

For the reasons stated in defendant The Harvard Crimson's memorandum, as well as those discussed in more detail below, the court will ALLOW its motion and will dismiss all claims against the Crimson with prejudice.

Plaintiff's defamation claim (Count VII) relies on three alleged defamatory statements made by the Crimson: (1) that Clopper "improperly worked on the play during work hours," (2) that he "is anti-Semitic"; and (3) that he "engaged in a 'nude, anti-Semitic rant' in Harvard's Sanders Theatre." Pl.'s Opp'n at 4, citing Compl. paras. 101(c), 105. The court determines that none of these statements is actionable. The first statement, for example, is not reasonably capable of a defamatory meaning because it is demonstrably true. The Complaint directly acknowledges that plaintiff worked on his play during work hours, *see* Compl. para. 12, and while plaintiff appears to suggest that the Crimson falsely characterized this work as "improper," review of the article itself reveals no mention of the *propriety* of any work he did on his play during work hours.

Portions of the third statement are also demonstrably true. Plaintiff *did* include nudity in his performance. *See id.* para. 20. And even assuming, as plaintiff suggests, that he did not specifically perform a "nude... rant" because he did not speak during the nude aspect of his performance, the court disagrees that the "nude, anti-Semitic rant" headline is *reasonably* capable of the defamatory meaning proposed by plaintiff. Statements must be read in their context, *see Foley v. Lowell Sun Pub. Co.*, 404 Mass. 9, 11 (1989), and here, the context of the referenced headline indisputably dispels any defamatory interpretation. The first line of the article, after all, explicitly clarifies that "Harvard is 'reviewing' reports that University employee Eric Clopper made anti-Semitic comments and *stripped to the nude during a public performance* he gave in Sanders Theatre." Ex. 1 to Aff. of Robert A. Bertsche (emphasis added). The article also includes several quotations from plaintiff describing his nude performance as the conclusion or "about the last 20 seconds" of his play. *Id.*

As to the remaining statements -- the second statement and the portions of the third statement characterizing plaintiff's performance as a rant or anti-Semitic -- the court determines that they are not actionable because they constitute opinions based on disclosed, non-defamatory facts (i.e., direct quotations from the performance). *See Dulgarian v. Stone*, 420 Mass. 843, 849-850 (1995). The court accordingly dismisses Count VII in its entirety.

The court also dismisses the remaining claims against the Crimson. The civil rights claim (Count II) fails because the Complaint does not plausibly allege that the Crimson interfered with any of plaintiff's constitutional rights *by means of threats, intimidation, or coercion*, as required by the Massachusetts Civil Rights Act, Mass. Gen. Laws ch. 12, secs. 11H, 11I. *See Bally v. Northeastern Univ.*, 403 Mass. 713, 718 (1989). And finally, the tortious interference (Count IX) and conspiracy (Count X) claims fail because they depend on the viability of the nonactionable defamation claim.

(RGS, law3) (Entered: 11/05/2020)