

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Chicago Association of Realtors and)
Virginia Downs,)
) No. 12 L 10003
Plaintiffs,)
) Commercial Calendar T
v.)
) Judge John C. Griffin
Andrea Geller,)
)
)
Defendant.)

ORDER

This cause is before the Court on Defendant Andrea Geller's motion to dismiss Plaintiffs Chicago Association of Realtors and Virginia Downs' complaint under section 2-615 of the Illinois Code of Civil Procedure.

I.

The Plaintiffs alleged that the Defendant published a series of defamatory statements on the internet wherein the Defendant claimed the existence of financial irregularities within the Chicago Association of Realtors and dishonest conduct by the Plaintiffs.

II.

A section 2-615 motion attacks the sufficiency of a complaint and raises the question of whether a complaint states a cause of action upon which relief can be granted. *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (1st Dist. 2008). All well-pleaded facts must be taken as true and any inferences should be drawn in favor of the non-movant. 735 ILCS 5/2-615; *Hammond v. S.I. Boo, L.L.C. (In re County Treasurer & Ex-Officio County Collector)*, 386 Ill. App. 3d 906, 908 (1st Dist. 2008). Plaintiffs are not required to prove their case in the pleading stage; they merely are required to allege sufficient facts to state all the elements which are necessary to constitute each cause of action in their complaint. *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (1st Dist. 2007). A 2-615 motion to dismiss should not be granted unless no set of facts could be proved that would entitle the plaintiff to relief. *Beacham v. Walker*, 231 Ill. 2d 51, 58 (2008).

A.

The Defendant argues that the Plaintiffs' complaint must be dismissed because it failed to allege sufficient facts to state a cause of action for defamation *per se*. "A statement is considered defamatory if it tends to cause such harm to the

reputation of another that it lowers that person in the eyes of the community or deters third persons from associating with her.” *Bryson v. News Ams. Publs., Inc.*, 174 Ill. 2d 77, 87 (1996). A statement or publication may be defamatory on its face. *Id.* To plead and prove defamation, “a plaintiff must show that the defendant made a false statement about the plaintiff, there was an unprivileged publication to a third party by the defendant, and the publication damaged the plaintiff.” *Harrison v. Addington*, 2011 IL App. (3rd) 100810, ¶39. A statement is “published” for purposes of defamation “when it is communicated to someone other than the plaintiff, including internal communication within a company.” *Goldberg v. Brooks*, 409 Ill. App. 3d 106, 110 (1st Dist. 2011).

A Plaintiff alleging defamation “must set forth the words alleged to be defamatory clearly and with particularity.” *Krueger v. Lewis*, 342 Ill. App. 3d 467, 470 (1st Dist. 2003). “This rule allows the defendants to properly formulate their answer and affirmative defenses, and to provide the court with the ability to meaningfully review the statements.” *Id.* A statement is defamatory *per se* if it is so obviously and naturally harmful to the person to whom it refers that injury to his reputation may be presumed. *Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 759 (1st Dist. 2002). Illinois law recognizes five categories of statements that are considered defamatory *per se*: (1) those imputing the commission of a criminal offense; (2) those imputing infection with a loathsome communicable disease; (3) those imputing an inability to perform or want of integrity in the discharge of duties of office or employment; (4) those that prejudice a party, or impute lack of ability, in his or her trade, profession or business; and (5) those imputing adultery or fornication. *Seitz-Partridge v. Loyola Univ.*, 409 Ill. App. 3d 76, 89 (1st Dist. 2011).

The Defendant argues that the Plaintiffs failed to plead any facts that alleged that the Defendant’s statements attacked the Plaintiffs’ integrity or character. The Court notes that the Plaintiffs alleged statements made by the Defendant that reasonably infer that the Plaintiffs lacked integrity. (See *e.g.*, Compl. ¶¶50(b), 50(c), 57(a), 57(c), 61, 63(a)). In addition, the Defendant contends that the Plaintiffs’ complaint cited twenty-two separate statements made by the Defendant, but failed to allege which specific statements contained a false statement of fact. The Court notes that the Plaintiffs pled the Defendant’s various postings made on August 20, 21, 22, 23, 24, 2012 as well as on September 2, 2012. Further, the Court notes that the Plaintiffs specifically alleged that the statements posted on the aforementioned dates contained false statements. (See Compl. ¶¶49, 51, 55, 58, 60, 62, 64, 65). The Court finds that the Plaintiffs have minimally pled sufficient facts to infer that the Defendant’s statements attacked the Plaintiffs’ integrity or character. Therefore, the Defendant’s motion to dismiss the Plaintiffs’ complaint based on their purported failure to allege that the Defendant’s statements attacked the Plaintiffs’ integrity or character is denied.

B.

The Defendant also contends that that Illinois’ innocent construction rule prevents the Plaintiffs from asserting a claim of defamation *per se*. Specifically, the

Defendant argues that the Plaintiffs' complaint failed to allege sufficient facts to plead the third or fourth categories of defamation *per se* as stated in *Seitz-Partridge*. "Even if a statement falls into one of the recognized categories of words that are actionable *per se*, it will not be found actionable *per se* if it is reasonably capable of an innocent construction." *Bryson*, 174 Ill. 2d at 90. Under the innocent construction rule, a court must consider the "written or oral statement in context, giving the words, and their implications, their natural and obvious meaning." *Id.* "Only reasonable innocent constructions will remove an allegedly defamatory statement from the *per se* category." *Id.* The innocent construction rule does not require courts to strain to find an unnatural but possibly innocent meaning for words where the defamatory meaning is far more reasonable. *Chanski v. Copley Press*, 92 Ill. 2d 344, 351-52 (1982). Nor does it require the "court to espouse a naiveté unwarranted under the circumstances." *Bryson*, 174 Ill. 2d at 94. Whether a statement is reasonably susceptible to an innocent interpretation is a question of law for the court to decide. *Kolegas v. Heftel Broad. Corp.*, 154 Ill. 2d 1, 11 (Ill. 1992).

After reviewing the Defendant's statement in context, giving the words, and their implications, their natural and obvious meaning, the Court finds that the Defendant's statements are not susceptible to an innocent interpretation. Therefore, the Defendant's motion to dismiss the Plaintiffs' complaint under the Illinois innocent construction rule is denied.

C.

The Defendant also contends that the Plaintiffs' complaint must be dismissed because the Defendant's statements are not actionable under the First Amendment. A statement is constitutionally protected under the First Amendment only if it cannot be "reasonably interpreted as stating actual facts." *Bryson*, 174 Ill. 2d at 100. In determining whether a statement reasonably presents or implies the existence of facts about the plaintiff, the court reviews three considerations. *Hopewell v. Vitullo*, 299 Ill. App. 3d 513, 518 (1st Dist. 1998). First, the court considers whether the language of the statement has a precise and readily understood meaning, while bearing in mind that the first amendment protects overly loose, figurative, rhetorical, or hyperbolic language, which negates the impression that the statement actually presents facts. *Id.* Second, the court considers whether the general tenor of the context in which the statement appears negates the impression that the statement has factual content. *Id.* at 519. Lastly, we consider whether the statement is susceptible of being objectively verified as true or false. *Id.*

The Court notes that the language of the Defendant's statement have a precise and readily understandable meaning whereby an impression can be reasonably inferred inasmuch as the statements may present actual facts because the Defendant's statements are based on her first-hand observations on the Plaintiffs' purported conduct and alleged financial irregularities. In addition, the Court notes that the context in which the statements appear do not negate the

impression that the statements contain factual content, but further support the contention that the statements include factual content because the Defendant's statements provide a detailed summation regarding the basis for the Defendant's comments. Further, the Court notes that the Defendant's statements are susceptible of being objectively verified true or false. In fact, the Court notes that the Defendant's statements are a textbook example of statements that can be objectively verified as true or false because the Defendant's statements seek substantiation by way of a third-party investigation or audit into the purported financial irregularities of Chicago Association of Realtors as well as the Plaintiffs' conduct as members of the board. Therefore, the Court finds that the well-pled allegations of the Plaintiffs' complaint, at this juncture of the litigation, cannot be deemed non-actionable opinions. Therefore, the Defendant's motion to dismiss the Plaintiffs' complaint based on the First Amendment is denied.

D.

The Defendant also contends that the Plaintiffs failed to state a cause of action for defamation because the complaint contains no factual allegations that the Defendant acted with actual malice. In response, the Plaintiffs contend that they are not "public figures," and therefore, need not plead actual malice. The Court notes that the Plaintiffs' contention is contrary to the record as the Plaintiffs include several generalized allegations stating that the Defendant's statements, on each respective date, "contained false statements that she either knew were false or that she made recklessly without regard for their truth." (See Compl. ¶¶49, 51, 55, 58, 60, 62, 64, 65).

In pleading actual malice under a defamation claim, the plaintiff must allege that the statement "was made with knowledge that it was false or with reckless disregard for whether or not the statement was false." *Reed v. Nw. Pub. Co.*, 124 Ill. 2d 495, 520 (1988). Our Supreme Court has held that "a legally sufficient complaint [alleging actual malice must] set forth factual allegations from which actual malice may reasonably be said to exist as opposed to the bare assertion of actual malice." *Coursey v. Greater Niles Twp. Pub. Corp.*, 40 Ill. 2d 257, 265 (1968). Allegations that the statements made were false, were made with knowledge of their falsity, or were made in reckless disregard as to their truth or falsity have been held to sufficiently allege actual malice. See, e.g., *Colson v. Stieg*, 86 Ill. App. 3d 993, 998 (2nd Dist. 1980) (complaint sufficiently alleges statement was made by defendant "knowing it to be false" and statement was made maliciously, willfully and intentionally); *Coursey*, 40 Ill. 2d at 265 (complaint sufficiently charges that defendants intended to injure the plaintiff police officer's name and injure his livelihood, with knowledge statement was false and with reckless disregard for falsity, they maliciously composed and published libelous article about officer's solicitation of girl).

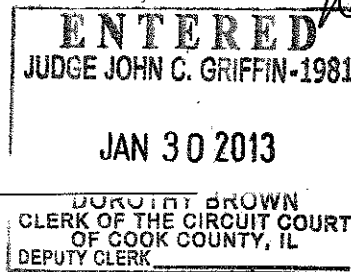
The Court finds that the Defendant's alleged defamatory statements gives rise to factual inferences that tend to support a charge of actual malice in the complaint. In addition, the Court finds that these statements taken together with

the fact that the statements purportedly fall within one of the categories of defamation *per se* categories based on the Plaintiffs' purported lack of integrity and character are sufficient to allege actual malice. The Defendant is sufficiently apprised of the allegations made and can either admit or deny the allegations. Discovery will quickly establish whether the Plaintiffs can sustain their burden and, if not, there are efficient procedures available to dispose of those claims. The issues raised by the Defendant do not warrant extensive and costly motion practice regarding the sufficiency of the complaint. Therefore, after accepting as true all well-pled facts of the Plaintiffs' complaint, the Defendant's motion to dismiss is denied.

III.

For the foregoing reasons, it is hereby **ORDERED**:

- (1) Defendant's motion to dismiss the Plaintiffs' complaint is DENIED;
- (2) Defendant is given 28 days, until March 1, 2013, to answer the Plaintiffs' complaint;
- (3) The parties shall initiate written and oral discovery by March 8, 2013;
- (4) The parties shall complete written discovery by May 7, 2013
- (5) The parties shall complete oral discovery by July 8, 2013;
- (6) This case is continued for a case management date of March 12, 2013 at 9:30 a.m.



ENTERED,

Judge John C. Griffin, No. 1981