

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1184

CA 11-00456

PRESENT: SCUDDER, P.J., SMITH, SCONIERS, GORSKI, AND MARTOCHE, JJ.

DAVID M. GORDON, PLAINTIFF-APPELLANT-RESPONDENT,

V

MEMORANDUM AND ORDER

LIN TV CORPORATION AND AL VAUGHTERS,
DEFENDANTS-RESPONDENTS-APPELLANTS.

HARRIS BEACH PLLC, BUFFALO (RICHARD T. SULLIVAN OF COUNSEL), FOR
PLAINTIFF-APPELLANT-RESPONDENT.

HISCOCK & BARCLAY, BUFFALO (JOSEPH M. FINNERTY OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS-APPELLANTS.

Appeal and cross appeal from an order of the Supreme Court, Erie County (Christopher J. Burns, J.), entered November 23, 2010 in a defamation action. The order granted the motion of defendants for summary judgment and dismissed the complaint.

It is hereby ORDERED that said cross appeal is unanimously dismissed and the order is affirmed without costs.

Memorandum: Plaintiff appeals and defendants cross-appeal from an order granting defendants' motion for summary judgment dismissing the complaint in this defamation action. We conclude at the outset that defendants are not aggrieved by the order dismissing the complaint and thus their cross appeal must be dismissed (*see Town of Massena v Niagara Mohawk Power Corp.*, 45 NY2d 482, 488). According to plaintiff, defendant Al Vaughters misidentified plaintiff as the president of a bankrupt investment fund during an evening news television broadcast on a station owned and operated by defendant Lin TV Corporation. We conclude that defendants met their burden of establishing their entitlement to judgment as a matter of law inasmuch as they did not act "in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties" (*Chapadeau v Utica Observer-Dispatch*, 38 NY2d 196, 199). As the Court of Appeals noted in *Chapadeau*, a limited number of errors in news reporting is inevitable (*see id.* at 200), and the fact that defendants corrected the mistake within the same broadcast demonstrates that they strived for accuracy (*see Alicea v Ogden Newspapers*, 115 AD2d 233, *aff'd* 67 NY2d 862). Because we conclude that defendants met their burden of demonstrating that they did not act in a grossly irresponsible manner, we do not address defendants' alternative ground for affirmance, i.e., that plaintiff was a limited purpose public figure and thus that the

court should have applied the higher standard of demonstrating actual malice (see generally *New York Times Co. v Sullivan*, 376 US 254, 279-280).

Entered: November 10, 2011

Patricia L. Morgan
Clerk of the Court