[NL] Statements by a political party about “wrong real estate bosses” on a website and Facebook page were not unlawful

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In a judgement of 22 December 2018, the District Court of Limburg ruled that a Dutch political party, the Socialist Party (SP), had not acted unlawfully by posting on a website called foutevastgoedbazen.nl (wrongrealestatebosses.nl)) and on a Facebook page statements about a real estate company, Metroprop, which owns a large number of properties in Heerlen, a city in the South of the Netherlands, and about its managing director.

The website was an initiative of citizens of Heerlen and the political party aimed at protesting against what they call “wrong real estate bosses”, such as the managing director of Metroprop. The website refers to articles in the local newspaper in which the abandoned properties owned by Metropop are mentioned and carries several photographs of its vacant properties. The website also has an online hotline that citizens can use to report other “wrongful” real estate bosses. The Facebook page refers to this website and also alleges that the managing director appears to be a “wrong” real estate boss.

In response, the managing director of Metroprop (the plaintiff) filed a lawsuit against the political party (the defendant). He argued that the defendant was acting unlawfully by posting statements about the plaintiff linked to “wrong” real estate bosses on their website and Facebook page. Accordingly, he demanded that the defendant remove these statements and publish a rectification in which the defendant should acknowledge that the statements were unlawful. The plaintiff also demanded that the defendant should refrain from publishing other statements about the plaintiff linked to “wrong” real estate bosses.

The District Court noted that this case concerned the question of whether the right to freedom of expression (enshrined in article 10 of the European Convention on Human Rights - “the ECHR”) of the defendant or the reputation and honour (as protected by article 8 of the ECHR) of the plaintiff should prevail. In its assessment, which took account of article 6:162 of the Dutch Civil Code, the Court considered all the relevant circumstances of the case. Firstly, the Court stated that the plaintiff plays an important role in the real estate market in Heerlen. Therefore, the plaintiff should be considered to be a public figure and had to show greater tolerance of criticism than a private person. Furthermore, it

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found that the statements made on the website and Facebook page had to be seen in the context of a wide and political debate in Heerlen, and that it therefore served the public interest. The Court stressed that in such a political and public debate regarding the development of real estate in Heerlen, both parties had the right to hold different views. The Court, therefore, did not agree with the plaintiff that the statements of the defendant were incorrect, because the plaintiff had not sufficiently demonstrated this.

Considering all these circumstances, the Court found that the statements on the website and Facebook page of the political party identifying the managing director as a “wrong” real estate boss had not been unlawful. Accordingly, the Court ruled that the defendant’s right to freedom of expression should prevail and it dismissed the plaintiff’s claims.

Rechtbank Limburg 22 januari 2019, ECLI:NL:RBLIM:2019:515

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBLIM:2019:515

District Court of Limburg, 22 January 2019, ECLI:NL:RBLIM:2019:515

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