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 MEMBER; AND JAMES S. MACDONALD, BOTH INDIVIDUALLY AND AS SENIOR PASTOR OF HARVEST BIBLE CHAPEL,	)	
Plaintiffs,	)	
vs.	)	No. 2018 L 011219
RYAN MICHAEL MAHONEY, MELINDA MAHONEY, SCOTT WILLIAM BRYANT, SARAH BRYANT, AND JULIE STERN ROYS,	)	Honorable Diane Joan Larsen
Defendants.	)	

DEFENDANT ROYS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT

Julie Stern Roys, by her counsel of record, Rathje Woodward LLC, hereby moves to dismiss the plaintiffs' Complaint pursuant to 735 ILCS 5/2-615. In support of her motion, defendant Roys states as follows:

INTRODUCTION

Plaintiffs have filed a six-count complaint asserting claims for violation of the Deceptive Trade Practices Act and defamation *per quod*. Plaintiffs are the officers of a not-for-profit religious institution known as Harvest Bible Chapel. Notwithstanding phenomenal success as articulated in paragraphs 12 through 52 of their complaint, plaintiffs contend that the defendants have engaged in a decade-long practice of disparagement by means of a website known as the "Elephant's Debt."

As against defendant Julie Stern Roys ("Ms. Roys"), plaintiffs seek injunctive relief pursuant to their Deceptive Trade Practices Act claims (Counts I and II) and damages pursuant to

their defamation *per quod* claim (Count IV). However, all of their claims against Ms. Roys are either procedurally (Count VI) or substantively (Count I, II and IV) deficient and must be dismissed. Accordingly, Ms. Roys prays for an Order from this Court dismissing Counts I, II, IV and VI.

ANALYSIS

I. Legal Standards For A Motion To Dismiss.

A Section 2–615 motion to dismiss attacks the legal sufficiency of a complaint based on facial defects. *City of Chicago v. Beretta U.S.A. Corp*., 213 Ill.2d 351, 364, 821 N.E.2d 1099 (2004). All well-pleaded facts and reasonable inferences that can be drawn from those facts are accepted as true. *Bryson*, 174 Ill.2d at 86, 672 N.E.2d 1207. While the Court interprets the allegations in the complaint in the light most favorable to the plaintiffs, *Wakulich v. Mraz*, 203 Ill.2d 223, 228, 785 N.E.2d 843 (2003), the Court cannot accept as true conclusions unsupported by specific facts. *Pooh–Bah Enterprises, Inc. v. County of Cook*, 232 Ill.2d 463, 473, 905 N.E.2d 781 (2009); *Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 17, 959 N.E.2d 728 (a motion to dismiss admits well-pleaded facts, but that "conclusions of law and conclusory factual allegations not supported by allegations of specific facts are not deemed admitted" (internal quotation marks omitted)).

II. Plaintiffs' Deceptive Trade Practices Act Claims Fail As A Matter Of Law.

A. Plaintiffs Have Plead Defamation, Not Commercial Disparagement.

Defamation and commercial disparagement are two distinct causes of action. *Allcare, Inc. v. Bork*, 176 Ill.App.3d 993, 1000, 531 N.E.2d 1033, 1037 (1st Dist. 1988):

> Defamation lies when a person's integrity in his business or profession is attacked while commercial disparagement lies when the quality of his goods or services is attached.

Allcare, Inc., at 1000, 531 N.E.2d at 1037.

The case of *Crinkley v. Dow Jones & Co.*, 67 Ill.App.3d 869, 385 N.E.2d 714 (1st Dist. 1978), is instructive here. In *Crinkley,* the plaintiff was a top officer of G.D. Searle & Company. He claimed that the defendant made false statements that plaintiff was involved in payoffs to agents of foreign governments. The Court held that the statement at issue did not give rise to a cause of action for commercial disparagement because, while it may have imputed to plaintiff want of integrity in his business, it had not disparaged the quality of his services as an executive. *Crinkley*, at 876-77, 385 N.W.2d at 719-20. The Court then noted that defamation and commercial disparagement are two distinct causes of action.

Here, Harvest Bible Chapel's services "are in the ministry and fellowship it provides and the spiritual message it delivers." (Compl. ¶ 139) In addition, "the duty and mission of Harvest and its pastors to teach and spread the Gospel and to equip their followers to do the same." (Compl. ¶ 141) However, none of the alleged disparaging statements in any way attack the quality of the services rendered by Harvest or the integrity of the teaching and preaching or equipping performed by its pastors and specifically plaintiff James MacDonald. (Compl. ¶¶ 61 - 131)

By contrast, all of the alleged false statements contained in plaintiffs' complaint are directed at decisions or personal conduct and judgment exercised by the plaintiffs, which "allegedly" amount to an attack on their integrity in their profession. (*See* Compl. ¶¶ 61 - 131) For example, plaintiffs claim that "[t]he ED website posted an article that falsely alleged that James S. MacDonald was under-reporting his present compensation." (Compl. ¶ 70) Just as in *Crinkley*, this statement may impute a want of integrity in his profession, but it does not disparage the quality of MacDonald's services as a pastor.

Other examples include:

- "The ED falsely portrays James S. MacDonald as being financially irresponsible and unresponsive to the direction of the Elders." (Compl. ¶ 72);
- "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. ¶ 75);
- "The ED website falsely wrote that James S. MacDonald is above reproach and is a lover of money, evidencing an underlying character problem which disqualifies him from ministry." (Compl. ¶ 77);
- "The ED website negligently reported the false allegation that James S. MacDonald had a gambling problem and 'has been disciplined a few times by his Elders in the past 10 years for this issue in his life.'" (Compl. ¶ 79)[1]

There are literally scores of examples that follow this line – accusations about what James S. MacDonald did and then claiming harm based on the inference concerning MacDonald's integrity. (*See* Compl. ¶¶ 85, 86, 91, 92, 107, 114, 165). As in *Crinkley*, the statements may constitute defamation, which will be addressed below, but they do not lie as commercial disparagement actionable under the Deceptive Trade Practices Act. *Allcare, Inc.*, at 1000, 531 N.E.2d at 1037.

Accordingly, defendant Roys moves to dismiss Counts I and II of the Complaint for violation of the Deceptive Trade Practices Act because the allegations do not amount to commercial disparagement.

III. Plaintiffs' Defamation Claim Against Ms. Roys Must Be Dismissed.

[1] The Complaint states: "The ED website falsely equates poker with gambling…" (Compl. ¶ 80) Poker is gambling and to suggest otherwise is nonsense.

Count IV of plaintiffs' complaint attempts to allege a defamation *per quod* claim against Ms. Roys.

A. The Legal Standard for Defamation *Per Quod*.

A statement is defamatory if it tends to harm a person's reputation to the extent that it lowers that person in the eyes of the community or deters others from associating with that person. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill.2d 558, 579, 852 N.E.2d 825 (2006). Statements may be considered defamatory *per se* or defamatory *per quod*. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill.2d 1, 10, 607 N.E.2d 201 (1992). A statement is defamatory *per se* if its defamatory character is obvious and apparent on its face and injury to the plaintiff's reputation may be presumed. *Owen v. Carr*, 113 Ill.2d 273, 277, 497 N.E.2d 1145 (1986). In a defamation *per quod* action, damage to the plaintiff's reputation is not presumed. Rather, the plaintiff must plead and prove special damages to recover. *Bryson v. News America Publications, Inc.*, 174 Ill.2d 77, 103, 672 N.E.2d 1207 (1996). Here, plaintiffs only allege a claim of defamation *per quod* against Ms. Roys.

B. Plaintiffs Have Failed To Plead Viable Defamation *Per Quod* Claim.

Plaintiffs have made scores of allegations detailing allegedly disparaging statements made over the course of ten (10) years on a website known as the "Elephant's Debt." (Compl. ¶¶ 61 through 115) Several of these allegations characterize the false statements as "opinions," (Compl. ¶¶ 66, 68, 69), and therefore are not actionable. The vast majority of the allegations concerning statements made on the Elephant's Debt website are plainly opinions.

Notwithstanding the plethora of allegations concerning statements contained in the Elephant's Debt's website, plaintiffs' defamation *per quod* claim against Ms. Roys is not based on

any of those statements. Rather, plaintiffs base their defamation claim against Ms. Roys upon other, unpled statements that Ms. Roys allegedly made on or after March 1, 2018:

> On or about March 1, 2018, to the date of filing, Defendant Roys has in reckless disregard for the truth published to third-parties false statements about Harvest Bible Chapel and James S. MacDonald. In these false statements, Defendant Roys has made assertions that James S. MacDonald has a gambling problem and cannot be trusted with finances. This has damaged both Harvest Bible Chapel and James S. MacDonald because members, viewers, and listeners of the church and related ministries believe the false and negligent publications of the Defendant and lose trust in the message of the church and James S. MacDonald and thereby the church and James S. MacDonald lose the financial support of these individuals.
>
> * * *
>
> As a direct and proximate result of Defendants Roys' false and malicious claims, Plaintiff Harvest Bible Church has suffered damage and continues to suffer damages.

(Compl. ¶¶ 178 and 180.)

These allegations are insufficient to support a defamation *per quod* claim against Ms. Roys.

First, the actual defamatory statement(s) has not been pled or identified with enough specificity as to determine whether the statement is merely opinion or a statement of fact. Statements about whether a person "has a gambling problem" or "cannot be trusted with finances" sound like opinions, not facts. Given that plaintiffs' complaint is replete with opinion statements made by the other defendants, the actual statements must be pled to determine whether they are actionable as a matter of law.

Second, plaintiffs have failed to allege to whom the statement(s) was published or the means of publication. Such facts are crucial to the causation and special damages elements of plaintiffs' defamation claim against Ms. Roys.

Third, plaintiffs have only made conclusory statements as to causation and specific damages. These conclusions are not supported by well pleaded facts. As a consequence, they are

not true for the purposes of this motion to dismiss and they are insufficient to support a viable claim for defamation *per quod*. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31.

Finally, it is unclear which plaintiff is asserting the claim for specific damages against Ms. Roys. On one hand, Count IV indicates that all the plaintiffs are asserting the claim against Ms. Roys. (Compl. at 42) Yet, the only allegation as to who suffered damages is: "Plaintiff Harvest Bible Church has suffered damage and continues to suffer damages." (Compl. 180) This lack of clarity as to which plaintiff is asserting the defamation claim highlights a dispositive flaw in plaintiffs' pleading. The alleged disparaging statement(s) concerns James MacDonald, but it has not caused James MacDonald specific harm or pecuniary loss. *Id.* Conversely, the alleged disparaging statement(s) does not concern Harvest Bible Church, but it has caused Harvest unspecified harm or unspecified pecuniary loss. *Id.* This is a legal impossibility. A defamatory statement as to one person cannot cause pecuniary loss to another person.

Accordingly, Count IV fails to state a claim against Ms. Roys upon which relief can be granted. It should be dismissed.

IV. Count VI Fails To State A Cause Of Action.

Count VI is titled "TRO AND INJUNCTION." (Compl. at 45)

The allegations in Count VI articulate the elements of injunctive relief and set forth opinions as to why harm caused by false statements about people engaged in religious ministries undermines the interests of the entity. (Compl. ¶ 193-197) However, a "TRO" and an injunction are remedies, not causes of action. *Town of Cicero v. Metropolitan Water Reclamation District of Greater Chicago*, 2012 Ill App (1st) 112164, ¶ 46, *quoting, Walker v. Bankers Life & Casualty*

Co., 2007 W.L. 967888 *4 (N.D.Ill. March 28, 2007)("injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted.")

Count VI merely articulates remedies and not a separate and distinct cause of action. In junctive relief is sought in the prayer for relief as to Counts I and II, so Count VI is both incomplete and redundant. (Compl. at 31 and 33). Therefore, Count VI must be dismissed for failure to state a claim upon which relief can be granted.

CONCLUSION

WHEREFORE, defendant Julie Stern Roys prays for an Order from this Court dismissing Counts I, II, IV and VI of plaintiffs' complaint, and awarding such relief as this Court deems just and proper.

Dated: November 14, 2018

Respectfully submitted,

_/s/Charles L. Philbrick_____
Charles L. Philbrick
RATHJE WOODWARD LLC
300 E. Roosevelt Rd., Suite 300
Wheaton, IL 60187
630-668-8500
cphilbrick@rathjewoodward.com

Attorneys for Defendant Julie Stern Roys

CERTIFICATE OF SERVICE

I, Charles L. Philbrick, an attorney, certify that on November 14, 2018, I served a true and correct copy of Defendant Julie Stern Roys" Motion to Dismiss Plaintiffs' Complaint via electronic transmission upon:

Michael J. Young
Law Office of Michael J. Young
9842 Roosevelt Road
Westchester, IL 60154
mike@winwithyoung.com

Thomas P. Scherschel
SmithAmundsen LLC
3815 E. Main Street
Suite A-1
St. Charles, IL 60174
tscherschel@salawus.com

Mark H. Horwitch
Tabet DiVito & Rothstein LLC
209 S. LaSalle Street, 7th Floor
Chicago, IL 60604
mhorwitch@tdrlawfirm.com

/s/ Charles L. Philbrick
Charles L. Philbrick