

**IN THE COURT OF COMMON PLEAS OF
BEAVER COUNTY, PENNSYLVANIA**

**CONNIE JAVENS and
RENEE JAVENS ZUK,**

PLAINTIFFS,

v.

JOHN DOES (1)-(6),

DEFENDANTS.

CIVIL DIVISION

No.: 10550 of 2016

JURY TRIAL DEMANDED

**BRIEF IN SUPPORT OF
MOTION TO QUASH SUBPOENA**

If it looks like a duck, sounds like a duck and smells like a duck, there is nothing wrong with calling it a duck.

It is a proven fact Treasurer Javens committed acts that bring into question her handling of county owned bank accounts. Deposit slips and other documents evidence that Treasurer Javens made multiple secret, unilateral cash withdrawals from county owned bank accounts which were used to purchase money orders that were hand delivered by her to a private entity, Comprehensive Health. At the time this occurred at least 3 of Treasurer Javens' family members were awarded lucrative contracts from Comprehensive Health and she was running a desperate political race for reelection. After reviewing these facts as published in media, John Q Taxpayer publicly commented and expressed his opinion characterizing Treasurer Javens'

actions as “stealing tax money”, “committing crimes and violating codes”, “taking money on her own and without authorization from anyone else and no record of it”, “crooked” and being a “con artist”.

Quack. Quack. Truth is truth even if it is distasteful or paints a vivid portrait of greed and self-dealing against Treasurer Javens. Under Pennsylvania law, truth is not defamation even if hyperbole is used to express the opinion of a citizen, voter and taxpayer criticizing an entrenched career politician such as Treasurer Javens.

To prevail on the *Motion To Issue Subpoena*, Treasurer Javens must present sufficient evidence to establish a prima facie case for all elements of defamation so it would survive summary judgment – which she has not done as she: (a) failed to deny any conclusions reached by John Q Taxpayer; (b) has not provided actual evidence any comment was inaccurate; and (c) has not pled actual damage and instead only asserts a “offensive and scandalous attack on [her] reputation”.

As to John Q Taxpayer, there are no allegations made as to any alleged defamatory comments posted by him that were directed at Renee Javens Zuk.

Pennsylvania Law in this case is set forth in specific detail in John Q Taxpayer’s *Motion To Quash* along with the filings of the BeaverCountian and the other “John Doe” co-defendants. Therefore, to focus and clarify the true nature of this lawsuit such case law is are incorporated by reference herein rather to avoid needless repetition.

The issue before the court is whether Treasurer Javens established through her pleadings that she is an “**innocent victim of an offensive and scandalous attack on her reputation**”. Treasurer Javens declined the opportunity to supplement the factual record in this matter by testifying or otherwise presenting evidence in support of her defamation claim at an evidentiary hearing offered by the Court.

This issue is resolved by reviewing the numerous exhibits attached to John Q Taxpayer’s

Motion To Quash Subpoena as well as the article titled, “Treasurer Connie Javens Refused To Cooperate With Audit Into Friendship Ridge Sale” – which is attached hereto as an Exhibit. These are the facts as set forth by Defendants which are unrefuted by Treasurer Javens and which support the protected 1st Amendment “core political” speech that is being attacked by Treasurer Javens in this case.

The following facts have been published in the local media and have not been refuted by Treasurer Javens.

1. Treasurer Javens is presently under criminal investigation by the Beaver County District Attorney for her unilateral actions in secretly withdrawing and disbursing over \$5,900,000 from county owned bank accounts contrary to the Pennsylvania County Code. The Beaver County District Attorney has publicly stated that Treasurer Javens has violated the County Code and that such acts may constitute criminal acts.
2. The Beaver County Controller confirmed the monies withdrawn by Treasurer Javens should not have been released as Beaver County was still owed approximately \$1,400,000 for the sale of Friendship Ridge - and for Treasurer Javens to do so was a violation of County Code.
3. The Beaver County Controller confirmed Treasurer Javens did not cooperate with him to reconcile the amount of cash monies she withdrew to purchase money orders delivered to Comprehensive Health or provide justification or explanation of why the Controller’s Office was not provided any information as to such transactions being conducted.
4. The Beaver County Controller was never provided an explanation as to why Treasurer Javens chose to withdraw cash and then purchase and disburse monies through money order rather than regular check issued by the Beaver County Controller’s Office – which seems to confirm Treasurer Javens knew such cash withdraws, purchase of money orders and hand delivery of same to Comprehensive were not proper or legal transactions by the County Treasurer.
5. The Beaver County Commissioners commissioned an audit concerning the monies withdrawn by Treasurer Javens – which cost the taxpayers an additional \$25,000. This audit revealed at least \$1,400,000 was improperly disbursed by Treasurer Javens to Comprehensive Health when, in fact, such monies belonged to the taxpayers of Beaver County.
6. Beaver County Controller Rossi, Financial Administrator Rickardo Luckow and County Solicitor Andrea Cantelmi all fully cooperated with the auditors retained by the Beaver County Commissioners. Treasurer Javens refused and continues to refuse to cooperate with the auditors employed by the Beaver County Commissioners.

7. In December 2015, Treasurer Javens refused to provide the Beaver County Commissioners with any explanation to justifying her unilateral withdrawal of \$5,900,000 in cash from county owned bank accounts and purchasing money orders hand delivered to Comprehensive Health.
8. Treasurer Javens has not made any public statements or accountings justifying her actions in withdrawing cash from county bank accounts and having money orders purchased and then personally hand delivered to Comprehensive Health.
9. The Beaver County Controller and the Beaver County Commissioners have confirmed that Treasurer Javens' transactions with Comprehensive Health were not authorized, were not signed off on as required by the Pennsylvania County Code and were made without either entering the transaction in any county computer system or notifying any other county elected or administrative official of the release of monies by making cash withdrawals, purchasing money orders and hand delivering same to Comprehensive Health.

In light of the above facts as reported in the BeaverCountian and other media, as a taxpayer and citizen of a cash-strapped and broke Beaver County, John Q Taxpayer has simply **exercised his 1st Amendment Right to Free “core political” Speech** to make his personal opinion known as to a matter of extreme public importance – that opinion being that an elected public official secretly and unilaterally withdrawing millions of dollars in cash from county bank accounts and then purchasing and hand delivering money orders to an entity which had entered into at least 3 lucrative contracts with that official's family is “stealing tax money” and “committing crimes and violating codes”.

John Q Taxpayer has every right to express his opinion publicly on issues of “core political speech” as to an elected public official. Treasurer Javens is an admitted “public figure” who voluntarily committed the actions that have led to widespread criticism and vilification. Treasurer Javens is now reaping what she has sown.

The civil action brought against John Q Taxpayer is an attempt by an elected public official to not only smother widespread public criticism of Treasurer Javens' conduct as Beaver County Treasurer, it is an attempt to thwart the investigative reporting of John Paul and publication of the BeaverCountian.

Bluntly stated, Treasurer Javens' filing of the *Motion For Issuance Of A Subpoena* is designed to chill political free speech that criticizes her rather than assert any legitimate cause

of action for defamation that has any possibility of success as to John Q Taxpayer. This is evidenced by Treasurer Javens failing to file defamation actions against any of the other commenters on the BeaverCountian that have used their own name and are easily identifiable as having made comments similar to those of John Q Taxpayer – and, in fact, some of the identifiable commenters have made comments that greatly exceed the hyperbole and conclusions in John Q Taxpayer’s comments.

The BeaverCountian is in the only forum in Beaver County that is easily available to the citizens, voters and taxpayers of Beaver County to inform themselves and protest and attempt to redress the constant stream of revelations of improprieties that continue to arise out of the Beaver County Courthouse and surround the elected officials of Beaver County and those privileged few with governmental positions of power and influence within the county. The BeaverCountian has brought light into areas of Beaver County Government which have been in total darkness from the public for decades. This is painful for the political corrupt and political elite. The BeaverCountian is the voice of the average “Joe” and “Jane” in Beaver County who are tired of dysfunctional local government, public employee incompetence and political self-dealing and patronage.

Allowing this lawsuit to continue based upon the pleadings of Treasurer Javens will only stifle free “core political” speech in Beaver County. Not only is this improper under Pennsylvania law, it would be devastating to Beaver County.

Respectfully Submitted,

Dated:

Gerald V. Benyo, Jr., Esq.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the within document was served upon the party/counsel of record as listed below by facsimile, email, and/or First Class United States Mail, postage pre-paid from Beaver, Pennsylvania.

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