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

HARVEST BIBLE CHAPEL, through JAMES SCOTT MILHOLLAND, COO; RONALD DUITSMAN, Elder Board Chairman; WILLIAM SPERLING, Elder Board Chairman; and JAMES S. MACDONALD, both individually and as Senior Pastor of Harvest Bible Chapel, Plaintiffs, v. RYAN MICHAEL MAHONEY, MELINDA MAHONEY, SCOTT WILLIAM BRYANT, SARAH BRYANT, and JULIE STERN ROYS, Defendants.	No. 2018 L 011219 (Transferred to Chancery Division) Honorable Diane J. Larsen

DEFENDANTS SCOTT WILLIAM BRYANT
AND SARAH BRYANT'S SECTION 2-619.1 MOTION TO DISMISS

Pursuant to Sections 2-615 and 2-619(a)(5) of the Code of Civil Procedure, 735 ILCS 5/2-615 and 2-619(a)(5), Defendants Scott William Bryant and Sarah Bryant (together, "Bryants" or "Defendants"), by their undersigned counsel, respectfully move to dismiss each of the counts in the Complaint pled against them (Counts I, III, V, and VI) by Harvest Bible Chapel and James S. MacDonald (together, "Plaintiffs"). In support of this motion, Defendants state as follows:

INTRODUCTION

James S. MacDonald and several other leaders of Harvest Bible Chapel, a large church with multiple locations across the United States, have brought this lawsuit to stop former church members from making statements concerning the church and its leadership. Plaintiffs attempt to allege four counts against the Bryants: violation of the Illinois Deceptive Trade Practices Act (Count I), defamation *per quod* (Count III), false light (Count V), and "TRO and Injunction"

(Count VI). These claims fail for a number of reasons. Initially, all of Plaintiffs claims against the Byrants must be dismissed for the reasons set forth in the Section 2-615 motion to dismiss filed by co-defendants Ryan and Malinda Mahoney on November 26, 2018. The Byrants therefore expressly join the Mahoney's motion in its entirety. Plaintiffs' claims against the Byrants should also be dismissed under Section 2-615 and Section 2-619(a)(5) for several additional reasons.

First, all claims against Sarah Bryant must be dismissed there are no allegations that she made any of the allegedly actionable statements.

Second, to the extent James Scott Milholland, Ronald Duitsman, William Sperling, and James S. MacDonald are attempting to bring a derivative claim on behalf of Harvest Bible Chapel, the claim should be dismissed because they have not alleged a demand or demand futility.

Third, Plaintiffs' defamation *per quod* claim should be dismissed because: 1) Plaintiffs have not alleged any facts establishing that the purportedly false statements were published to a third party; 2) Plaintiffs have not alleged any extrinsic facts establishing the defamatory nature of the purportedly actionable statements; 3) the purportedly defamatory statements are protected opinion; and 4) determining the truth of certain statements would require this Court to interpret religious doctrine in violation of the First Amendment.

Fourth, Plaintiffs' false light claim must be dismissed for all of the reasons their defamation claim must be dismissed and because Plaintiffs' have not pled any special damages.

Fifth, Plaintiffs' claim for "TRO and Injunction" only seeks relief and does not purport to state any cause of action and must therefore be dismissed.

And *Sixth*, Plaintiffs allege that the purportedly actionable statements were published over one year before the Complaint was filed. Any claim for defamation or false light based on these claims is therefore barred by the statute of limitations and should be dismissed pursuant to Section 2-619(5).

FACTUAL BACKGROUND

The following facts are taken from Plaintiffs' Complaint and are assumed to be true for purposes of this motion.

The Bryants are former members of the Harvest Bible Chapel, a large, nationwide church with multiple locations. (Compl. at ¶¶ 1, 49, 60.) Since 2012, Scott Bryant, along with other former members of the church, have operated a website called "TheElephantsDebt.com" (abbreviated "ED" in Plaintiffs' complaint), that reports on issues regarding the church. (*Id.* at ¶ 60.) Plaintiff James MacDonald ("MacDonald") is the church's "Senior Pastor," and has been since the inception of the church in 1988. (*Id.* at ¶¶ 2, 14.)

MacDonald and three other members of the Harvest Bible Chapel have brought this suit claiming that statements made on the "TheElephantsDebt.com" concerning MacDonald or Harvest Bible Chapel constitute trade disparagement, defamation, and false light. (Compl. at ¶¶ 60-118, Counts I, III, V.) Although all the purportedly actionable statements are alleged to have been published in written form on the website, Plaintiffs have not attached any of the actual articles or postings to the Complaint. Instead, they describe approximately 70 statements that they claim appeared on the website since its inception in 2012. (*Id.*) Plaintiffs allege that most of the statements were "republished" on the website in June 2017. (Compl. at ¶ 94.)

For the reasons set forth below, Plaintiffs' claims against the Byrants should be dismissed with prejudice.

ARGUMENT

I. DEFENDANTS' ARGUMENTS UNDER SECTION 2-615

A. All claims against Sarah Bryant should be dismissed.

Plaintiffs do not allege that Sarah Bryant made any purportedly actionable statement concerning any of the Plaintiffs. The only allegation concerning Mrs. Bryant is that she provided "funds for computer(s) that are used to create, edit, host and maintain the ED website, and provid[ed] funds for internet access for the ED site." (Compl. at ¶ 9.) This sole allegation does not meet any of the elements of defamation, false light, or a claim under the Illinois Deceptive Trade Practices Act. All claims against Mrs. Bryant should be dismissed with prejudice.

B. Plaintiffs' derivative claims should be dismissed.

Plaintiffs appear to be attempting a derivative claim on behalf of Harvest Bible Chapel. To the extent they are, they have failed to properly plead a derivative claim. In order to bring a claim derivatively on behalf of a not-for-profit corporation, an individual must plead that he or she was a member at the time of the challenged conduct and currently, and that he or she made demand upon the not-for-profit corporation's directors or that such demand would have been futile. *Powell v. Gant*, 199 Ill. App. 3d 259, 266-67 (4th Dist. 1990); *see also* 805 ILCS 105/107.80. Plaintiffs have made none of the required allegations.

C. Count III (defamation *per quod*) should be dismissed.

1. Plaintiffs have not alleged publication to a third party.

Publication to a third party is an essential element of defamation. *Beauvoir v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 137 Ill. App. 3d 294, 300-01 (1st Dist. 1985). Accordingly, Plaintiffs must allege facts establishing that someone besides Plaintiffs read the statements in question. *Id.* They have not. Count III should therefore be dismissed.

2. Plaintiffs have not alleged extrinsic facts establishing that any alleged statement constitutes defamation *per quod*.

In order to state a claim for defamation *per quod*, Plaintiffs must allege facts establishing that the otherwise non-actionable statements have a defamatory meaning not apparent from their face. *Harris Tr. & Sav. Bank v. Phillips*, 154 Ill. App. 3d 574, 582-84 (1st Dist. 1987). Plaintiffs must establish this element with factual allegations and cannot rely solely on "self-serving characterizations and constructions" or by "alleging innuendo." *Id.* "Where the extrinsic facts are insufficient to reasonably support the defamatory meaning plaintiff urges, dismissal of the complaint is in order." *Taradash v. Adelet/Scott-Fetzer Co.*, 260 Ill. App. 3d 313, 318 (1st Dist. 1993).

Throughout the Complaint, Plaintiffs' impose self-serving and factually unsupported interpretations of non-actionable statements and do not support their interpretations with any well-pled facts. For example, Plaintiffs allege: "The ED website falsely asserts that there was no mention of the 5G campaign helping with debt relief at the outset of the campaign." (Compl. at ¶ 76.) They go on to allege that the statement "portrays [Plaintiffs] as misleading the congregation and undermining confidence in their fiduciary leadership." (*Id.*) There are no allegations even explaining what the "5G campaign" is, much less allegations sufficient to allow the Court to determine whether Plaintiffs' interpretation of the statement is reasonable (it is not). As another example, Plaintiffs' allege: "The ED website falsely asserts that James S. MacDonald had 'numerous streams of revenue' tied to Harvest Bible Chapel and that he demanded a 40% pay raise." (Compl. at ¶ 75.) Plaintiffs do not even allege what the purported defamatory meaning of this statement is, much less support that meaning with well-pled facts.

Plaintiffs often fail to even identify the allegedly defamatory statement at all. (*See, e.g.*, Compl. at ¶ 66 ("The ED website . . . published the opinion of two former Elders who were

removed on the basis of performance failure and presented that information as having greater weight than the 40 other Elders who were providing meaningful oversight and accountability."); ¶ 67 ("The ED website . . . publish [sic] the view point of former Elders who breached broadly accepted board policy and fiduciary responsibility by falsely and unlawfully reporting financial details about the church's finances."). Such allegations do not suffice to establish defamation. *Sangston v. Ridge Country Club*, 35 F.3d 568 (7th Cir. 1994) ("a plaintiff who fails to repeat the actual libelous statements in his complaint should not survive a motion to dismiss simply by providing self-serving characterizations of the statements.") (interpreting Illinois law).

Accordingly, Plaintiffs have failed to plead any defamatory statements. Count III should be dismissed for this independent reason.

3. Plaintiffs' defamation claims based on non-actionable opinion should be dismissed.

"Only factual statements capable of being proven true or false are actionable." *Brennan v. Kadner*, 351 Ill. App. 3d 963, 969 (1st Dist. 2004). Plaintiffs allege numerous statements that are not capable of being proven true or false. For example, Plaintiffs allege: "The ED website falsely wrote that James S. MacDonald is above reproach and is a lover of money." (Compl. at ¶ 77.) Setting aside that this statement is not defamatory, it is also cannot be proven true or false. It therefore cannot form the basis for a defamation claim. (*See also*, Compl. at ¶¶ 66, 67, 68, 69, 80, 81, 84, 86, 88.)

4. Plaintiffs' defamation claims requiring interpretation of religious doctrine should be dismissed.

The First Amendment to the United States Constitution prohibits courts from resolving questions of religious law and polity. *Thomas v. Fuerst*, 345 Ill. App. 3d 929, 934-35 (1st Dist. 2004). It follows that a defamation claim should be dismissed if the truth of the statement in question can only be determined through inquiry into questions of religious doctrine. *Id.*

Here, several of the statements underpinning Plaintiffs' defamation claim would require the Court to interpret religious law. For example, Plaintiffs allege: "The ED website . . . falsely asserts that by playing poker, James S. MacDonald has contradicted his teaching that addiction to gambling evidences greed." (Compl. at ¶ 80.) Another example: "The ED website falsely asserted 'that James S. MacDonald has ceased to qualify as an Elder' for failing to be above reproach and being a lover of money." (Compl. at ¶ 81.) Determining whether these statements are true would require this Court to interpret religious doctrine. For that independent reason, Plaintiffs' defamation claim should be dismissed to the extent it is based on these allegations.

D. Count V (false light) should be dismissed.

1. Plaintiffs false light claim should be dismissed because Plaintiffs do not allege special damages.

In order to establish a claim of false light, Plaintiffs must allege special damages. *Schaffer v. Zekman*, 554 N.E.2d 988, 993-94 (1st Dist. 1990). They have not. Plaintiffs' false light claim must therefore be dismissed.[1]

Additionally, Plaintiffs' false light claim should be dismissed for all the reasons their defamation *per quod* claim should be dismissed. *Brennen v. Kadner*, 351 Ill. App. 3d 963, 971 (1st Dist. 2004). ("[T]he similarities between defamation and false light claims make certain restrictions and limitations for defamation equally applicable to false light claims.") (affirming motion to dismiss false light and defamation claims because the statements constituted non-actionable opinion).

[1] As argued in the Mahoney's Section 2-615 motion, Plaintiffs' defamation claims must be dismissed for this reason as well. *Taradash v. Adelet/Scott-Fetzer Co.*, 260 Ill. App. 3d 313, 318 (1st Dist. 1993). The Bryants' join that argument, along with all other arguments in the Mahoney's motion.

E. Count VI ("TRO and Injunction") should be dismissed because it does not identify any specific cause of action.

The Illinois Code of Civil Procedure requires that each count in a complaint state a single, well-pled cause of action. 735 ILCS 6/2-603. Failure to identify a single, specific cause of action in a count is grounds for dismissal. *Cable Am., Inc. v. Pace Elecs., Inc.*, 396 Ill. App. 3d 15, 20 (1st Dist. 2009).

Here, Count VI does not plead, or even purport to plead, a specific cause of action. Rather, it seeks remedies without identifying specific underlying causes of action. *See, e.g.*, *Town of Cicero v. Metro. Water Reclamation Dist. of Greater Chicago*, 2012 IL App (1st) 112164, ¶ 46 ("A permanent injunction, however, is not a separate cause of action."). Because Count VI fails to allege a specific cause of action, it should be dismissed with prejudice. *Cable Am.*, 396 Ill. App. 3d at 20.

II. DEFENDANTS' ARGUMENTS UNDER SECTION 2-619(a)(5)

A. Plaintiffs' defamation and false light claims are barred by the statute of limitations.

Plaintiffs' defamation and false light claims are governed by a one-year statute of limitations. 735 ILCS 5/13-201. The statute of limitations begins run when the allegedly actionable statement is first published, regardless whether the statement continued to be published after the initial publication. *Blair v. Nevada Landing P'ship*, 369 Ill. App. 3d 318, 324-25 (2d Dist. 2006).

Here, Plaintiffs avoid alleging the publication date of any specific statement, and have failed to attach the actual articles and posts that are the basis of their claims to the Complaint, as they are required to do under Section 2-606,[2] but, after listing most of the allegedly defamatory

[2] Failure to comply with Section 2-606 is among the reasons the Complaint should be dismissed that are set forth in the Mahoney's Section 2-615 motion, which the Bryants' have joined.

statements, Plaintiffs state: "The ED website falsely promised to cease publication about Harvest Bible Chapel, then by beginning afresh in June of 2017, caused harm to James S. MacDonald and Harvest Bible Chapel by republishing previous false statements and adding to the library of misinformation." (Compl. at ¶ 94.) The reasonable inference to be drawn from Plaintiffs' allegation is that the allegedly actionable statements were published in or before June 2017. The Complaint was not filed until October 16, 2018, over one year later. Plaintiffs' defamation and false light claims should be dismissed with prejudiced for this independent reason. *Farkas v. Howard*, 176 Ill. App. 3d 1005, 1011 (1st Dist. 1988) (granting motion to dismiss pursuant to Section 2-619(5) is appropriate where reasonable inference to be drawn from allegation is that conduct occurred outside the statute of limitations, even if actual dates of conduct are not alleged).

WHEREFORE, for the reasons set forth above, Defendants respectfully request that Counts I, III, V, and VI be dismissed with prejudice, and for all other relief the Courts deems proper.

Date: December 7, 2018

Respectfully submitted,

SCOTT WILLIAM BRYANT and SARAH BRYANT

By: /s/ Mark H. Horwitch
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