

**CORTE SUPREMA DE CASSAZIONE**

*(The Supreme Court of Cassation)*

Margaret,	)	
Petitioner	)	
v .	)	Civil No. 2022-03
Hero,	)	
Respondent	)	

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Hero, the daughter of Messina’s governor, after discovering the plot to stain her reputation and subvert her marriage to Claudio, the count from Florence, sues Don John, his follower Borachio, and Hero’s former attendant Margaret in the Superior Court of Messina.

Hero claims that Don John defamed her and that he and the other defendants were part of or otherwise assisted in this defamation scheme. Specifically, Hero asserts that on the night before her wedding to Claudio, Don John staged a tryst between Borachio and Margaret, disguised as Hero, to trick Claudio into believing Hero to be unfaithful.

Count I of the complaint alleges that Don John slandered Hero by asserting to Claudio that Hero was “disloyal” to Claudio and was “every man’s Hero.” In count II, Hero alleges that at Hero’s wedding ceremony, Don John further defamed her by stating – in the presence of the gathered congregation - that Claudio’s accusations of Hero’s unchastity “are true.” Count III charges Don John, Borachio and Margaret with conspiracy to commit the tort of defamation. Count IV alleges that Borachio and Margaret aided and abetted Don John’s defamation. For all counts, Hero alleges that Don John’s statements about Hero were brazen lies, destroyed her reputation, and caused Claudio to jilt her.

On Hero’s application with evidentiary support, the court entered default judgment against Don John. The court entered summary judgment against Borachio based on his admission that Don John “incensed him to slander the Lady Hero,” and that he took actions “confirm[ing] any slander that Don John had made.” Expressing regret for his role in the scheme, Borachio did not appeal this judgment.

Margaret contested all claims against her, so the court conducted a non-jury trial (testimony at which William Shakespeare transcribed in *Much Ado about Nothing*). In support of her claims, Hero presented evidence that Borachio urged Don John to make false statements about Hero to Claudio, and, in furtherance of this conspiracy, arranged the assignation with Margaret.

Additionally, Hero alleges that Borachio colluded with Margaret to appear at Hero’s window dressed in Hero’s clothes, which she readily agreed to do, and that Borachio’s informing Margaret that he would refer to her as “Hero” (to which she did not object) showed she was part of the plot. In her defense, Margaret testified that she was ignorant of any plot against Hero, to

whom she was deeply attached from long association and always loyal. Moreover, she says that even on the morning of the wedding she expected the marriage to occur and was upset when Claudio spurned Hero and, rebutting a suspicion of Hero's father, Margaret testified that no one, including Don John, paid her to act in ways that would trigger questions about Hero's chastity. Nonetheless, after trial, the court held Margaret liable for both conspiracy and aiding and abetting the scheme to defame Hero. The court refused to credit her protestations of innocence, and also found Borachio's testimony that Margaret "knew not what she did when she spoke" to him at Hero's window, not credible.

In reaching its decision on the conspiracy count, the court recognized that conspiracy requires (a) agreement between two or more people (b) to participate in an unlawful act (including a tort) or a lawful act in an unlawful manner (c) an injury caused by an unlawful overt act performed by one of the parties to the agreement and (d) which overt act was performed by any of the conspirators in furtherance of the conspiracy. The court held that Margaret's behavior with Borachio formed an adequate basis for inferring their intent to act in concert. To be liable, Margaret did not need to speak the slanderous words herself or perform as actively as the others in the conspiracy.

In reaching its decision on the aiding and abetting count, the court also stated that one who aids and abets commission of a tort is liable when following elements are proven: (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his/her role as part of an overall illegal or tortious activity at the time that he/she provides the assistance; (3) the defendant must knowingly and substantially assist the principal violation. The court held that Don John defamed Hero, as alleged, and that Margaret aided and abetted him by materially assisting Borachio in carrying out a plan to embarrass Hero. The court found that Margaret appeared to know about some such plan and held that she need not know its full scope or utter the words herself to be liable for aiding it.

In Margaret's appeal to Italy's highest court, at issue are (1) whether the trial court clearly erred in concluding that Margaret agreed to become a co-conspirator and (2) whether the evidence sufficiently supports the trial court's conclusion that Margaret knew enough about Borachio's and Don John's plan to defame Hero to be liable for aiding and abetting that plan.