IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

RONALD S. FEDERICI	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:10-cv-01418
	)	
MONICA PIGNOTTI, *ET AL.*	)	
	)	
Defendants.	)	
	)	

REPLY OF DEFENDANTS JEAN MERCER AND MONICA PIGNOTTI

Defendants Jean Mercer and Monica Pignotti (collectively, "Defendants"), by counsel, submit this Reply in response to the Opposition to their Motion to Dismiss filed by Plaintiff Ronald Federici. Defendants incorporate by reference their arguments in the Motion to Dismiss and, in further support thereof, address the following, discrete issues raised in Plaintiff's Opposition:

I. The General District Court's Exercise of Personal Jurisdiction over Dr. Mercer is not Binding.

After dismissing Plaintiff's claims, the Fairfax County General District Court commented that Dr. Mercer waived her objection to personal jurisdiction and, regardless, was subject to jurisdiction through the subject internet postings. Op. to Mot. to Dismiss, Ex. C, p. 27. As discussed at length in Defendants' Motion to Dismiss, the general district court's cursory analysis does not fully consider the governing law surrounding these emerging issues. Regardless, this ruling is not binding on this Court as Plaintiff appealed the general district court's dismissal of his claim, rendering all rulings null and void.

Under Virginia law, any party aggrieved by an order of judgment of the general district court may appeal such decision to the circuit court for a *de novo* hearing. Va. Code § 16.1-106. As the Virginia Supreme Court explained, "Such an appeal is in effect a statutory grant of a new trial, in which the perfected appeal *annuls the judgment of the district court as completely as if there had been no previous trial*." Joseph v. Giant Food, Inc., 61 Va.Cir. 143, 146 (Fairfax 2003) (quoting Ragan v. Woodcroft Village Apartments, 255 Va. 322, 327, 497 S.E.2d 740, 742 (1998)) (emphasis in original). "Upon such trial in the Circuit Court, *all rulings and judgments rendered by the GDC are completely null and void and of no legal consequence.*" Id. (emphasis added). As such, the general district court's rulings, including that ignoring Dr. Mercer's special appearance and exercising personal jurisdiction over her, are of "no legal consequence" and therefore not binding on this Court.

II. Defendants cannot be held Responsible for Actions by ACT.

Plaintiff's suit haphazardly groups together all Defendants with ACT. Op. to Mot. to Dismiss, pp. 8-9, 13-14, 16. To support his flawed theory, Plaintiff argues that, "All Defendants, including Pignotti and Mercer are associated with ACT," using this loose "association" as his basis to exercise jurisdiction through ACT's domain name agreement with Network Solutions, a Virginia company. Op. to Mot. to Dismiss, p. 13.

Virginia law is clear, however, that "a corporation is a legal entity separate and distinct from the stockholders or members who compose it. The whole corporate concept would be meaningless if such were not the case. Thus, it is also axiomatic that when a corporation causes injury as a result of an unlawful action, it is the corporation that is directly liable for any judgment obtained against it by the injured party." Dana, *et al.* v. 313 Freemason, a Condo.

Ass'n, Inc., 266 Va. 491, 499, 587 S.E.2d 548, 553 (2003). Any effort to hold Drs. Mercer and Pignotti responsible for the content in Exhibit A must fail.[1]

Additionally, to the extent Plaintiff asserts that Drs. Mercer and Pignotti are agents of ACT, no conspiracy claim can exist. Under the intracorporate conspiracy doctrine, "a conspiracy between a corporation and the agents of that corporation who are acting in the scope of their employment is a legal impossibility." Mardula v. Shamshiry, Inc., *et al.*, 49 Va.Cir. 55, 58 (Fairfax 1999).

III. Drs. Mercer and Pignotti Cannot be Held Responsible for Postings of Other Defendants.

In a similar vein, Plaintiff attempts, via circumstantial inferences, to hold Drs. Mercer and Pignotti individually responsible for the postings of all Defendants. This theory must fail where, as here, the identities of the alleged defaming speakers are undeniably evident from the face of the postings. Each of these Defendants will be discussed in turn.

As set forth in Defendants' Motion to Dismiss, Plaintiff has not identified a single claimed defamatory statement linked to Dr. Mercer. Indeed, with the exception of Exhibit B, authored by "Wayward Radish" who is presumably one of Plaintiff's "John Doe" defendants, all of the complained-of postings contain an identifiable person or entity that is NOT Dr. Mercer. Plaintiff's own words demonstrate the vacuous nature of this claim: "Given Mercer's relationship with Defendants and her activity on the aforementioned websites, particularly in regards to her involvement in posts relating to Plaintiff, it is not a stretch of the imagination to believe that Mercer is responsible for some of the defamatory posts . . ." Op. to Mot. to Dismiss, p. 16. In light of Plaintiff's own exhibits to his Complaint, none of which identify Dr. Mercer as

[1] Notably, Dr. Mercer testified in the general district court matter that, "Anything that is on [the ACT] website is signed by me if I wrote it. Otherwise it was not written by me." Op. to Mot. to Dismiss, Ex. C, p. 22.

author, Plaintiff's conclusory and self-serving allegations are insufficient to permit a defamation claim against her.

With regards to Dr. Pignotti, she expressly acknowledges her authorship of Exhibits E, F, and H, and those comments in Exhibit G posted under her name. Any attempt to hold Dr. Pignotti liable in defamation for any other posting must fail as such articles are, *prima facie*, the responsibility of another party or entity.

IV. Any Claim Arising from Exhibit H is Barred by the Statute of Limitations.

Plaintiff contends that the present action is simply the refiling of the Fairfax County General District Court case he filed against Dr. Mercer and ACT, which he appealed to the Fairfax County Circuit Court and non-suited on September 2, 2010. As such, he seeks to circumscribe the one-year statute of limitations applicable to a defamation claim in connection with Exhibit H, a July 29, 2009 posting by Dr. Pignotti. Given the significant substantive differences between this suit and that which was nonsuited, it is apparent that the present suit does not fall within the ambit of Virginia's nonsuit provision.

Virginia law provides that after a voluntary nonsuit, "the plaintiff may recommence *his action* within six months from the date of the order entered by the court. . ." Va. Code § 8.01-229(E)(3) (emphasis added). Here, in general district court, Plaintiff sued Dr. Mercer and ACT for defamation and interference with business, listing a $5,000 *ad damnum*. Op. to Mot. to Dismiss, Ex. A. Dr. Pignotti was not a party to that suit.

As the Circuit Court for Fauquier County explained, "There is nothing in § 8.01-229(E)(3) that suggests that a plaintiff can recommence his action and add new claims." Allen, *et al.* v. Loudoun County Sanitation Auth., 2009 Va.Cir. LEXIS 218 at *16 (Fauquier Nov. 2, 2009) (copy attached as Exhibit 1). In other words, "If a nonsuit is taken, it is with respect to the

cause of action that is asserted in the action he has filed. There is no nonsuit with respect to any unasserted causes of action." Id. at 19. Similarly, the Loudoun County Circuit Court noted, "the amount sued for is just as much a component of an action as the operative facts alleged and the claims made by a plaintiff." Spear v. Metro. Wash. Airports Auth., *et al.*, 78 Va.Cir. 456, 458 (2009) (dismissing complaint as time-barred because plaintiff did not recommence nonsuited case when *ad damnum* increased), *appeal docketed*, 2010 Va.LEXIS 146 (Va., Apr. 1, 2010).

The present action names at least three additional defendants, includes a conspiracy claim, and seeks damages **sixty times** that in the general district court case. In short, this case is not a resurrected appeal, but rather an entirely new case. As such, any claim arising from Exhibit H is barred by the one-year statute of limitations.

V. Plaintiff's Clientele is not Limited to Virginia Residents.

Plaintiff's repeated contention that he only conducts business in Virginia, and therefore Defendants' alleged postings were addressed to Virginia residents is disingenuous. Op. to Mot. to Dismiss, pp. 7, 8, 10. Plaintiff asserts in Paragraph 10 of the Complaint that he is "internally [internationally] renowned." His own website states, "Individuals and families from across the United States and abroad come to our specialty clinic for first, second and third opinions for answers and treatment recommendations." http://www.drfederici.com/about.htm (printouts of Plaintiff's website pages are attached, collectively, as Exhibit 2). Plaintiff's website even provides airport and hotel information for his clients. http://www.drfederici.com/about.htm.

Indeed, in State v. Salvetti, which Dr. Mercer commented upon, Plaintiff treated a North Carolina child, and testified as an expert in a North Carolina courtroom. See, Mercer & Pignotti Mot. to Dismiss, Ex. B. Similarly, the United States District Court in New Hampshire noted that Plaintiff treated a New Hampshire child, with the infant's school district funding the evaluation

and the family's travel expenses during their trip to Virginia. Kasenia R., by and through her Parents and Next Best Friend, M.R. and C.B. v. Brookline Sch. Dist., 588 F.Supp.2d 175, 185 (D.N.H. 2008).

On the "News" tab of his website, Plaintiff touts trainings and lectures he has conducted in various states and abroad, including "Iceland, Canada, Illinois, Indiana, Maryland, [W]ashington, D.C., Virginia and Oregon" and "multiple major cities in US" during 2007. http://www.drfederici.com/news.htm. Plaintiff describes himself as having "an international following." http://www.drfederici.com/staff.htm. Indeed, his blog entry for January 19, 2011 notes, "Dr. Federici has started the new year by traveling around the country, treating adopted children in their new homes." http://ronaldfederici.wordpress.com/2011/01/19/happy-2011-on-the-road/ (printout attached as Exhibit 3). Any assertion that Plaintiff's practice is limited to the Commonwealth lacks candor.

Conclusion

For the reasons set forth fully above and in support of their Motion to Dismiss, Defendants Jean Mercer and Monica Pignotti respectfully request that the Complaint be dismissed as to them.

Respectfully submitted,

Dated: January 20, 2011

/s/ Kristin A. Zech

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Reply of Defendants Jean Mercer and Monica Pignotti was electronically filed with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) to the following on this 20th day of January, 2011, unless otherwise noted:

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