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DATE:	April 23, 2012
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RE:	Greene v. Times (Case#: 10-47749 CA 32)
SUBJECT:	Executed Order
TOTAL # of Pages:	7 Including coversheet

Dear Counsels:

Attached hereto please find the Order on Defendant's Motion to Dismiss Plaintiff's Complaint.

**Honorable Judge Valeria Manno-Schurr
Circuit Court Judge - Criminal Division
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1351 N.W. 12 Street
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**IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA**

**GENERAL JURISDICTION DIVISION
CASE NO. 10-47749 CA 32**

JEFF GREENE,

Plaintiff,

v.

**TIMES PUBLISHING COMPANY, d/b/a
St. Petersburg Times, KRIS HUNDLEY,
CARYN BAIRD, ADAM C. SMITH,
JOHN OR JANE DOES 1-6, MIAMI HERALD
MEDIA COMPANY, d/b/a *The Miami Herald*, and
JOHN OR JANE DOES 7-12,**

Defendants.

**ORDER ON DEFENDANTS MOTIONS
TO DISMISS PLAINTIFF'S COMPLAINT**

THIS CAUSE came before the Court on August 25, 2011, on Defendants', Times Publishing Company, Kris Hundley, Caryn Baird, and Adam C Smith's Motion to Dismiss and/or Motion to Strike as well as Herald Media Company's Motion to Dismiss, and the Court having reviewed the motion, having heard argument of counsel and being otherwise fully advised in the premises, the court makes the following findings:

STATEMENT OF FACTS

Plaintiff, Jeff Greene, is a real estate investor and former political candidate who sought the Florida Democratic Party's nomination for the United States Senate in Florida's August 2010 primary election. Following his loss in the

August 24, 2010 primary election, Greene filed suit against the above named media defendants.

Greene's one count complaint alleges that the defendants published 22 libelous statements in three articles published in The St . Petersburg Times and in The Miami Herald in August of 2010. Greene claims that over the course of six days in August of 2010, the Times Defendants, and in part, the Herald Defendants, published these articles and severely damaged his reputation, causing him to lose the 2010 democratic primary election. Greene alleges that he was enjoying a comfortable lead heading into the final three weeks before the primary election in August of 2010. Greene further alleges that after the publication of the articles between August 7th and 12th 2010, his polling numbers suffered a significant decline. On August 26, 2010, Greene lost the primary election by a 26% margin. Greene alleges that the publication of these articles damaged his real estate and political career.

Greene claims that these articles conveyed to the average reader not only that Greene was an active and involved participant in a multi-million dollar mortgage fraud, but also that he used his allegedly ill-gotten wealth to condone or engage in lewd and illegal behavior aboard his yacht, *Summerwind*.

In order to state a claim for defamation (libel or slander), a plaintiff must establish five elements (1) publication, (2) falsity (3) the publication must be made with knowledge of falsity or with reckless disregard as to the falsity on a matter concerning a public figure (4) actual damages (5) the statement must be defamatory.

As a threshold matter, whether a publication is defamatory is a legal issue to be decided by the Court.

Each article will be discussed separately below.

Article 1 was published on Saturday, August 7, 2010, in the Times' online edition and again on Sunday, August 8, 2010 on the front page of the Times' print edition. On August 7, 2010, The Herald published the same article in its online edition, verbatim. Article 1 is a lengthy investigation into the sale of certain property located in California. The plaintiff claims that the article conveyed to the average reader that Greene was complicit in and engaged in mortgage fraud and criminal activities with James McConville, the buyer of a large bulk sale of 300 condominium units in California.

The plaintiff claims that prior to the publication of this article, both the Times and the Herald had repeated conversations with Greene and was provided with documentation that the article was false and misleading. There is no doubt that Greene had injected himself, even if for a limited time, into the public arena as a candidate for public office he is considered a public figure. However, plaintiff's complaint fails to properly allege that the Defendant's conduct was reckless or that the defendants knew of the falsity of the published statements. In addition, the plaintiff is asking the Court to engage in a post election analysis and to award damages against the defendants for a lost election.

Article 2 was published on August 9, 2010, in The St. Petersburg Times as an opinion editorial piece and cannot be considered defamatory and it is not actionable as a matter of law. The editorial was pure opinion and as the Supreme

Court has held in Gertz v. Robert Welch, Inc., 418 US 323 (1974), there is no such thing as a false idea. In order for the Court to determine whether a statement is actionable, the Court must examine it in the context in which it was published. Courts have broadly upheld the privilege extended to statements of pure opinion. Stembridge v. Mintz 652 So 2d 444 (Fla 3rd DCA). Accordingly, the Court does not find that the August 9, 2010 article is defamatory and must dismiss all allegations in Plaintiff's complaint related to this article.

Article 3 was published on August 12, 2010 in the St. Petersburg Times and on August 13, 2010 in The Miami Herald. This article relates to a story told by former boxer Mike Tyson, a friend of Greene's and best man at Green's wedding. The August 13, 2010 article discusses Greene's relationship with Tyson as well as Tyson's conduct aboard Greene's yacht, *Summerwind*. The August 13, 2010 article discusses Tyson's illegal drug use and possible criminal behavior while onboard *Summerwind*. However, this article in no way accuses Greene of engaging in, approving of, or witnessing any illegal activity and is not libelous in any way. In fact, the article does not even put Greene on the Yacht at the same time as Tyson. The fact that the plaintiff may not like the way the article was written or how it was written does not automatically provide the basis for a libel suit. Kurtell v. Miami Tribune, 193 So. 2d 471 (3rd DCA 1967).

Article 3 in no way infers that Greene engaged in the same activities as Tyson. Greene offers no basis in his complaint why a reader would conclude that he was involved in the same activities as Tyson. For these reasons, the Court

concludes that the August 13, 2010 article is not defamatory and again, must dismiss all allegations in Plaintiff's complaint related to this article.

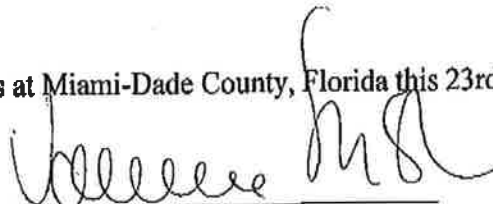
Finally, Defendant, Miami Herald Media Company, for the first time during the hearing on August 25, 2011, raised the defense of failure to comply with Florida Statute 770.01. The Herald claims that Greene failed to serve notice in writing on the defendant, specifying the article and/or statement which he or she alleges to be false and defamatory. Because the defendant failed to raise this defense either as an affirmative defense or as part of its motion to dismiss, The Herald has essentially waived this defense.

Accordingly, it is hereby, ORDERED AND ADJUDGED as follows

- (1) Defendants' Times Publishing Company and The Miami Herald's Motion to Dismiss is **GRANTED**, without prejudice, with leave to amend as to the allegations pertaining to article 1 published on Saturday, August 7, 2010, in the Times' online edition and again on Sunday, August 8, 2010 on the front page of The Times' print edition and on August 7, 2010, in the Miami Herald Online edition. .
- (2) Defendant's Times Publishing Company's Motion to Dismiss is **GRANTED** with Prejudice as to all the allegations pertaining to article 2 published August 9, 2010 .
- (3) Defendant's Times Publishing Company and The Miami Herald's Motion to Dismiss is **GRANTED** with Prejudice as to all the allegations pertaining to article and 3 published on August 12, 2010 in the St. Petersburg Times and on August 13' 2010 in The Miami Herald.

(4) Defendants' Kris Hundley, Caryn Baird and Adam Smith's Motion to Dismiss is **GRANTED** with prejudice as to all allegations in the complaint.

DONE and ORDERED in Chambers at Miami-Dade County, Florida this 23rd day of April, 2012.


VALERIE MANNO SCHURR
Circuit Court Judge

cc: all counsel of Record