

August 15, 2018

VIA E-MAIL & FEDERAL EXPRESS

Charles J. Harder, Esq.
Harder Mirell & Abrams LLP
132 S. Rodeo Drive, Fourth Floor
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Re: **The Trump Campaign's Letter**

Dear Mr. Harder:

I write as counsel for Simon & Schuster, Inc. and Gallery Books (collectively, "S&S") in response to your letter dated August 13, 2018, concerning your client, President Donald J. Trump's Presidential campaign, Donald J. Trump for President, Inc. (the "Trump Campaign"). Your letter recounts at great length the details of a non-disclosure agreement between former White House Senior Staffer Omarosa Manigault-Newman and the Trump Campaign (the "NDA"), and threatens that publication of Ms. Manigault-Newman's book, *Unhinged: An Insider's Account of the Trump White House* (the "Book"), will subject S&S to "substantial monetary damages and punitive damages" for various legal claims arising from the Book and the NDA. My clients will not be intimidated by hollow legal threats and have proceeded with publication of the Book as scheduled.

Mr. Trump is the President of the United States, with a "bully pulpit" at his disposal. To the extent he disputes any statements in the Book, he has the largest platform in the world to challenge them. As the Supreme Court observed in *New York Times v. Sullivan*, "debate on public issues should be uninhibited, robust, and wide-open, and that [] may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." 376 U.S. 254, 270 (1964). While your letter generally claims that excerpts from the Book contain "disparaging statements," it is quite telling that at no point do you claim that any specific statement in the Book is *false*. Your client does not have a viable legal claim merely because unspecified truthful statements in the Book may embarrass the President or his associates. At base, your letter is nothing more than an obvious attempt to silence legitimate criticism of the President. S&S will not be silenced by legal threats grounded in vague allusions to "disparaging statements."

Your letter briefly raises only two alleged claims against S&S: tortious interference with contract and inducement of breach of contract. Of course, S&S is not a party to any such

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agreements. And, as you well know, timing is central to interference or inducement claims. Well before your forwarding of, and my clients' receipt of, your "notice," Ms. Manigault-Newman shared her story freely with S&S. Ms. Manigault-Newman shopped her book proposal to various publishing houses and submitted her manuscript to S&S for publication; S&S sent the Book to press, and, as evidenced by the news articles you reference in your letter, S&S has already provided advance copies of the Book to various media outlets who have themselves published excerpts. An after-the-fact lawyer's letter putting my clients "on notice" does not put the proverbial genie back into the bottle, much less subject S&S to liability for Ms. Manigault-Newman's purported contractual obligations.

Nor is this the only clear infirmity with these threatened claims. As with the unidentified "disparaging" statements, your letter also fails to specify any statements in the excerpts of the Book that contain confidential information. Instead, you merely cite to four news articles published about the Book. Yet, these articles do not contain any obvious confidential information regarding Ms. Manigault-Newman's time working for the Trump Campaign and instead largely discuss information from her time in the White House. Further, for a tortious interference with contractual relations action to be sustained, the Trump Campaign must prove that S&S actively and intentionally procured the breach for the *sole purpose* of harming the Trump Campaign. *Jacobs v. Continuum Health Partners, Inc.*, 7 A.D.3d 312, 313, 776 N.Y.S.2d 279, 280 (1st Dep't 2004). This it cannot do. Ms. Manigault-Newman, "whose motive and conduct is intended to foster public awareness or debate cannot be found to have engaged in the wrongful or improper conduct required" to state such a claim. *See, e.g., Huggins v. Povitch*, No. 131164/94, 1996 WL 515498, at *9 (N.Y. Sup. Ct. Apr. 19, 1996).

Put simply, the book's purpose is to inform the public. Private contracts like the NDA may not be used to censor former or current government officials from speaking about non-classified information learned during the course of their public employment. *See McGahee v. Casey*, 718 F.2d 1137, 1142 (D.C. Cir. 1983). Nor could the NDA support censorship of a publisher, like S&S, that legitimately reports on information that is plainly newsworthy and highly relevant to matters of public concern. The government has no legitimate interest in censoring such materials and no court would support the Presidential campaign of a sitting U.S. President in silencing a former government official like Ms. Manigault-Newman or her publisher. To do so would be a perversion of contract law, a prior restraint, and a plain violation of the First Amendment.

Lastly, your letter instructs S&S that it must preserve documents, communications, and materials "that refer or relate to [sic] in any way to the Book, and any or all of its contents." While my clients do not adopt or subscribe to your description of their legal obligations, S&S will comply with any and all document preservation obligations that the law imposes upon it. At the same time, we want to remind you that the Trump Campaign must comply with the same legal obligations regarding the President, his administration, his family members, their

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businesses, and the Trump Campaign, and must ensure all appropriate measures to preserve such documents are in place. This would include any and all documents pertaining to any of the matters about which the book reports. Should you pursue litigation against S&S, we are confident that documents related to the contents of the Book in the possession of President Trump, his family members, his businesses, the Trump Campaign, and his administration will prove particularly relevant to our defense.

This letter is without waiver of any S&S's rights, remedies or defenses, all of which are expressly reserved.

Sincerely,

Davis Wright Tremaine LLP



Elizabeth A. McNamara

cc: Carolyn Reidy
Jennifer Bergstrom
Hazel-Ann Mayers, Esq.