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April 9, 2014

VIA CERTIFIED, RETURN-RECEIPT
REQUESTED FIRST CLASS MAIL

Mr. Terry Smith
P.O. Box 4884
Cave Creek, AZ 85327

Dear Mr. Smith:

This firm represents Gerald Freeman. I write to you today to tell you to immediately cease and desist all defamatory activity against Mr. Freeman. Failure to do so will result in legal action against you.

As you may know, the United States and Arizona Constitutions protect the rights of all of us to free speech. However, the right to free speech does not extend to lies told publicly about another person in a deliberate and malicious attempt to injure the person.

At a January 27, 2014 Cave Creek Town Council meeting, you claimed that Gerald Freeman "rammed the back of a mule. I heard he threatened to knock a lady off her horse with a shovel. He has also threatened to run over dogs."

<https://cavecreek.civicweb.net/Documents/DocumentList.aspx?ID=19533>

All of these statements are false and intended to harm the reputation of Mr. Freeman. By claiming these things, you have committed the tort of defamation and you are liable for damages. *Turner v. Devlin*, 174 Ariz. 201, 848 P.2d 286 (1993)(stating that tort of defamation requires a false statement that "bring[s] the defamed person into disrepute, contempt, or ridicule, or...impeach[es] plaintiff's honesty, integrity, virtue, or reputation."

There is no question that all of your statements are false. Here are the actual facts.

The fact is that you and your friends created a confrontation to entrap Mr. Freeman despite numerous signs that the driveway was private. And you did so with the full knowledge that you would be trespassing because you have done so repeatedly. You did not have permission to use the property for the purpose you were using it for. Under Arizona law, no shared easement holder may grant any third party the right to use an easement for any purpose other than to visit that



Mr. Terry Smith

April 9, 2014

Page -2-

residence as a business or personal invitee. *DND Neffson Co. v. Galleria Partners*, 155 Ariz. 148, 745 P.2d 206 (App. 1987) ("It is elementary law that an easement cannot be extended...beyond the land to which it is appurtenant, for such an extension would constitute an unreasonable increase of the burden of the servient tenement.")

Mr. Freeman had served the Town a legal Notice of Trespass which was one of the many grounds for Restraining Order that was granted.

By your own admission, you were trespassing.

As to your claim that Mr. Freeman "rammed the back of a mule," this is a fabrication. When Mr. Freeman came down to serve the Notice of Trespass, he stopped his truck when he was even with Fisher. In a blatant act to create the confrontation, Fisher deliberately swung his mule into the right front of Mr. Freeman's truck at exactly that point and then claimed he was "rammed". Attempts to have Mr. Freeman prosecuted fell apart because the allegations are not true.

Mr. Freeman has not threatened to hit horse riders with shovels or to run over dogs, as you claim. All of these statements are fabrications.

These false statements clearly are intended to and in fact bring Mr. Freeman into disrepute and impeach his honesty, integrity, virtue and reputation.

You should also know that you do not have a right to repeat someone else's lies. See *Saban v. Maricopa County*, 2010 WL 2977553, (App. 2010)(quoting the Restatement (Second) of Torts § 578, which provides that "one who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it").

As the Ninth Circuit elaborated in *Flowers v. Carville*:

On the quaint homespun logic that "[t]alebearers are as bad as talemakers," each repetition of a defamatory statement by a new person constitutes a new publication, rendering the repeater liable for that new publication.... The law deems the repeater to "adopt as his own" the defamatory statement. Liability for repetition of a libel may not be avoided by the mere expedient of adding the truthful caveat that one heard the statement from somebody else.



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& BOSCO**
P.A.

Mr. Terry Smith

April 9, 2014

Page -3-

310 F.3d 1118, (9th Cir. 2002).

You must cease and desist all defamatory conduct against Mr. Freeman. If you say anything else false about Mr. Freeman, we will take legal action against you. And once legal action is instituted, you will be subject to damages, including potential punitive damages. *Smith v. Wade*, 461 U.S. 30, 53-54, 103 S.Ct. 1625, 1639 (1983)(discussing the legal standard for awarding punitive damages in defamation cases).

To avoid future litigation, please stop lying about Mr. Freeman. If you continue to make false, disparaging remarks about Mr. Freeman, you will be held legally accountable.

Sincerely,

TIFFANY & BOSCO, P.A.

Timothy A. La Sota

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