

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

OBSIDIAN FINANCE GROUP, LLC
and KEVIN D. PADRICK,

Plaintiffs,

v.

CRYSTAL COX,

Defendant.

No. CV-11-57-HZ

ORDER

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1 - OPINION & ORDER

Crystal Cox
P.O. Box 505
Eureka, Montana 59917

Defendant Pro Se

HERNANDEZ, District Judge:

Plaintiffs Obsidian Finance Group and Kevin Padrick bring this diversity action against defendant Crystal Cox, alleging that defendant has published false and defamatory statements about plaintiffs to third parties. Pursuant to Federal Rule of Civil Procedure 12(e), defendant moves for a more definite statement. I deny the motion.

STANDARDS

"A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). "The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired." Id.

A motion for a more definite statement is generally left to the district court's discretion. Sheffield v. Orius Corp., 211 F.R.D. 411, 414 (D. Or. 2002). Rule 12(e) is designed to strike at unintelligibility rather than lack of detail. Maixner v. Bank of Am. Home Loans, No. CV-10-3037-CL, 2010 WL 5918860, at *3 (D. Or. Nov. 18, 2010) (citing Bautista v. Los Angeles Cnty., 216 F.3d 837, 843 n.1 (9th Cir. 2000)). "Rule 12(e) motions attack the intelligibility of the complaint, not the lack of detail, and are properly denied where the complaint notifies the defendant of the substance of the claims asserted." Holdner v. Coba, No. CV-09-979-AC, 2010 WL 678112, at *1 (D. Or. Feb. 25, 2010) (internal quotation omitted).

Where the detail sought is available through discovery, the motion should be denied.

Ramos v. U.S. Bank Nat'l Ass'n., No. CV-08-1150-PK, 2009 WL 1475023, at *7 (D. Or. May 20, 2009); see also Tilley v. Allstate Ins. Co., 40 F. Supp. 2d 809, 814 (S. D. W. Va. 1999) (the motion "is not to be used to assist in getting facts in preparation for trial as such; other rules relating to discovery, interrogatories and the like exist for such purposes") (internal quotation omitted). In ruling on a Rule 12(e) motion, the court should take into account the liberal pleading guidelines of Rule 8. Palmerton v. Cochran, No. CV-05-3109-CO, 2006 WL 3227889, at *2 (D. Or. Nov. 6, 2006).

DISCUSSION

In their Complaint, plaintiffs allege that defendant has published, and continues to publish several defamatory statements of fact concerning plaintiffs. Compl. at ¶ 8. Plaintiffs list ten separate specific statements. Id. at ¶¶ 8a-8j. Plaintiffs further allege that defendant has published these statements to third parties on an internet website she maintains at www.obsidianfinancesucks.com, and other websites. Id. at ¶ 9. Plaintiffs allege that defendant has knowingly and intentionally published the false and defamatory statements alleged with actual knowledge of their falsity or with actual malice or reckless disregard for the truth or falsity of the statements. Id. at ¶ 10. Defendant's acts are alleged to have been not privileged. Id. Plaintiffs allege that they have suffered damages as a result of the defamatory statements, including damage to their reputation. Id. at ¶ 11. They seek money damages and injunctive relief prohibiting plaintiff from publishing further false and defamatory statements concerning plaintiffs. Id.

Defendant moves for a more definite statement under Rule 12(e) because, she explains, she has written voluminous articles on the [obsidianfinancesucks](http://www.obsidianfinancesucks.com) website, and various other blogs

and public forums, since July 2009, and she is unaware of which specific article, date, or time is at issue in the Complaint. She seeks a more definite statement as to each of the ten specific statements alleged in the Complaint.

Under Oregon law, facts sufficient to state a claim for defamation are that the defendant published a defamatory statement about plaintiff to a third party. Marleau v. Truck Ins. Exch., 333 Or. 82, 94, 37 P.3d 148, 155 (2001). As noted above, a Rule 12(e) motion must be evaluated in the context of Rule 8's requirements that a pleading need contain only a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a). Here, the Complaint contains the necessary allegations under Oregon law, and provides a sufficient statement of the claim under Rule 8.

Defendant's motion seeks information about the statements that is routinely acquired through discovery. The allegations as currently pleaded are adequate to allow defendant to frame a responsive pleading.¹ Nothing further is required at the pleading stage. Compare Householder v. The Cedars, Inc., Civil No. 08-2463-KHV-GLR, 2008 WL 4974785 at *1 (D. Kan. Nov. 19, 2008) (granting Rule 12(e) motion as to defamation claim where the complaint failed to allege what statements were made, what was defamatory, who made the statements, to whom they were published, and when and where they were published), with Lambey v. Nev. Dep't of Health & Human Servs., No. 2:07-cv-1268-RLH-PAL, 2008 WL 2704191, at *5 (D. Nev. July 3, 2008) (denying a Rule 12(e) motion as to a defamation claim when, although plaintiff did not identify the exact words of the defamatory communication, she identified the general content, the context

¹ Indeed, defendant, without waiting for a decision on her motion for more definite statement, filed an Answer to the Complaint on May 4, 2011 (dkt #12 entitled "Response" to Complaint and properly docketed as an Answer).

in which they were made, and that they were made by one or more of defendant's employees).

CONCLUSION

Defendant's motion for a more definite statement [# 6] is denied.

IT IS SO ORDERED.

Dated this 19th day of May, 2011

/s/ Marco A. Hernandez
Marco A. Hernandez
United States District Judge