” for “competitive bidding”

63. After attacking Mr. Swiezy’s and Greenleaf’s reputations, and mischaracterizing the terms and negotiation of the Agreement, Mr. Telvock engaged in the following-question-and-answer segments with Mr. LeVine and a so-called “good government expert” concerning “competitive proposals”:

Dan Telvock: Why not open the process up for competitive proposals?

Michael LeVine: We are not looking to have student housing other than right around the campus.

Dan Telvock: The SUNY system has rules that govern how colleges do business with private companies. In general, SUNY schools are supposed to use competitive bidding to safeguard against favoritism and fraud, but the college said the usual rules didn't apply.

Dan Telvock: Why do you think they didn't apply?

Michael LeVine: Because we didn't purchase anything.

Dan Telvock: John Kaehny, a "good government expert" at Reinvent Albany said the deal raises red flags.

John Kaehny This contract needs to be stopped and reviewed by the Comptroller's Office.

64. Mr. Telvock's question about the "process . . . for competitive proposals" falsely implies that a such a process was required, feasible, or beneficial under the specific circumstances here, which it was not.

65. Mr. Telvock's question about whether "the usual rules" apply falsely implies that Greenleaf and Buffalo State failed to adhere to "rules" that clearly do not apply to the Agreement.

66. Mr. Telvock is an Environmental Reporter who, upon information and belief, lacks experience in public procurement rules or private development, and his unsupported and unsubstantiated characterization of Mr. Kaehny as a "good government expert" improperly bolsters the false narrative of the Second Report.

67. Mr. Telvock's statement that Mr. Kaehny believes "the deal raises red flags" falsely paraphrases Mr. Kaehny's on-air statement.

68. In fact, Mr. Kaehny never stated on-air that “the deal raises red flags.”

69. The statements that “the deal raises red flags” and that “[t]his contract needs to be stopped and reviewed by the Comptroller’s office” falsely imply that Mr. Swiezy and Greenleaf have violated the law.

70. By falsely implying that Mr. Swiezy and Greenleaf violated the law and the “usual rules” for “competitive bidding,” Investigative Post and Mr. Telvock have maliciously attempted to damage Mr. Swiezy’s and Greenleaf’s reputations.

F. The Second Report falsely implies that Buffalo State improperly assisted Greenleaf with the Project

71. After attacking Mr. Swiezy’s and Greenleaf’s reputations, grossly overstating the value of the subject properties, mischaracterizing the terms and negotiation of the Agreement, and falsely implying that Greenleaf failed to comply with the law, Mr. Telvock stated that:

The emails I obtained raised more questions about LeVine’s interaction with Swiezy. For example, LeVine visited banks with Swiezy to help him obtain a loan. He met with City officials to support his project. LeVine even lent the college’s PR staff to Greenleaf to help write press releases for the project’s groundbreaking. During this time, Swiezy had donated at least \$15,000 to scholarship funds. He also gave LeVine’s golf team a set of golf clubs as a gift.

72. Mr. Telvock’s statements that “LeVine visited banks with Swiezy to help him obtain a loan,” “met with City officials to support [Greenleaf’s] Project,” and “even lent the college’s PR staff to Greenleaf to help write press releases for the project’s groundbreaking” falsely and negatively imply that these interactions were unusual, inappropriate, or evidence of wrongful activities.

73. Mr. Telvock's statement that Mr. Swiezy "also gave LeVine's golf team a set of golf clubs as a gift" is false.

74. Greenleaf received four drivers from BSCR as a sponsor gift in connection with Greenleaf's sponsorship of BSCR's annual golf event. Having no use for the four drivers, Mr. Swiezy simply informed Mr. LeVine to keep the drivers. Investigative Post's and Mr. Telvock's report that Greenleaf gave Mr. LeVine "a set of golf clubs" is false, and the insinuation that Mr. LeVine, a 30-year veteran of the SUNY system, would jeopardize his career for four door prize drivers is absurd and could only be meant to outrage viewers by creating a false sense that Mr. Swiezy bribed Mr. LeVine as an inducement for entering into the Agreement. Moreover, as could have and should have been easily ascertained by Investigative Post, the Agreement was long completed and construction of Campus Walk was already underway when Greenleaf "re-gifted" the four drivers that were offered to it in connection with its sponsorship.

75. By falsely and negatively implying that Buffalo State's interactions with Mr. Swiezy and Greenleaf were unusual, inappropriate, or evidence of wrongful activities, and by falsely stating that Mr. Swiezy and Greenleaf donated a "set of golf clubs" to Buffalo State, Investigative Post and Mr. Telvock have maliciously attempted to damage Mr. Swiezy's and Greenleaf's reputations.

G. Investigative Post falsely summarizes the Second Report and repeats its falsities and false implications on its website

76. On its website (<http://www.investigativepost.org/2017/02/21/buff-states-deal-with-greenleaf-raises-red-flags/> (last accessed April 3, 2017)) ("Article"), Investigative Report, under Mr. Telvock's byline, repeated and made still more false statements about Mr. Swiezy, Greenleaf, the Agreement, and the Project.

77. The Article's introductory paragraph states that "Buffalo State College will prohibit seniors from living on its Elmwood Avenue campus starting this fall to benefit a developer with an unsavory track record of renting to students."

78. The statement that "Buffalo State College will prohibit seniors from living on its Elmwood Avenue campus starting this fall" is false because the Agreement does not preclude seniors from residing on campus in all cases. The Agreement expressly provides that seniors will be permitted to reside on campus at all times prior to 2021 that Campus Walk is fully leased and under all circumstances after 2021.

79. The stigmatizing statement that Mr. Swiezy's and Greenleaf's reputations are "unsavory" is false, one-sided, and based upon incomplete reporting.

80. The Article also states that "one good government advocate familiar with state procurement rules said the deal raises 'a lot of red flags.'"

81. In fact, Mr. Kaehny, whose name appears in the immediately following paragraph, never stated on-air in the Second Report and was never quoted in the Article as stating that "the deal raises red flags," let alone "a lot of red flags."

82. The Article also repeats the false statements that Buffalo State "failed to maintain an arm's length relationship with Greenleaf CEO Jim Swiezy while negotiating the deal" and "accepted a free set of golf clubs from Swiezy."

83. The Article quotes Mr. Kaehny as stating that the Agreement "on the face of it stinks" and "should be investigated by the comptroller and the attorney general."

84. By making such false statements in the Article, Investigative Post and Mr. Telvock have falsely mischaracterized the Agreement, falsely implied a negative impression about Greenleaf's property management reputation, falsely implied that the

Agreement is unlawful or improper, and have maliciously created a false negative implication designed to damage Mr. Swiezy's and Greenleaf's reputations.

III. The damage inflicted upon Mr. Swiezy and Greenleaf

85. As a result of the Second Report and the Article, Greenleaf has received the following comments from Buffalo State students, through discussions, phone calls, and social media:

- a. "Why would I rent from you when the article I read last night says that you treat your tenants badly? I get that the writer may only be telling one side of the story but if the only reason Buffalo State is making us live here is because you paid them off?"
- b. "I read that article and I don't want to live somewhere they won't fix what's broken."
- c. "I can't believe the school is kicking seniors off campus. I'm not going to come back next year, I'm transferring."
- d. "Why did greenleaf make unter [sic] the table deals with buffalo stateto [sic] secure the contract for campus walk? There is protocal [sic] set in place by SUNY to assure transparency that were not followed"
- e. "I read that Article and Greenleaf is garbage, why would I move in to their building?"

86. Before the Second Report aired, Campus Walk was on pace to have its 318 Phase I rooms fully leased by the end of April 2017. As of February 19, 2017, Campus Walk had entered into leases with 134 students. In the two weeks preceding the airing of the Second Report, Campus Walk entered into eleven and six leases each week, respectively, and experienced steady interest in Campus Walk units, through walk-ins, internet inquiries, and phone calls to Campus Walk's leasing office.

87. As a result of Investigative Post's false statements, false negative implications, and false innuendos about Mr. Swiezy's and Greenleaf's business reputations,

as endorsed by Mr. Telvock and Investigative Post, Campus Walk's leasing velocity has decreased substantially. In the four weeks since the Second Report aired, Campus Walk has only entered into leases with 14 students, and has experienced substantially reduced interest levels for Campus Walk units. Indeed, in the four weeks since the Second Report aired, walk-ins have fallen an average of 60% per week, internet inquiries have fallen an average of 51% per week, and phone calls have fallen an average of 47% per week.

88. Campus Walk's reduced leasing velocity means that Greenleaf is taking in fewer security deposits for Campus Walk units, and has forced Greenleaf to spend more money to obtain tenants than it otherwise would have already secured. For example, since the Second Report aired, Campus Walk has had to waive the administrative fee of \$149 and application fee of \$50 per student, and has been forced to offer gift cards in the amount of \$50 to incentivize students to enter into leases with Campus Walk ("Lease Signing Costs"). So far, Lease Signing Costs total \$3,486, and will continue to accrue with every lease signed with these incentives in place.

89. A continued reduction in leasing velocity may also force Greenleaf to lower its rental prices, which would further damage Greenleaf. For example, Campus Walk may be forced to reduce its pricing if leasing velocity does not pick up; a rent reduction of \$50 per month would cause Greenleaf and Mr. Swiezy to incur damages of \$15,900 per month, for every month Greenleaf is forced to charge lower rents as a result of the falsities and false negative implications in the Second Report and the Article, which totals \$190,800 in lost rent annually ("Reduced Rent Losses").

90. Reduced Rent Losses directly impact Mr. Swiezy's and Greenleaf's ability to obtain permanent financing for Campus Walk, which is currently financed

through construction loans, because the reduced rents lower Campus Walk's present value and projected future value. Although unknown at this time because Campus Walk's rents have not been finalized yet, the Reduced Rent Losses could adversely affect the fair market value of Campus Walk by \$2,935,385 or more ("Campus Walk Financing Losses").

91. A continued reduction in leasing velocity may prevent Greenleaf from constructing the second phase of Campus Walk or obtaining financing to construct the second phase of Campus Walk ("Campus Walk Second Phase Costs").

92. As a result of Investigative Post's false statements, false negative implications, and false innuendos about Mr. Swiezy's reputation and Greenleaf's business reputation, as endorsed by Mr. Telvock and Investigative Post, another SUNY university has advised Greenleaf that its potential agreement with Greenleaf to build a student apartment building is in jeopardy ("Potentially Lost Housing Opportunity").

FIRST CAUSE OF ACTION
(Defamation)

93. Mr. Swiezy and Greenleaf repeat and reallege paragraphs 1 through 92.

94. Investigative Post and Mr. Telvock have made false statements, false negative implications, and false innuendos about Mr. Swiezy's reputation and Greenleaf's business reputation, including, without limitation:

- a. branding the Second Report with the title "BUFF STATE HOUSING DEAL RAISES RED FLAGS";
- b. mischaracterizing the terms of the Agreement ;
- c. stating that the Agreement is "unusual";
- d. stating that the "deal would not be possible without the support of Michael LeVine, the College's Vice President for Finance and Management";

- e. stating that Mr. Swiezy's and Greenleaf's reputation is "unsavory";
- f. stating that "Greenleaf was prosecuted in Housing Court at least twenty times" while omitting the time period in which those proceedings occurred;
- g. after attacking Mr. Swiezy's and Greenleaf's reputations, stating that "[y]et Buffalo State *still* negotiated an exclusive deal with Greenleaf" (emphasis added);
- h. stating that "nearly \$1,000,000 in real estate changed hands" in connection with the Agreement (when the value, as shown in public records at the Erie County Clerk's Office, is nowhere near \$1,000,000);
- i. stating that Mr. LeVine and Mr. Swiezy's relationship was "chummy" and not at "an arm's length";
- j. stating that the Agreement "facilitated the construction of the Project without competitive proposals" (when no "competitive proposals" were required for the Project);
- k. stating that the Agreement lacked "independent review by the State";
- l. making false statements about the "process . . . for competitive proposals" (when no "competitive proposals" were required for the Project);
- m. making false statements about the "usual rules" "for competitive proposals" (when no "usual rules" for "competitive proposals" applied to the Project);
- n. bolstering the false narrative of the Second Report through use of a "good government expert";
- o. stating that the "good government expert" actually stated that "the deal raises red flags" and "a lot of red flags";
- p. implying that Mr. Swiezy and Greenleaf have violated the law through the "good government expert's" statement that "[t]his contract needs to be stopped and reviewed by the Comptroller's office";
- q. implying that Mr. Swiezy's and Greenleaf's interactions with Buffalo State were unusual, inappropriate, or evidence of wrongful activities, through the statements that "LeVine visited

banks with Swiezy to help him obtain a loan,” “met with City officials to support [Greenleaf’s] Project,” and “even lent the college’s PR staff to Greenleaf to help write press releases for the project’s groundbreaking”;

- r. stating that Mr. Swiezy “also gave LeVine’s golf team a set of golf clubs as a gift”;
- s. stating that “Buffalo State College will prohibit seniors from living on its Elmwood Avenue campus starting this fall”; and
- t. stating that “one good government advocate familiar with state procurement rules said the deal raises ‘a lot of red flags’” (“Statements”).

95. The Statements about Mr. Swiezy’s and Greenleaf’s business and reputations are false, create false negative implications, and create false innuendos.

96. The Statements are about Mr. Swiezy’s and Greenleaf’s business and reputations as real estate developers and property managers, and therefore constitute defamation *per se*.

97. The Statements were published online and/or on television.

98. In making the Statements, Mr. Telvock and Investigative Post acted with actual malice.

99. Through the review of emails pertaining to the Agreement, the Project, Greenleaf, Buffalo State, and SUNY, and related discussions with representatives of Buffalo State and SUNY, and their review or failure to review easily verifiable information available in the public record, among other things, Mr. Telvock and Investigative Post, upon information and belief, entertained serious doubts as to the truth of the publication of the Statements, or acted with a high degree of awareness of the probability of their falsity.

100. The Second Report selectively aired approximately 30 seconds of Mr. Telvock's interview of Mr. LeVine, even though, upon information and belief, the interview lasted for approximately 25 minutes.

101. Given the selective editing of the First and Second Reports, and Mr. Telvock's familiarity with Greenleaf, Buffalo State, the Agreement, and the Project, as well as his failure to review easily verifiable information in the public record, among other things, Investigative Post's and Mr. Telvock's Statements represent a gross departure from journalistic standards.

102. Given the selective editing of the First and Second Reports, and Mr. Telvock's familiarity with Greenleaf, Buffalo State, the Agreement, and the Project, as well as his failure to review easily verifiable information in the public record, among other things, Investigative Post's and Mr. Telvock's Statements represent negligence.

103. Mr. Telvock and Investigative Post made the Statements without any authorization or privilege.

104. Mr. Telvock and Investigative Post made the Statements with the malicious intent to harm Mr. Swiezy's reputation and Greenleaf's business reputation.

105. Mr. Telvock and Investigative Post intended and endorsed the Statements' falsities and false negative inferences, insinuations, and innuendos about Mr. Swiezy's reputation and Greenleaf's business reputation, in an apparent attempt to bolster Investigative Post's "watchdog journalism" profile and elicit donations for the not-for-profit company.

106. As a result of the Statements' falsities, false negative implications, and false innuendos, Mr. Swiezy and Greenleaf have sustained damages in an amount

exceeding \$3,000,000, based upon, including, without limitation, Lease Signing Costs, Reduced Rent Losses, Campus Walk Financing Losses, Campus Walk Second Phase Costs, and the Potentially Lost Housing Opportunity (“Special Damages”).

SECOND CAUSE OF ACTION
(Injurious Falsehood)

107. Mr. Swiezy and Greenleaf repeat and reallege paragraphs 1 through 106.

108. The Statements about Mr. Swiezy’s and Greenleaf’s business and reputations are false, create false negative implications, and create false innuendos.

109. The Statements were published online and/or on television.

110. Through the review of emails pertaining to the Agreement, the Project, Greenleaf, Buffalo State, and SUNY, the review or failure to review easily verifiable information available in the public record, and related discussions with representatives of Buffalo State and SUNY, among other things, Mr. Telvock and Investigative Post, upon information and belief, entertained serious doubts as to the truth of the publication of the Statements, or acted with a high degree of awareness of the probability of their falsity.

111. In making the Statements, Mr. Telvock and Investigative Post acted with express or implied malice.

112. As a result of the Statements’ falsities, false negative implications, and false innuendos, Mr. Swiezy and Greenleaf have sustained damages in an amount exceeding \$3,000,000, based upon, including, without limitation, the Special Damages.

WHEREFORE, Mr. Swiezy and Greenleaf demand judgment against Investigative Post and Mr. Telvock, granting and awarding actual damages in an amount exceeding \$3,000,000, and compensatory and punitive damages in an amount determined

by the Court, together with interest, costs, and attorneys' fees, and such other and further relief as the Court deems just and proper.

Dated: Buffalo, New York
April 3, 2017

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