

**SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY**

-----X
JOHN GREANEY, :
 : Index No. **1162/98**
 :
 Plaintiff, :
 :
 -against- : **VERIFIED COMPLAINT**
 :
 FERNANDO FERRER, CLINTON ROSWELL and :
 PAMELA MERLO BALFOUR, in her capacity as Treasurer :
 of FERRER '97, the designated campaign committee of :
 FERNANDO FERRER, :
 :
 Defendants. :
 :
-----X

Plaintiff, JOHN GREANEY, complaining of defendant by his attorney JOHN C. KLOTZ, alleges:

**FOR A FIRST CAUSE OF ACTION
AGAINST FERNANDO FERRER AND CLINTON ROSWELL**

Parties

1. At all pertinent times, plaintiff JOHN GREANEY was and is a resident of the City and State of New York.
2. On information and belief, at all pertinent times, defendant FERNANDO FERRER (“candidate FERRER”) was and is purportedly a resident of the Bronx.
3. On information and belief, at all pertinent times, defendant CLINTON ROSWELL (“ROSWELL”) was and is a resident of the County of Westchester.
4. On information and belief defendant FERRER '97 is an unincorporated association and is sued herein through its treasurer, PAMELA MERLO BALFOUR (“BALFOUR”).
5. Plaintiff is an experienced political consultant and public servant, well regarded, capable and conscientious.

6. From 1987 to date, candidate FERRER was Borough President of Bronx County and from 1987 to 1992, plaintiff was employed by FERRER.

7. In 1992, plaintiff resigned from the employment of FERRER having completed five years of loyal service to FERRER.

8. In or about July 1997, candidate FERRER was a candidate for reelection as Borough President.

9. In or about July 1997, ROSWELL was acting as spokesman for candidate FERRER in his campaign.

10. In or about July 1997, plaintiff was acting as campaign manager and political consultant to Israel Ruiz, Jr. ("Ruiz"), a candidate opposing FERRER for the Democratic nomination for Bronx Borough President.

The Bronx-Lebanon Hospital Waste Incineration Project

11. In or about 1987, a proposal was advanced by Bronx-Lebanon Hospital for the construction of a hospital waste incinerator (the "incinerator") in the Port Morris area of the Bronx.

12. On information and belief, candidate FERRER had long-standing personal relationship to the sponsors of the incinerator.

13. On or about November 2, 1988, candidate FERRER wrote the sponsors of the incinerator supporting the incinerator and approving its construction, (See EXHIBIT A, annexed.)

14. At no time did plaintiff deal with the incinerator project during his employment by candidate FERRER.

15. At no time did candidate FERRER consult with or discuss the incinerator with the plaintiff.

16. In or about 1992, because of public clamor against the incinerator candidate FERRER abandoned his previously unwavering support for the incinerator.

17. In or about May, 1992, plaintiff left the employ of candidate FERRER.

18. On information and belief, in or about June 1992, it was discovered that Alberto Urbina, an appointee to public office by candidate FERRER, had been paid moneys by the builder of incinerator about the time that FERRER first approved of the incineration and that the Federal Bureau of Investigation (“FBI”) and the U.S. Attorney for the Southern District of New York (U.S. Attorney) were conducting an investigation of the incinerator project.

19. In information and belief, candidate FERRER was questioned by FBI agents and subpoenaed to testify before a grand jury concerning the incinerator project.

20. On information and belief, during the course of the federal investigation at no time was the plaintiff ever mentioned by candidate FERRER as having played any role in the approval of the incinerator project whatsoever.

21. Despite a wide ranging investigation of the incinerator by federal authorities, at no time was plaintiff ever approached by the FBI or the U.S. Attorney concerning the incinerator.

22. The incinerator as constructed was subject to numerous health and safety violations and eventually closed.

The slander and libel.

23. In or about July 1997, candidate FERRER announced the closing down of the incinerator and claimed credit for its closing.

24. In response, Ruiz, candidate FERRER’s opponent in the Democratic Primary for Borough President, issued a statement pointing out that FERRER was taking credit for killing of a project that would not have been built without candidate FERRER’s support in the first place.

25. Thereafter, on or about July 9, candidate FERRER had a conversation with a reporter of the New York Daily News (“Daily News reporter”).

26. At the time of his conversation with the Daily News reporter, candidate FERRER knew that Daily News reporter was a reporter for the Daily News, FERRER was speaking for publication in the Daily News and that FERRER’s words would be distributed in as many as a million copies of the Daily News.

27. FERRER intended that his words be printed and distributed by the Daily News in connection with his campaign for nomination in the Democratic Party primary for Bronx Borough President.

28. In conversation with Daily News reporter, FERRER said in reference to the plaintiff:

(a) that plaintiff was “encouraged to resign” because he had “botched a 1988 review” of the incinerator and had “other problems”;

(b) “He [plaintiff] had drafted the letter” that approved the incinerator project

(c) that candidate FERRER “later became the incinerator’s strongest critic” and he “then forced Greaney [plaintiff] to quit in 1992.”

29. Thereafter, on July 10, 1997, the Daily News published FERRER statement as FERRER had intended it do (See EXHIBIT B annexed).

30. To FERRER’s knowledge, the statements made by candidate FERRER were false in that:

(a) that plaintiff was not encouraged to resign but actually stayed well beyond his original separation date at the request of candidate FERRER;

(b) plaintiff had not botched any 1988 review of the incinerator project because he had never been asked to conduct any such review and he had played no part in, and was excluded from, all deliberations and activities of the Borough President’s office concerning the incinerator;

(c) plaintiff had not drafted the letter approving the incinerator (EXHIBIT A);

(d) plaintiff had not been forced to quit by candidate FERRER but had left voluntarily.

31. After publication of EXHIBIT B, plaintiff demanded a retraction from FERRER which on information and belief was communicated to FERRER.

32. In or about July 16, 1997 and prior to July 17, 1997, a reporter for the Bronx News (“Bronx News reporter”), a paper of general circulation in the Bronx, interviewed defendant ROSWELL who was speaking on behalf of FERRER.

33. At the time he spoke with the Bronx News reporter, ROSWELL knew that Bronx News reporter was a reporter and ROSWELL intended that his comments be published in the Bronx News.

34. In his conversation with the Bronx News reporter, ROSWELL stated:

- (a) “He [plaintiff] piggybacked on letters of support from the community board”;
- (b) “He didn’t do his job well and mislead the borough president”;
- (c) in relation to plaintiff’s statement that he was encouraged to stay with the borough president’s office; ROSWELL stated “That is far from the truth”;
- (d) plaintiff “violated the code of ethics”
- (e) plaintiff “was fired due to the strong urging by Ferrer.”
- (f) “there were witness who saw Greaney make the false report.”

35. ROSWELL also stated to Bronx News reporter, that FERRER was looking forward to the possibility of a lawsuit over plaintiff’s firing.

36. Thereafter, on or about July 17, 1997, the Bronx News published ROSWELL’s statement as ROSWELL had intended it do (See EXHIBIT C annexed).

37. ROSWELL’s statements to Bronx News reporter, alleged above, were objectively false in that:

- (a) plaintiff had not piggybacked on the letters of support from the community board in that he had no involvement with the incinerator project at all;
- (b) plaintiff had not misled the borough president;

(c) plaintiff had been encouraged to stay with the borough president's office so that plaintiff's statement that he had was the truth and not "far from the truth";

(d) at no time had plaintiff violated the code of ethics, or been charged with violating the code of the ethics, in regard to the incinerator or anything else;

(e) plaintiff was not fired due to the strong urging by FERRER. Candidate FERRER had urged him to stay;

(f) there could be no witness who saw plaintiff make "the false report" about the incinerator because he had never made any report about the incinerator.

38. ROSWELL knew his statements to Bronx News reporter were false, or in the alternative they were made with a complete, reckless disregard for their truth or falsity and with the specific intention of harming the plaintiff.

39. On information and belief, at the time he spoke with Bronx News reporter, ROSWELL was acting as agent of, and with complete concurrence of candidate FERRER and was acting in concert with candidate FERRER.

40. Candidate FERRER and ROSWELL are joint tort-feasors in the making of the statements by ROSWELL and FERRER.

41. On or about July 17, 1997, attorney Andrew M. Schnier wrote candidate FERRER requesting a retraction of his statements as previously alleged. (See EXHIBIT D, annexed).

42. In response to EXHIBIT D, an attorney representing candidate FERRER spoke with attorney Schnier and informed him that candidate FERRER would not retract any of the published statements and that, in relation to the threat of a law suit by plaintiff for libel, that plaintiff would "have to do what he had to do."

43. In refusing to retract or explain his statements as published by the Daily News and the Bronx News, FERRER was adopting and affirmatively accepting his responsibility for the statements.

44. The statements of FERRER and ROSWELL as aforesaid related to plaintiff's profession and cast doubt on his fitness and competence for his profession.

45. In making his statements attacking plaintiff's fitness for his profession, defendant FERRER acted with spite because of plaintiff's support of Ruiz.

46. By reason of the premises aforesaid, candidate FERRER and ROSWELL have slander, libeled and defamed the plaintiff with actual malice.

Damages.

47. By reason of the premises aforesaid, plaintiff's competence in his chosen profession has been impugned, he has been falsely accused of unethical conduct, he has suffered grave embarrassment and humiliation among his family and friends, suffered mental anguish and he has other wise been damaged in the sum \$2.5 million dollars.

48. By reason of the premises aforesaid, defendant FERRER and ROSWELL have become liable for punitive damages which ought to be assessed in the sum of \$2.5 million dollars.

**FOR A SECOND CAUSE OF ACTION AGAINST FERRER'97
BY ITS TREASURER PAMELA MERLO BALFOUR**

49. Plaintiff repeats each and every allegation contained in paragraphs "1" through "48" as though the same were hereinafter completely set forth.

50. On November 17, 1997, candidate FERRER filed with the Board of Elections in the City of New York pursuant to requirements of the election law the following sworn statement in connection with his 1997 candidacy for Bronx Borough President (EXHIBIT D, annexed):

(a) He was a candidate for the office of Bronx Borough President;

(b) He had made no expenditures relating to such candidacy, nor did he intend to make such expenditures accept through the authorized political committee named "Ferrer '97", the treasurer of which was "Pamela Merlo-Balfour" whose residence address was 7 Deepwater Way, Bronx, NY 10464.

51. On information and belief, FERRER '97 has collected millions of dollars on behalf of candidate FERRER's candidacy, dispensed millions of the same dollars but still has a substantial cash balance.

52. By reason of the fact that the libels alleged were conducted as a part of candidate FERRER's reelection campaign, Ferrer '97 and any successor committee are liable for any damages awarded to plaintiff against FERRER.

53. Plaintiff has an equitable lien against the assets of FERRER '97 for the full extent of its claim.

WHEREFORE, plaintiff prays that court enter judgment awarding plaintiff:

(a) jointly and severally against defendant FERRER and ROSWELL the sum \$2.5 million dollars in general and special damages and \$2.5 million dollars in punitive damages on the FIRST CAUSE OF ACTION;

(b) against FERRER '97 in sum of \$5 million dollars on the SECOND CAUSE OF ACTION;

(c) jointly and severally against all defendants, the costs and disbursement of this action.

Dated: New York, New York
January 27, 1998

JOHN C. KLOTZ
Attorney for the Plaintiffs
Office and P.O. Address
885 Third Avenue, Suite 2900
New York, New York 10022
(212) 829-5542

VERIFICATION

JOHN C. KLOTZ, an attorney admitted to practice before the Courts of this state affirms the truth of the following statements under penalties of perjury:

That I am the attorney for the plaintiff herein and that I have read the foregoing complaint and the same is true upon my information and belief. The sources of my information and belief are conversations with clients and others, certain papers in my file and my own investigation.

The reason this verification is made by me and not the plaintiff is that plaintiff is not present in the County of New York, the county in which I maintain my office for the practice of law.

Dated: New York, New York
January 27, 1998

s/John C. Klotz
JOHN C. KLOTZ

Index No. **1162/98**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

X-----X

JOHN GREANEY,

Plaintiff,

-against-

FERNANDO FERRER, CLINTON ROSWELL
and PAMELA MERLO BALFOUR,
in her capacity as Treasurer of FERRER '97,

Defendants.

X-----X

SUMMONS AND COMPLAINT

JOHN C. KLOTZ

Attorney for Plaintiff

885 Third Avenue, Suite 2900
New York, New York 10022-4834
(212) 829-5542