

# Actor's Parking Spat Highlights Line Between Fact, Opinion

By **Dariusz Adli**

A recent New York trial court decision[1] found that actor Alec Baldwin's public comments regarding a dispute over a parking space, in which an individual claimed to have been verbally and physically assaulted by Baldwin, did not rise to the level of slander. The judge stated that Baldwin was merely expressing his opinion of the encounter, and that, in any event, the alleged crime was not serious enough to qualify for a claim of slander per se.



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Baldwin and the plaintiff, Wojciech Cieszkowski, got into a verbal and physical altercation over a parking spot in New York City. According to filed court papers, Baldwin got upset when Cieszkowski pulled into a parking spot that Baldwin had been waiting for. Baldwin, upset at having lost the space, waited for Cieszkowski to get out of his car, and then chastised, taunted and shoved him.

Baldwin was charged with attempted assault and harassment, and pled guilty to the lesser harassment charge. Later, Baldwin described the episode on two TV shows, stating: "I thought he was going to run my wife over with his car when he was stealing my parking spot."

Cieszkowski filed a claim for slander per se, claiming that Baldwin's public references to the incident had defamed him, because in the statements, Baldwin had falsely accused him of serious crimes of theft and reckless conduct. Baldwin asked the court to dismiss Cieszkowski's slander claim, arguing that Baldwin's statements were merely his opinion of the event, and that they did not include any accusation of a serious crime.

Baldwin had discussed the episode in a public forum in two instances. In the first episode, Baldwin appeared on "The Ellen DeGeneres Show" and said: "Did I have an argument with the guy? Yeah. I thought he was going to run my wife over with his car when he was stealing my parking spot."

Later, on "The Howard Stern Show," Baldwin observed:

[W]hen he aggressively takes this parking space, which was not the end of the world, I think he was going to hit my wife and my son. ... I thought what he did was impolite, bordering on dangerous. He didn't walk up to me and say, "Excuse me. I've been waiting here. I'd like to take this space." He just went zip! Really fast, and really aggressive.

Defamation is a tort that is defined by state laws, which are fairly uniform across the country. Typically, a claim of slander, the oral form of defamation, is defined as the making of a false statement about a person that tends to expose the person to public contempt, ridicule, aversion or disgrace[2].

In order for a slander claim to be legally actionable, it has to be false. Therefore, opinions, even those which are false or libelous, are constitutionally protected, as long as they include

supporting facts on which the opinions are based.[3] Courts have also found that rhetorical hyperbole, vigorous epithets and lusty and imaginative expression, even if they are deemed offensive and deprecating, are not actionable, so long as they don't convey actual facts about an individual.

To determine whether an allegedly defamatory statement falls into the actionable fact or nonactionable opinion category, courts consider several factors, including whether the specific language at issue has a sufficiently precise and well understood meaning; whether the statements are capable of being proven as being true or false; and whether the communication, within its context, conveys opinion or fact.[4]

Importantly, slander per se requires that the false statement concerns a serious crime.[5] The "serious crime" requirement means that a charge of unlawful behavior does not rise to the level of slander per se, if the alleged crime is of a minor nature.

The distinction between a claim of slander and one of slander per se is significant, because unlike a slander claim, which requires allegations of actual damages, a slander per se claim can proceed in court without any allegation of actual damages suffered. As such, a slander per se case is more likely to settle at an early stage, as it is not vulnerable to a motion to dismiss for failure to allege actual damages suffered.

In the Baldwin case, the plaintiff argued that the two statements made by Baldwin on television were slanderous per se, because they imputed serious crimes to the plaintiff — specifically, theft and reckless endangerment. Baldwin disagreed, pointing out that he was merely sharing his opinion of the event and the plaintiff's conduct, rather than making a factual accusation. Baldwin also pointed out that the crimes alleged were of relatively minor nature, namely, stealing a parking spot and driving aggressively.

As examples of serious crimes, courts have identified murder, burglary, larceny, arson, rape and kidnapping,[6] i.e., those that tend to cause serious physical or reputational harm. In this case, the judge found that Baldwin's statements that the plaintiff drove aggressively did not rise to that level, but rather constituted everyday words used to describe driving by the public.

Specifically, the judge found that certain characterizations by Baldwin, such as "really fast," "aggressive," "zip" and "almost hit/run over my wife and child" were hyperbole, and rhetorical illustrations, without a precise meaning to a reader or listener.

Although expressions of opinion are not actionable as slander per se, courts have cautioned that couching an otherwise defamatory statements by words such as "I thought" or "in my opinion" does not convert a statement from fact to opinion.[7]

## **Conclusion**

The case is significant because the public statements made by Baldwin about the incident traverse the legal borderline between assertions of fact and expressions of opinion — and highlight the fine line between a factual description of an incident that includes a suggestion of a potential crime committed by an individual, and directly accusing the individual of that crime.

Finally, the case discusses the use of epithets and hyperbole in determining the slanderous nature of a statement. The lesson that can be taken from the case is that so long as the defendant clearly qualifies statements as being his or her opinion, and does not directly

accuse the plaintiff of a serious crime, the defendant is unlikely to sustain a claim of slander per se.

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[1] Cieszkowski v. Baldwin, 2019 WL 7496391 (N.Y. Sup. Ct. Dec. 26, 2019).

[2] Rinaldi v. Holt, Rinehart & Winston, 42 NY2d 369, 379 (1977).

[3] *Id.* at 380.

[4] Brian v. Richardson, 87 NY2d 46, 51 (1995).

[5] Nolan v. State, 158 AD3d 186 (2018).

[6] Liberman v. Gelstein, 80 N.Y.2d 429, 434 (1992).

[7] Gross v. New York Times Co., 82 NY2d 146, 155 (1993).