SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

STEPHEN C. SIEBER, *et al.,*

v. 2007 CA 2549

BROWNSTONE PUBLISHING CO., *et al.*

MEMORANDUM OPINION AND ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENT OF ALL DEFENDANTS, DENYING PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT, and GRANTING POOLE'S MOTION FOR SUMMARY JUDGMENT ON HIS COUNTERCLAIM

The purpose of this memorandum opinion is to set forth the Court's rulings with respect to summary judgment motions filed by all of the parties herein. This lawsuit is essentially a tort case involving claims of libel and intentional interference with contractual relations on the part of the Brownstone Publishing Co., The Washington Post Company, and other individual defendants. The plaintiffs also rely upon a civil conspiracy theory that is linked to these torts. The parties long ago completed discovery and have argued very detailed, dispositive motions. Having reviewed the entire record herein, this Court is firmly convinced that the defendants are entitled to judgment in their favor on all of the claims brought by the plaintiffs. The plaintiffs, for the reasons that the Court will elucidate herein, are not entitled to summary judgment on any claim. Defendant Poole has demonstrated that he is also entitled to summary judgment on his Counterclaim.

The plaintiffs herein are Stephen C. Sieber, a home improvement contractor, and his company, an entity that he describes as a "limited partnership" organized under the District of Columbia Code. The company is known as SCS Contracting Group LP (hereinafter "SCS"). The partnership is represented by counsel, and Sieber is *pro se*.

The lead defendant is Brownstone Publishing Co., doing business as Angie's List (hereinafter "Angie's List"). Plaintiffs also have sued The Washington Post Company (a local newspaper, hereinafter "the Post"), John Kelly (a post writer who produces a column known as John Kelly's Washington), and John W. Poole, an individual District of Columbia citizen who happens to be employed by the Post in a non-writing capacity. Various other named defendants (such as Monica Hammock and Edwin Castillo) are no longer in the case for various reasons.[1] Nonetheless, the allegations against some of them are useful in explicating the context of the case.

Angie's List is a business headquartered in Indianapolis, Indiana. It is a consumer-oriented organization that collects customer satisfaction ratings and reports on service companies from its members. The members pay a fee to access the Angie's List website and to post their own reports on this website if they choose to do so. The Internet website indisputably has many members in the District of Columbia. Information appearing on the Angie's List site is important to the allegations herein. Angie's List also publishes a magazine, and one article from that magazine is also the subject of this lawsuit.

[1] In a praecipe filed on October 7, 2008, the plaintiffs dismissed their causes of action against defendants Monica Hammock and Edwin Castillo. In a Consent Order filed by the Hon. Ronna Lee Beck on November 18, 2008, the claims of the plaintiffs against defendant Todd Johanesen were dismissed.

In response to certain dispositive motions of the defendants, the plaintiffs had suggested that with additional discovery (discovery by then being long ago closed), they could develop admissible evidence that would defeat the defendants' motions. Much to the consternation of the defendants and over their objections, this Court exercised its discretion to permit the tardy depositions of John Poole, Angela Hicks, and Paul Pogue (Pogue and Hicks being employees of Angie's List). At the close of oral argument on the summary judgment motions, this Court specifically directed all parties to file a Supplemental Memorandum to pinpoint what, if anything, emerged from those depositions that would be helpful to the Court in adjudicating the summary judgment issues. In an order filed on June 29, 2009 after the oral argument, this Court instructed the parties as follows:

> Such memorandum shall address the sole question of whether and to what extent any of the depositions produced admissible evidence that supports or challenges any party's dispositive motion. The parties shall quote from the deposition transcripts as needed and may attach excerpts from the transcripts as attachments. These memoranda are not to be used by any party for injecting new claims or counterclaims into the case. Counsel shall only illustrate how and to what extent the deposition testimony [of Poole, Pogue, and Hicks] strengthens or weakens any party's pending summary judgment motion.

Order of June 29, 2009 at 2 (emphasis added).

Ultimately, nothing in those tardy depositions makes any difference where the summary judgment motions are concerned. The net effect of those post-argument filings is that the depositions underscore fatal weaknesses in the plaintiffs' case.

The record herein is quite full. The parties all have provided exhaustive discovery materials, affidavits, and ample legal citations on all aspects of their motions.

Nonetheless, there is no need for the Court to match the same volume of words in order to rule on the core issues herein. Instead, the Court will distill the essence of why the claims of the plaintiffs are legally and factually insufficient to proceed to trial. Moreover, as to the Counterclaim of defendant Poole, the Court will explain succinctly why he is unquestionably entitled to a judgment in his favor.

ALLEGATIONS OF THE PLAINTIFFS

The causes of action are set forth in two distinct Counts in the plaintiffs' Second Amended Complaint filed on April 9, 2008 (for ease of reference, hereinafter "Compl.") are: (1) "Tortious Interference with Contractual Relations" and (2) "Libel." The plaintiffs specifically contend that Count I was effectuated through a conspiracy among the defendants. The plaintiffs weave together several discrete episodes as the factual underpinning of the two Counts. The allegations involving the defendants are summarized in the following synopsis.

The Episode with Plaintiffs' Customers Castillo and Hammock. Two citizens (spouses Monica Hammock and Edwin Castillo) entered into a contract with SCS to build a three story addition onto their row house in the District of Columbia. When they failed to make payments as required under the contract, Sieber put them on notice that work would cease if payments were not made. Castillo and Hammock subsequently approached an employee of SCS and hired him to complete the job personally after termination of the contract with the plaintiff. Later, they complained about SCS to the Better Business Bureau and the District of Columbia government. Plaintiff Sieber surmised that they did so as a tactic for refusing to complete payment of the money that

they still owed. Ultimately, neither the District of Columbia nor the Bureau took any adverse steps against the plaintiffs as to these customers.

The plaintiffs allege that Castillo and Hammock, as subscribing members of Angie's List, submitted negative comments about the plaintiffs and that the comments were placed on the Angie's List website without attribution of Castillo or Hammock. The core of their March 22, 2006 posted comment was: "Awful – run away quickly. SCS basically takes your money and runs without delivery [*sic*] what they promise . . ." Compl. at ¶38.

The plaintiffs theorize that Hammock and Castillo then took certain actions against the plaintiff, allegedly in a fit of pique about the lack of any enforcement action by the District of Columbia and by the Better Business Bureau. Such actions allegedly included conspiring with others (including The Post, Kelly, and Poole) to destroy Sieber's business through the Angie's List website and magazine and through the Post newspaper.

Plaintiffs allege that Angie's List never allowed Sieber to respond on the site to the unsigned negative reports that had been posted there.

The Episode with Defendant John W. Poole. Another scenario unfolded with respect to defendant Poole. On April 29, 2006, Poole entered into a contract with SCS for construction services. Under that agreement, this home improvement company was to convert the basement of Poole's District of Columbia residence into a rental apartment. Compl. at ¶¶ 45-46. According to the plaintiffs, Poole attempted to complete the project without a proper permit and, for reasons allegedly caused by Poole, the project went poorly. The plaintiffs allege that Poole terminated his contract with SCS on or about

August 15, 2006, after learning of Hammock's negative report posted on the Angie's List website. Compl. at ¶52.

Noting that Poole was employed by the Post, the plaintiffs allege that Poole "contacted Hammock and offered to join with her in a conspiracy to defame Plaintiffs using Poole's connections within the post." Compl. at ¶55. Further, the plaintiffs allege that Poole supplied negative information about Sieber to Hammock and that this convinced Hammock to sue Sieber for $83,000.00 "some three years after Hammock's failure to pay Plaintiffs for the deck Plaintiffs had constructed and Plaintiffs' subsequent cessation of work on the project." Compl. at ¶56.

Further, the plaintiffs allege that on January 4, 2007, after seeing an SCS sign in his neighborhood, Poole posted a negative announcement about the plaintiffs on the electronic bulletin board of the Monroe Street Association. That announcement allegedly read as follows:

> Neighbors, I was disturbed this evening to see a sign for SCS Contracting outside the house at 1525 Monroe St. I wanted to let you know – the resident of 1525 – and/or well intentioned neighbors – that this company is very, very bad news. There are at least three lawsuits pending against them in the Mount Pleasant area that I know of – one of which involves work they performed at my house. I have since learned that they have a record of shoddy, borderline criminal activity that dates back over 15 years. If only I knew this before I hired them. I hope someone can gain from my misfortune. Sincerely, John Poole (1429 Monroe) – jp.

Compl. at ¶66.

The plaintiffs allege that Poole delivered a copy of his announcement to Phillip Thomas, at the Thomas residence on Monroe Street, N.W. in Washington, D.C. Compl.

at ¶68. According to the plaintiffs, Thomas informed Sieber of this delivery. Compl. at ¶69.

When Sieber called Poole to confront him about the announcement, Poole allegedly told Sieber that he was "well connected in the media and that if the Plaintiffs did not refund the total amount of all monies paid to the Plaintiffs by Poole in connection with the Poole Contract, that Poole would get the media involved and further expose the fact that Plaintiffs had appeared on Primetime Live [and that Sieber was] dubbed the 'Contractor from Hell' in 1991." Compl. at ¶ 71. Apparently, this is the alleged statement that at least partly fuels the conspiracy allegation of the plaintiffs.

The Plaintiffs' Interaction with Angie's List. As a practical matter, the plaintiffs' gripe with Angie's List focuses on this defendant's failure to give Sieber what he believed to be a sufficient opportunity to respond to "negative unsigned phantom reports about SCS that had been posted on the Angie's List website." Compl. at ¶74. Sieber alleges that he made several attempts to submit material for posting on the site, in defense of himself and his company.

First, Sieber claims that he reached a customer service representative named Thomas Meadows, who told him that he could post a response. He asserts that on February 13, 2007, he submitted "the first of three attempted responses to the member reports of Hammock and Poole to Angie's List." Compl. at ¶81. On February 14, 2007, Meadows allegedly told Sieber that his first response would not be posted because it did not conform to the policies governing the Angie's List website. Compl. ¶83. Sieber acknowledged that he was "enraged about the way he was being treated by Angie's List,

so in the content of Plaintiffs' first response [he] defended the reputation of plaintiffs and attacked the business principles of Angie's List." Compl. at ¶82.

By his own admission, Sieber's second response, submitted by electronic mail on February 15, 2007, was "a little less inflammatory to Angie's List" but was rejected for the same reasons. Compl. at ¶¶ 87-88.

The third attempt of Sieber to respond to the negative postings evolved after he was contacted directly on February 20, 2007 by Paul Pogue, a staff writer for Angie's List. According to Sieber, Pogue told him that the Angie's List Magazine was preparing an article for publication on the subject of reports posted specifically by Hammock and Poole concerning the plaintiffs. Compl. at ¶ 94. Sieber alleges that he granted an interview to Pogue only upon the specific condition that a summary of that interview would be published "as a response opposite the member reports of Hammock and Poole along with one of the first two responses that Plaintiffs had submitted to Angie's List." Compl. at ¶99. He also alleges that Pogue agreed that SCS "would be allowed to respond [to the consumer comments] on the Angie's List website within a week from the date of the telephone interview and on that basis Sieber granted an interview to Pogue." Compl. at ¶100.

After giving an interview that Sieber says was highly detailed (including an invitation to visit current work sites to meet current customers), Sieber claims that Angie's List totally reneged on its promise. Compl. at ¶120.

Plaintiff Sieber specifically complains that he received on February 27, 2007 an unsolicited phone call from a business associate named Dr. Allen Bissell, who alleged that an unnamed reporter in Indiana "had made defamatory statements about Plaintiffs

and had attempted to put words in Dr. Bissell's mouth by attempting to convince Dr. Bissell to make negative and untrue statements about Plaintiffs." Compl. at ¶121.

When Sieber phoned Pogue to complain, he was met with an instruction not to call either Pogue or Meadows again but instead to call a certain law firm. Plaintiff alleges that the firm never returned his call. He further alleges that on February 28, 2007 Angie's List published a "Consumer Alert" that was distributed to all of its members on its Internet website. The Alert stated the following:

> Several Angie's List members have contacted us recently with serious complaints about their experiences with the SCS Contracting Group LP in the Baltimore and Washington DC area. Due to the serious nature of these complaints, we wanted to alert you right away.

Compl. at ¶129.

According to the plaintiffs, the Alert also stated, "[Angie's List] will be sharing our findings with local authorities and will update you about SCS in the coming weeks." Compl. at ¶132. The plaintiffs contend that the Alert concluded with the comment that "incidents like this highlight the value Angie's List offers. Please continue to check the listing before you make hiring decisions and make sure you report on the service quality you receive. By sharing your experiences, you can save other members from a negative experience. . ." Compl. at ¶134.

The plaintiffs contend that they never received any straightforward answer to Sieber's query as to why this Consumer Alert had been published. Compl. at ¶¶ 149-152.

Sieber alleges that another attempt to submit a response to Angie's List occurred on March 5, 2007, when he submitted a "point-counter point" formal statement that responded directly to the allegations made by Hammock on the Angie's List website. He

says that he was careful, this time, not to attack the Angie's List business model. Compl. at ¶ 193. Nonetheless, his submission was not posted on the Internet by Angie's List.

The Allegations Against Defendants Kelly and the Washington Post. The plaintiffs contend that the Washington Post and its writer, John Kelly, published three different articles (all of which were Kelly columns) and that all three were specifically intended to ruin Sieber's business and his personal reputation. Sieber theorizes that the Post and Kelly were aware that Angie's List was a "big advertiser" of the Post and that they purposely published negative articles about the plaintiffs in order to promote the image and profits of Angie's List. Compl. at ¶155.

The articles were published after John Kelly personally contacted plaintiff Sieber on or about March 2, 2007. At that time, Kelly sought to interview Sieber and he was able to do so several times. According to Sieber, Kelly specifically wanted to get Sieber's responses to the allegations of Hammock and Poole on the Angie's List website. Compl. at ¶161. In the Amended Complaint, Sieber relates the details of what he allegedly told Kelly, including telling Kelly that he planned to file libel suits against Hammock and Poole. Compl. at ¶184. Sieber confirms in his own Complaint that he did in fact file such suits in March of 2007. Compl. at ¶199.

The plaintiffs allege that the Post and Kelly published three columns containing certain language that is the basis for the claims against these two defendants. The columns each are described as follows.

The Column of March 13, 2007. The title of this article was *Homeowner's Web Gripe Draws Contractor Lawsuit*. A full copy of the article is in the record as

Attachment A, appended to John Kelly's Declaration, and filed in Support of his Motion for Summary Judgment.

The column specifically reported that Hammock and Castillo had posted complaints about SCS on Angie's List, based upon their experience with this company in 2003. The column reported the grade that Hammock gave SCS. It was "an F rating in six categories" and the column reported that she had described the company as "awful." Significantly, the column further explained that Sieber had sued Hammock in the Superior Court of the District of Columbia for $6 million in damages, "charging that she made false and defamatory statements on Angie's List with the intent of damaging his reputation." Kelly also reported in this column that Sieber was "also suing John Poole, another disgruntled client, who sent warning about SCS to a neighborhood message group and posted this on Angie's List: 'Absolutely terrible on all counts. Avoid!'"

Without question, Kelly included in this column details of Sieber's side of the matter, including Sieber's rhetorical question, "Should Angie's List be able to become a finder of fact and create innuendo and create scare tactics and all of this?" Noting that Sieber denied Hammock's allegations, Kelly also quoted Sieber as saying, "What has happened is a great contractor like myself is subject to this gossip, innuendo, rumor – all these things that homeowners talk about. And it's not fair."

Other factually true information was included in this column. For example, Kelly made reference to the ABC television network's "Primetime Live" broadcast and to Sieber's 1992 settlement with the Montgomery County Office of Consumer Affairs, in which he agreed to cease doing home improvement work in that County for three years.

In addition, this column reported that Angie's List "has been conducting an investigation of SCS," and that Angie's List "sent an e-mail warning to its members and yesterday issued a news release announcing a 'consumer alert' about the company."

During discovery, when asked to provide Admissions, Sieber admitted that he called John Kelly the day after this particular column was published to thank him for writing a "fair and balanced article" and to tell him that "business is booming."

The Column of March 14, 2007. This second column is reproduced in its entirety as Exhibit B, attached to the Kelly's Declaration. It is entitled, *To Pick a Contractor, Play Detective*.

This column never mentioned Sieber or SCS by name at all. The thrust of the column was a discussion of how a person should go about selecting a contractor. The only connection of this article to the plaintiffs was a brief reference to "a local contractor" who "has filed [libel lawsuits] against two of his customers, saying that they defamed him by posting negative comments on Angie's List (www.angieslist.com), a Web site of user-generated reviews of service providers."

John Kelly included a brief opinion when he wrote that "[t]he aggrieved contractor made some interesting points" about an anonymous Internet forum like Angie's List, but that "[o]f course, his points would carry more weight if he hadn't had a well-publicized run-in with disgruntled customers 17 years ago."

The Column of May 3, 2007. The third John Kelly column is provided in its entirety as Exhibit C attached to Kelly's Declaration. The article is entitled, *Who Has the Last Word in Consumer Debate?*

The focus of the column was the litigation between the plaintiffs and certain former clients. There were multiple quotes from Sieber's court filings. Kelly wrote, "You can read the lawsuit yourself at www.angiegotsued.com, a site Sieber put up. Basically, Sieber's argument is that Angie's List trumped up the accusations against his company as a way of luring new customers."

Quoting Sieber's allegations in the original Complaint herein, Kelly wrote, "The alert, Sieber wrote in his lawsuit, 'was used solely as a public relations ploy to gain more market exposure and revenue for Defendants, at the expense of the business and reputation of SCS Contracting Group and Stephen C. Sieber personally.'"

Kelly quoted Sieber as saying to him, "I'm standing up for all the service providers who this will not happen to, ever."

Kelly admonished his readers that "[c]onsumers can't rely solely on sites such as [Angie's List] when picking a contractor."

In addition, Kelly reported in this column that "[a]bout a half-dozen of Sieber's ex-customers have come together as a sort of victims support group, meeting to compare notes on their experiences and urging local officials to take action against the contractor." Kelly added that the District of Columbia Office of Consumer Protection and the Attorney General's Office were inquiring into complaints from SCS customers.

Kelly reported Sieber's theory that Angie's List "set out to torpedo him." He quoted Sieber as saying, "They ruined a company I was going to leave to my son. It's been crippled. That's the truth."

Kelly ended this column by stating, "Whether that's the whole truth and nothing but the truth could be up to a court to decide." Several months after the publication of

this column, John Kelly and the Post were added as defendants to the lawsuit against Angie's List and former customers.

The Counterclaim of John W. Poole. The Counterclaim of John W. Poole is a demand for a money judgment in the amount of $18,300 plus 6% per annum interest, based upon an arbitration award for that same amount against SCS. The subject of the arbitration was Poole's claim against plaintiff SCS, for restitution arising out of a home improvement project in which SCS contracted to remodel the basement of Poole's residence. A copy of the arbitrator's decision is attached as Exhibit C to Poole's Motion for Summary Judgment.

So far, SCS has not paid the arbitration award, and Poole has made a demand for a money judgment in conformity with the arbitrator's decision.

THE BASIC LAW REGARDING SUMMARY JUDGMENT

Rule 56 of the Superior Court Civil Rules governs the litigation of summary judgment motions. The Rule itself provides in pertinent part:

> When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations of denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Super. Ct. Civ. R. 56(e) (emphasis added).

As to the legal sufficiency of affidavits, Rule 56(e) requires that affidavits "shall be made on personal knowledge, shall set forth such facts as would be admissible in

evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." *Id*. (emphasis added).

The decision to grant summary judgment is appropriate if the pleadings, depositions, interrogatories, admissions, and any affidavits in the record demonstrate that there are no material factual issues in dispute and if the moving party is entitled to judgment as a matter of law based on the uncontested, material facts. *Townsend v. Waldo*, 640 A.2d 185, 187 (D.C. 1994). After the movant makes an initial showing that he or she is entitled to judgment as a matter of law, the non-moving party must demonstrate that there is a genuine issue of material fact that requires a trial. *Id.*

The party opposing summary judgment is entitled to the benefit of all favorable inferences which may reasonably be drawn from the evidentiary materials and uncontested facts. *Colbert v. Georgetown Univ*., 641 A.2d 469, 472 (D.C. 1994) (en banc); *Beard v. Goodyear Tire & Rubber Co*., 587 A.2d 195, 198 (D.C. 1991).

In a nutshell, summary judgment is properly granted only "if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the nonmoving party, (3) under the appropriate burden of proof." *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979), *cert. denied*, 444 U.S. 1078 (1980).

The quality of the response of the non-moving party is pivotal. The Court of Appeals has reiterated, "Mere conclusory allegations on the part of the non-moving party are insufficient to stave off the entry of summary judgment." *Musa v. Continental Ins. Co*., 644 A.2d 999, 1002 (D.C. 1994), citing *Graff v. Malawer*, 592 A.2d 1038, 1040 (D.C. 1991). Allegations that are not in the form of an affidavit or sworn statement do

not create a triable issue of material fact. *Beard v. Goodyear Tire & Rubber Co*., *supra*; *see also Cloverleaf Standardbred Owners Ass'n v. National Bank of Washington*, 512 A.2d 299, 300 (D.C. 1986) ("summary judgment motions (and oppositions) must be 'done by the numbers' "). The District of Columbia Court of Appeals has stated that when the movant has submitted one or more affidavits or other admissible documents in support of a motion for summary judgment, the adverse party may not rest on allegations or denials of his pleadings, but must set forth specific facts showing a genuine issue for trial. *Mossley v. Second New St. Paul Baptist Church*, 534 A.2d 346, 349 (D.C. 1987) (per curiam).

The United States Supreme Court has emphasized, "The mere existence of a scintilla of evidence . . . will be insufficient [to overcome summary judgment]; there must be evidence on which the jury could reasonably find for the [non-moving party.]." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 252 (1986) (emphasis added). The objective reasonableness of a party's case is an important ingredient to a summary judgment analysis. The Supreme Court's articulation of summary judgment principles compels a trial court to look closely at whether a plaintiff's case can withstand realistic scrutiny. The Supreme Court has stated, "There is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson v. Liberty Lobby, Inc*., *supra*, at 249-50 (citations omitted) (emphasis added).

ANALYSIS OF THE MOTIONS REGARDING THE LIBEL COUNT

Considering the material facts that are not in dispute, the lack of admissible evidence that would be necessary to entitle the plaintiffs to a trial, and the applicable case law, the Court makes the following conclusions regarding the merits of the Motions for Summary Judgment as to the libel allegations.

Clarification as to Dismissed Allegations. It is imperative for the Court to emphasize precisely what "libel" claim is or is not before this Court for adjudication. The plaintiffs have assiduously created confusion on this subject, in their summary judgment filings, during oral argument, and in their post-argument Supplemental Memoranda.

The plaintiffs herein filed a series of Complaints in which they use hundreds of paragraphs of narrative assertions and musings in order to explain the origins of their claims. In doing so, they liberally seasoned those paragraphs with cascading references to libel and defamation in writings and publications, without ever specifying a corresponding cause of action. Instead, the only discrete cause of action for libel concerned one extremely narrow matter involving a mysterious neighborhood flyer that is denominated as Count II. This approach to pleading yields a great deal of material in the Second Amended Complaint that appears to serve as a claim that Angie's List, the Washington Post, John Kelly, and John W. Poole (each in his or its own way) has committed the tort of libel.

This Court is constrained to note that the prior calendar judge who presided over this litigation, the Hon. Ronna L. Beck, has explicitly sorted through the true status of the aforementioned, narrative accusations of libel. The issue of whether the plaintiffs would

be allowed to add a belated cause of action for libel based expressly upon any of defendants' publications or writings was firmly adjudicated – against the plaintiffs. At this juncture, there is no such claim in this case at all, no matter how much and in what way the plaintiffs continue to talk about it or write about it. The following portions of the record reflect those rulings.

First, in an order filed June 18, 2008, Judge Beck granted Motions to Dismiss the libel claims, filed on behalf of Angie's List, the Washington Post, and John Kelly. The libel claims in dispute were those implied throughout the hundreds of narrative paragraphs of the Second Amended Complaint (filed on April 9, 2008). In those paragraphs, plaintiffs described their factual allegations, which mentioned libel many times. However, on the face of the Second Amended Complaint, they had set those preliminary allegations apart from the two specific causes of action (intentional interference with contracts and libel relating only to a flyer left in a person's home mailbox).

Judge Beck observed that in her order of March 31, 2008, she granted plaintiffs' motion for leave to amend their complaint but specified that the proposed Second Amended Complaint that was attached to their motion would not be accepted for filing. Instead, Judge Beck wrote that the proposed, Second Amended Complaint did not comply with Rule 11 and included substantive changes that were not authorized by the Court.

Judge Beck specified in her order dismissing those unauthorized claims that "if Plaintiffs decide they wish to pursue the libel claims, they must promptly file a motion seeking to amend the complaint. Any such motion must address the factors that the court

is to consider in deciding whether to permit the amendment. . . . In addition, the motion shall be accompanied by a proposed amended complaint, which should take into account The Post's and Angie's List's position about the deficiencies of the libel claims that are being dismissed." In granting the Motions to Dismiss, those non-flyer libel allegations that are strewn throughout the Second Amended Complaint were stricken by Judge Beck. The plaintiffs never complied with Judge Beck's roadmap directive as to how to obtain judicial approval to add non-flyer libel claims to their case. The Second Amended Complaint that was actually filed was in direct contravention of Judge Beck's March 31, 2008 order, because it boldly included libel allegations that had no connection whatsoever to the flyer incident. The plaintiffs openly flouted Judge Beck's order.

Second, in an order filed on September 15, 2009, Judge Beck denied the motion filed by Stephen C. Sieber for leave to file another "Second Amended Complaint." This is the confusing manner in which his motion was styled, even though any newly-authorized Complaint actually would have been the Third Amended Complaint.[2] What Sieber proposed to do was to add an explicit claim for libel as a new (and third) cause of action. Previously, Sieber had represented that he had specifically chosen to proceed on an intentional interference claim as the underpinning of his civil conspiracy allegation. Nonetheless, he changed his mind and sought to add another round of allegations of libel to the original libel claim that concerned only a flyer that was distributed in a certain neighborhood.

For a variety of sound reasons, Judge Beck denied Sieber's motion and thus eliminated once again any claims for libel that might have been founded on the three

[2] The original Complaint was filed on April 10, 2007. The Amended Complaint was filed on August 10, 2007. The Second Amended Complaint was filed on April 9, 2008.

John Kelly columns, actions of other Post employees,[3] or upon any publications of Angie's List. As a practical matter, Judge Beck drew a bright line that the plaintiffs continue to ignore, *i.e.* that the only cause of action for libel that is properly in this case is the one based upon the mysterious flyer.

Openly and defiantly, in their subsequent filings and in oral argument before this Court, the plaintiffs have continued to act as if Judge Beck's rulings do not exist. They continue to brief and argue why those non-flyer allegations should go forward to trial. The defendants have objected to such arguments and have complained (understandably) of having to brief and argue subjects that they should not have to deal with at all. It is clear that the plaintiffs persist in frustrating their opponents and in totally disrespecting the rulings of Judge Beck.

Notably, Stephen Sieber filed on January 12, 2009 his individual Motion for Summary Judgment against all of the four, remaining defendants. Explicitly therein, he directed this motion to the issues of "Libel, Libel by Omission and Conspiracy that wrongfully ruined the personal reputation of Stephen C. Sieber." Plaintiff Sieber's Statement of Undisputed Facts and Memorandum of Points and Authorities in Support of Plaintiff Stephen Sieber's Motion for Summary Judgment at 3.[4] He did so, knowing that Judge Beck had eliminated any claim for libel not based upon the mysterious flyer described in Count II of the Second Amended Complaint.[5]

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[3] Apparently, for example, Sieber wanted to add a claim of libel against a Post employee for a reason that seems rather abusive of that employee, *i.e*. that she did not return his telephone calls. Judge Beck denied the request to add libel claims for this and other reasons.

[4] This document, on its face, is not paginated.

[5] In presenting oral argument on his own behalf before this Court, Sieber obliquely threatened to file new lawsuits against Angie's List and other defendants in order to skirt the rulings of Judge Beck. He evidently has concluded that since Judge Beck precluded the addition of further claims of libel herein, the self-help

In his Motion for Summary Judgment, Sieber ignores Judge Beck's ruling and complains that the Post and Angie's List have "forced their legal opinion" upon the plaintiff. Having devoted the vast bulk of his Motion for Summary Judgment in an attempt to demonstrate that the four defendants have libeled him in their publications, the content of the plaintiff's Motion is a wasteful treatment of issues that were previously eliminated.

Similarly, to the extent that the Motion for Summary Judgment filed on behalf of SCS likewise addresses "non-flyer" libel allegations, that motion also has no merit.

Nature of the Sole, Existing Libel Claim (The Mysterious Flyer). Irrespective of the plaintiffs' liberal use of the terms "defamatory" and "libel" throughout the narrative paragraphs of the Second Amended Complaint, the only pending cause of action for libel concerns an allegation for which the plaintiffs have no evidence that is linked to the defendants.

Specifically, Count II states the following:

> In early June, 2007, a statement that '[Plaintiff] Steve Sieber is a . . . criminal' was made on a flyer that was left in a residential mailbox in Northwest Washington

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remedy for such limitations is to re-file the disallowed claims under a new docket number. This approach will not work for a variety of reasons. First, it would violate Rule 11 as a purposeful tactic to evade a court order. Second, both plaintiffs have raised allegations of libel as part of their effort to prove the tort of intentional interference with contracts. Having chosen to do so, any lack of success in the present lawsuit most likely would yield *res judicata* or collateral estoppel barriers for any new attempt to sue the same defendants for the same alleged libel. Sieber pointedly urged this Court to ignore Judge Beck's rulings and to allow him, as a *pro se* party, to continue to re-plead the disallowed libel claims in a fourth Amended Complaint. Sieber says that the defendants have always been on notice of what Sieber believes to constitute libel on their part. Therefore, so he argues, they have no grounds to complain about libel allegations that were buried in the narrative portion of his earlier Complaints. Judge Beck considered that argument, and rejected it. Even *pro se* parties must adhere to basic boundaries. Sieber, unlike many *pro se* parties, is quite focused. He is fully capable of understanding how to structure a Complaint and how to present legal motions, even if their content is not meritorious. He was also capable of following Judge Beck's express directive as to how to set forth any further request to add a new claim. He simply ignored that directive. This Court, though sensitive to the tribulations of *pro se* parties, is not in any way required to serve as an unspoken advocate for Sieber or any other party. Such would be unethical. Even if the Court has the discretion to countermand Judge Beck, it would be unfair to whipsaw the defendants by doing so.

> DC. Since the flyer was left in a residential mailbox and the recipient did not know who caused it to be put there, it was circulated to one or more third parties in what appears to have been an intentional, general public distribution of such flyer. Since Mr. Sieber has no criminal record in any jurisdiction, the statement contained in the flyer that Mr. Sieber is a criminal was false, non-privileged and highly injurious to the reputation of Mr. Sieber and, by association, the reputation of SCS.

Compl. at ¶¶ 356-358 (emphasis added).

In addition, the plaintiffs make the following sweeping statement:

> Since one or more Defendants have made similar recent verbal assaults in the same neighborhood against Mr. Sieber, including one verbal assault in which one Defendant called the activities of Mr. Sieber and SCS 'borderline criminal activity', [*sic*] it is presumed that the person who circulated the Flyer or caused it to be circulated is a member of the conspiracy of Defendants described elsewhere in this Amended Complaint.

Compl. at ¶363 (emphasis added).

Responses of the Defendants as to the Flyer. For the sake of brevity, the Court need not pause to repeat the details of the various motions on this aspect of the case. All of the defendants essentially emphasize the same thing, *i.e.* that discovery has never produced one iota of evidence as to the source of the flyer or the identity of whoever composed it or delivered it. Such matters have always been a total mystery, and the plaintiffs have proffered no facts to support this claim. This claim is entirely speculative, and this is not a close question. There is no practical reason for the Court to tarry further to analyze whether the flyer was libelous, because its mere existence cannot establish a claim against any of the defendants.

Realistically, it appears that the plaintiffs have abandoned their "flyer-related" libel claim. When they filed their post-argument memoranda, they never mentioned the

flyer issue. The only inference that the Court can draw is that this claim is baseless and has always been baseless. Under the totality of circumstances, the Court is compelled to grant summary judgment in favor of all defendants on this claim.

ANALYSIS OF THE MOTIONS REGARDING THE INTENTIONAL INTERFERENCE COUNT

Elements of this Claim and the Practicalities of the Burden of Proof. The elements that a plaintiff is required to prove as to this tort are summarized succinctly by the District of Columbia Court of Appeals as follows.

> To recover in tort for intentional interference with contractual relations, the plaintiff must prove four elements: '(1) the existence of a contract, (2) [the defendant's] knowledge of the contract, (3) intentional procurement of its breach by the defendant, and (4) damages resulting from the breach.'

Sorrells v. Garfinckel's, Brooks Brothers, Miller & Rhoads, Inc., 565 A.2d 285, 289 (D.C. 1989) (quoting *Alfred A. Altimont, Inc. v. Chatelain, Samperton & Nolan*, 374 A.2d 284, 288 (D.C. 1977) (citation omitted)).

The District of Columbia Court of Appeals has adopted the well-settled principle from the Restatement (Second) of Torts that if a plaintiff can establish a prima facie case of intentional interference a trier of fact may find for the plaintiff "unless the defendant proves that his or her conduct was justified or privileged." *Sorrells, supra*, at 290. This underscores the plaintiff's burden of proving that the defendant acted not only intentionally but also "improperly." *Id.*

Even though the plaintiffs' attempt to inject additional counts of libel into this lawsuit has been foreclosed in Judge Beck's orders, the only conceivable "impropriety"

that the plaintiffs have implied is that the publications of the Post defendants were libelous. The same concept applies to Angie's List and John W. Poole, to the extent hat no other "improper" conduct is particularly defined by SCS.[6]

Without question, the plaintiff is not allowed to utilize the intentional interference count as a back-door way of seeking damages for libel without having to meet the rigorous burden of proof for proving an outright claim of libel. Where media defendants are concerned, a plaintiff alleging libel must not only prove that a published statement was false but also that it was defamatory. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986); *Kendrick v. Fox Television*, 659 A.2d 814, 819 (D.C. 1995). Without question, a plaintiff "may not use related causes of action to avoid the constitutional requisites of a defamation claim." *Moldea v. New York Times Co.*, 306 U.S. App. D.C. 1, 10-11, 22 F.3d 310, 319-20 (1994). *See* further discussion, *infra*, regarding lack of proof of "improper" conduct by the defendants.

Where Angie's List is concerned, it is important to clarify that the only plaintiff authorized to pursue the intentional interference claim against Angie's List is SCS, but not Sieber as an individual. In an order filed on July 1, 2008, Judge Beck granted relief to Angie's List as to this discrete claim by Stephen C. Sieber. Judge Beck ruled that Sieber never responded in any relevant way to this defendant's contention that Sieber is not the "real party in interest" on this claim. Thus, Judge Beck declared that this point had been conceded by Sieber. Nevertheless, because both plaintiffs write about this tort in their respective motions and memoranda, the Court herein may refer to "plaintiffs"

[6] Obviously, the plaintiff's burden to prove "improper" conduct by a defendant is not to be measured by whether the conduct was personally disagreeable to the plaintiff. Rather, a court must determine whether a defendant's conduct violated a statute or whether the defendant breached a recognized legal duty to the plaintiff.

(plural). Logically, it also makes sense that only SCS is the real party in interest where this claim concerns the Post defendants and Poole.

Based upon the considerations set forth below, well-briefed by the defendants, the Court concludes that the plaintiffs have no proof of any of the elements of this tort. Even if the plaintiff is only unable to prove one element, this is enough to justify granting summary judgment to the defendants.

Lack of Evidence as to Causation. To put this case immediately in a practical perspective, the Court must recognize as a threshold matter that the plaintiffs have no proof of causation whatsoever.

All of the defendants, in their own ways, have isolated a fundamental fact that illuminates why the plaintiffs cannot possibly prove any of the elements of this tort. Simply stated, neither plaintiff has brought forth any admissible evidence of any kind that a particular contract – with anyone – was breached because of anything that was done, said, or published by any defendant. This is the overarching reason why this tort claim must fail as a matter of law.

The Court must be mindful, as the plaintiffs are not, that intentional interference with a contract means precisely that, *i.e.* intentional interference with a specific contract between the particular plaintiff and an identifiable other person, corporation, etc. It is simply not enough to complain broadly that one's business failed or to say, retrospectively, that one's business attracted fewer customers subsequent to some action of a defendant. Yet, this is the most that the plaintiffs have to say.

They have produced no admissible evidence that any particular SCS customer breached an existing contract for a reason that is traceable (through admissible evidence)

to an intentional act of any defendant. This principle, of course, tracks the legal burden of SCS to establish the proximate cause of the breach of a particular contract (such as causing a customer to leave a contractual relationship). *Connors, Fiscina, Swartz & Zimmerly v. Rees*, 599 A.2d 47, 51 (D.C. 1991).

Herein, the plaintiffs can only fend off the defendants' Motions for Summary Judgment with admissible evidence to establish "substantial and direct causal link" between a defendant's wrongful and intentional conduct and a breach of a specific contract. *Dalo v. Kivitz*, 596 A.2d 35, 42 (D.C. 1991) (quotation omitted). The plaintiffs have no such proof.

Every defendant has set forth succinctly the fact that SCS cannot establish any causal link between any defendant's actions and any particular contract that was breached by a customer or modified at the customer's request in some way that damaged SCS. The Court accepts the points briefed by the defendant and rejects those briefed by the plaintiffs. Certain considerations are especially compelling.

First, for example, the Post and John Kelly stress that the plaintiffs have never successfully identified any customers who cancelled or modified their contracts with SCS because of anything that they read in or attributed to the Post columns. The Court uses the phrase "never successfully" because even though Sieber initially contended in his deposition that a number of customers[7] attempted to modify their contracts with SCS because of certain Post columns, the results of discovery eventually debunked his assertions. Such discovery included depositions of the individual customers named by Sieber. When they were asked about what actually had evolved with their contracts, the

[7] According to the Post defendants, this number changed from one session of Sieber's deposition to another – growing over a period of time.

customers testified in a manner that totally eviscerated the testimony of Sieber, and he has never come forward with any contrary evidence to revive his assertions.[8]

Where Angie's List and John W. Poole are concerned, they also point out that the plaintiffs have never produced any evidence that any customer breached a contract or modified one in a way damaging to the plaintiff because of anything that was ever communicated to them by Poole or by the magazine or Consumer Alert of Angie's List.

Certainly, the Court has considered the submissions of the plaintiffs on this subject, but those filings do not in any way cure the lack of evidence of causation as to any of the four defendants. The plaintiffs (looking globally at all of their filings) offer no admissible evidence to support the demand for summary judgment as to intentional interference.[9] For example, the Court has reviewed Sieber's Motion for Summary Judgment to identify evidence of any causal link between the defendants and any alleged contract breaches by customers. This subject is relevant not only as to the defendants' Motions for Summary Judgment but also as to Sieber's briefing of his allegation of conspiracy. Because, as the Court will discuss further herein, the allegation of conspiracy is only an indirect way of proving an underlying tort, Sieber's treatment of conspiracy necessarily should have addressed proof of intentional interference.

[8] As the Post and Kelly have thoroughly briefed, (with deposition citations, etc.), some of those customers actually entered into contracts with SCS subsequent to the Post publications. Such historical facts, coming directly from the customers in their depositions, certainly prove that they were not deterred from doing business with SCS because of the columns.

[9] Even though Sieber's individual Motion for Summary Judgment is entitled as one that affects only the Post Defendants and Angie's List, he states in the text that he actually seeks summary judgment as to all defendants on all counts – including libel allegations disallowed by Judge Beck. In a general way, he purports to brief these issues on behalf of SCS as well as himself.

The Court has reviewed carefully the voluminous attachments to Sieber's Motion for Summary Judgment, and the purported "evidence" that he proffers is actually not admissible evidence of anything. Sieber composed and included with his Motion for Summary Judgment a detailed Affidavit of his own. While it certainly sets forth his personal theories as to the actions of the defendants regarding SCS customer contracts, nothing in the Affidavit is admissible evidence of any element of the tort of intentional interference. In his Affidavit Sieber states:

> Poole distributed copies of his Monroe Street Bulletin Board posting about SCS to the residence of Phillip Thomas, an SCS customer.
>
> Kelly's Articles alarmed SCS Customers and smeared the reputation of Stephen Sieber and caused customers not to do business with SCS Contracting which affected the ability for Stephen Sieber to make a living.
>
> The Angie's List Consumer Alert and the May edition of the Angie's List magazine alarmed SCS Customers and smeared the reputation of Stephen Sieber and caused customers not to do business with SCS Contracting which affected the ability for Stephen Sieber to make a living.

Affidavit of Sieber at ¶25.

All three of the paragraphs quoted above are conclusory statements that are not the kind of sworn evidence that Sieber must file in order to defeat the Motions for Summary Judgment of the defendants. The conclusory statements noted above are not based on Sieber's personal knowledge, as opposed to his speculation. As such, this Affidavit is legally insufficient and does not comport with the requirements of Rule 56. In addition, he also does not provide any Affidavit of Phillip Thomas attesting to a breach of an existing contract based upon anything done or said by defendant Poole.

The mere fact that a party, such as plaintiff Sieber, makes a conclusory statement of his personal beliefs under oath does not transform that statement into admissible evidence.

To summarize: because the plaintiffs cannot identify a breach or negative modification of any customer's contract caused by any improper actions of any defendant, the plaintiff cannot establish the elements of (1) existence of a contract; (2) a defendant's knowledge of a particular contract, and (3) a defendant's intentional procurement of a breach of such contract.

Lack of Proof of Damages. It is logical for the Court to conclude that since SCS (as the real party in interest) cannot prove causation, it cannot prove any damages that flow from the unproven breach of contract. Where damage to a business is concerned, particularly when based upon words or someone's interpretation of words, a plaintiff would need expert testimony to prove damages. Neither SCS nor Sieber has proffered any expert testimony on this subject. Indeed, the plaintiffs herein have never even identified an expert witness who actually produced an opinion and who was actually in a position to testify as a trial witness. At one point in time, the plaintiffs named a damages expert. However, when defendants attempted to take discovery in order to learn his expert opinion, that individual disclaimed any relationship to the case. He had never rendered any opinion for either plaintiff. Proof of damage is a key element of the tort. Therefore, if this tort were subject to trial, the Court would be compelled to grant judgment in favor of the defendants at the close of the plaintiffs' case because of a total failure of proof as to damages.

Where a plaintiff cannot prove damages, the plaintiff simply has no case at all (no matter how appealing his other facts might be). The Court must recognize that "equity abhors forfeitures . . . [and] so indeed does the law." *Association of American Railroads v. Connerton*, 723 A.2d 858, 862 (D.C. 1999) (citation omitted). The natural impact of this legal principle is that no action at law can be maintained where the plaintiff cannot demonstrate that he, she, or it suffered any harm attributable to the defendant's behavior. It short, the District of Columbia Court of Appeals has adopted the well-known concept of "no harm, no foul." *Tsintolas Realty Co. v. Mendez*, ___A.2d ___ (slip op. App. No. 08-CV-730, November 25, 2009, 2009 D.C. App. LEXIS 601); citing *Mira v. Nuclear Measurements Corp*., 107 F.3d 466, 473 (7th Cir. 1999); *In re DeMartino*, 108 B.R. 394, 403 (D.R.I. 1989). That concept is an elegant fit for this case.

Lack of Proof of "Improper" Conduct of the Defendants. Theoretically, since the record is devoid of any proof of causation and damages, this Court is not obligated to specify further reasons for granting summary judgment in favor of the defendants. Nonetheless, for the sake of being complete, the Court will make its analysis of the lack of proof of the other major element of this tort.

To the extent that libel allegations that were not pleaded as a specific cause of action still should be interpreted as a form of "improper" conduct supporting the intentional interference claim, SCS cannot prove that any defendant published or distributed libelous material about either SCS or Sieber.[10]

[10] The Court here refers to both SCS and Sieber because, as a practical matter, they have both briefed the issues as if they are alter egos (or at least as if others treat them as such). Also, the comments of some of the customers of SCS and communications of non-parties, such as the ABC PrimeTime Live broadcast might reasonably have implied that these plaintiffs are effectively the same.

The defendants have filed meticulous and forceful motions, responses, and supplemental memoranda that thoroughly dissect why the plaintiffs have no admissible evidence to establish any form of libel by the defendants and why the applicable law compels granting summary judgment in favor of the defendants. For the sake of brevity, the Court will not attempt to re-state and re-catalog what the defendants have stated and why their factual proffers defeat the plaintiffs' case. The Court finds the defendants' statements of undisputed material facts to be accurate, relevant, and more than sufficient to support relief in their favor. However, having made its own assessment of the legal and factual insufficiency of the plaintiffs' case and having found the defense presentation to be convincing, it is still appropriate for the Court to highlight an illustrative example of why the plaintiffs' case falls flat.

The Post and John Kelly. A vivid example of the plaintiffs' ineffectual response to the defense motions is found in plaintiff Sieber's "Statement of Undisputed Material Facts." This list of "undisputed material facts" cannot withstand scrutiny at all, for a variety of reasons. In some instances, for example, Sieber makes conclusory assertions that are easily refuted by sworn testimony of the same people about whom he makes sweeping mis-statements or irrelevant statements. An instructive sample is Sieber's "undisputed material fact" number 6, which does not concern disrupted contracts but instead relates to Sieber's theme of libel. This item reveals his superficial proffers of "facts" that are not really facts at all or which are not "material" facts even if they are true.

In "fact" number 6, Sieber attempts to show that Kelly never had a basis for writing in his third column that some of the former SCS customers "have come together

as a sort of victims support group, meeting to compare notes on their experiences" etc. Sieber cites as a "fact" the following, referring to one of his former customers, Nick Mattera:

> Mr. Nick Mattera never mentioned to Monica Hammock or any other person including John Kelly that a group of ex-customers of Sieber or SCS were meeting who considered themselves victims.

Sieber's Statement of Undisputed Material Facts, page 6 (attached to Motion for Summary Judgment).

Clearly, the unspoken theme or assumption of Sieber is that Kelly must have fabricated the "support group" scenario merely because Sieber personally surmises that Mattera never mentioned such a thing to Kelly.

The problem with this so-called "fact" is that Sieber does not purport to have personal knowledge of how Kelly found out about the "victims support group" or the origin of that phrase. Surely, he cannot personally account for Kelly's source. The person who was directly involved, John Kelly, has stated under oath that his source for the reference to "victims support group" was indeed Mattera and that Mattera had told him that "seven to nine of Mr. Sieber's customers had gathered as a kind of 'victims' support group' (in Mr. Mattera's words) to discuss their experiences with SCS." Declaration of John F. Kelly at ¶11. Furthermore, included in Kelly's Declaration (filed in support of his Motion for Summary Judgment) is the same source information in Kelly's contemporaneous notes that he made while researching the subject of Sieber and his customer's difficulties. Sieber has never produced any other admissible evidence to contradict Kelly's explanation of the origins of the reference to "victims support group." Sieber's affidavit does not transform this subject into a triable factual dispute.

If anything, Kelly's choice of words in the third column was totally consistent with the testimony of Monica Hammock in her deposition, wherein she testified that the "support group" reference was a factually accurate statement. In that deposition, she stated that Mattera never used that particular phrase in speaking to her. However, the fact that Mattera never used that phrase in her presence does not prove or disprove that Mattera[11] was Kelly's source or that what Kelly wrote was not factually accurate and fair. Significantly, in that same deposition, Hammock readily corroborated the fact that various former customers of SCS did meet together as a group to share their stories about problems with SCS.[12] She also testified in her deposition that while neither Mattera nor Kelly ever said in her presence that there was a "victim's support group," she had clearly heard that phrase from someone. This phrase was not fiction. Another revealing part of Hammock's deposition was her confirmation that Sieber owed her money to reimburse her for her payment for certain work that had not been completed. She agreed under oath, with more of her own factual embellishment, that the statement "SCS basically takes your money and runs" is a "fair statement."

The proverbial bottom line is that Kelly used a phrase that accurately and truthfully described what certain customers were actually doing (coming together as a group to discuss their common problem: the poor performance of SCS). Thus, the "undisputed material fact" number 6 is no help to the plaintiffs. There are many other instances of the same faulty nature of Sieber's list of "undisputed material facts." Plaintiffs' lack of evidence is fully exposed by Sieber's approach of focusing on the

[11] This individual's name is described as "Mattero" in some places in the record.

[12] This deposition testimony is reproduced as Exhibit C to the Declaration of Tekeei, filed in support of the Motion for Summary Judgment of the Post and Kelly.

wrong details and explaining episodes from unhelpful angles without first-hand affidavits or other admissible evidence.

Entirely aside from the lack of proof of "misconduct" by the Post and John Kelly, all three of the columns of John Kelly are protected from suit by a specific privilege. This protection extends not only to explicit allegations of libel but also to any cause of action that is based upon the need to prove libel. That privilege is known as the "fair report" privilege.

The fair report privilege protects fair and accurate "reports of proceedings before any court." *Phillips v. Evening Star Newspaper Co*., 424, A.2d 78, 88 (D.C. 1980). A publication or writer can establish entitlement to this protection if the report in question is "(a) accurate and complete, or a fair abridgement of what has occurred, and (b) published for the purpose of informing the public as to a matter of public concern." *Id.*

Not to belabor the obvious, the Court is guided by the appellate observation that "since libel suits are government proceedings which by definition involve material that is allegedly false and defamatory, no meaningful discussion of such suits would be possible unless such reports were privileged." *Liberty Lobby, Inc. v. Dow Jones & Co*., 267 U.S. App. D.C. 337, 349, 838 F.2d 1287, 1299 (1988). Naturally, the fair report privilege protects publishers and writers from liability for intentional interference with contracts, when that tort is based upon the same assertions of defamation. *See Brown & Williamson Tobacco Corp. v. Jacobson*, 713 F.2d 262, 274 (7th Cir. 1983). No plaintiff is permitted to do indirectly what he is not permitted to do directly.

In this particular lawsuit, the three columns of John Kelly are true paradigms of what the fair report privilege is designed to protect. This is so based not only upon the titling of the columns but also based upon their content.

John Kelly has stated under oath in numerous respects that what initially drove his decision to write the columns was the noteworthy and unusual scenario of a contractor suing his own customers.[13] Objectively, this was certainly outside the ordinary situation of customers suing contractors (a very common type of litigation in the Superior Court and other local courts). Facially, each and every Kelly column contained quotations and information that has been shown to be accurate reporting. The fact that the customer lawsuits against Sieber and SCS are the genuine focus of his writing is unmistakable.

The first column (March 13, 2007) is explicitly entitled *Homeowner's Web Gripe Draws Contractor Lawsuit*. Obviously, any reader instantly would know that the column concerned court proceedings. The content of that column informs the readers about the lawsuit against Hammock and Castillo, and it contains various facts about Sieber's allegations, his demand for money damages, etc. To the extent that the column contains references to anything other than lawsuits, the content is still accurate. For example, it was completely accurate to mention that ABC "Primetime Live" broadcast that was relevant to plaintiff Sieber. This was relevant background information. The Angie's List Consumer Alert was accurately described also.

The second column (March 14, 2007) never identified either plaintiff by name at all. The title of the column did not mention any court proceeding, but the content did so. Referring only to a "local contractor," the lawsuit mention was entirely accurate.

[13] This may be rather like observing a physician who sues his own patients when they complain of his malpractice.

Without the need to do so, Kelly wrote that the unnamed "local contractor" had "made some interesting points" in the lawsuit. There is no reason why the fair report privilege does not cover this column.

The third column (May 3, 2007) returns to a more specific examination of Sieber's lawsuit. Kelly pointed his readers to a more direct source of information, *i*.e. a website created by Sieber himself – concerning his own litigation. This is scarcely defamatory or inaccurate. Moreover, this column quotes Sieber's comments about the subject matter within his lawsuit. At the end, Kelly was careful to note that a court would decide the lawsuit. This column was a very direct attempt to report on very specific litigation. The column is privileged.

Totally aside from any discussion of the "fair report privilege," there is another unrelated reason why the Post publications do not legally suffice as acts of impropriety. The realistic theme of the plaintiffs' lawsuit is that the Post and John Kelly should have included in their columns more material that was supportive of the plaintiffs -- as if the plaintiffs are entitled to a brand or level of detail to their personal liking.

Where the Post defendants are concerned, the plaintiffs have complained, *inter alia*:

> Kelly, however, did not mention in any of his articles, and the Post did not publish, the fact that Plaintiff was being denied his right to respond to the member reports posted on the Angie's List website.

Compl. at ¶250.

The levels on which the plaintiffs accuse the Post defendants of simply not being fair enough (or sufficiently supportive of Sieber) know no boundaries. In a filing of July 29, 2009 (after oral arguments on the dispositive motions), SCS attempted to set forth

"new" admissible evidence from extra depositions that were permitted by this Court. Therein, SCS lists all manner of minutiae that it contends Kelly should have included or pursued in greater detail. Sieber's expectation of micro-managing the press unmistakable (even when Sieber refers to this approach as a claim for "libel by omission"). However, upon examination, this filing contains no admissible evidence to support the claim of intentional interference (and none to support the claim of conspiracy). At best, it rehashes old subject areas related to the dismissed defendants, the judicially unauthorized allegations of "libel per se," and other details that were not even argued to this Court. It also contains new allegations never before mentioned in discovery.[14]

The plaintiffs complain that the column of March 13, 2007 "omitted Plaintiffs' excellent public record in Washington, D.C. over the past eleven years with the Department of Consumer and Regulatory Affairs, the Better Business Bureau, the office of the Attorney General and the District of Columbia Courts." Compl at ¶222. The Post defendants have no duty to research and report the plaintiff's total regulatory history and how any other customer disputes were resolved. The law is rather clear that "[m]erely omitting facts favorable to the plaintiff or facts that the plaintiff thinks should have been included does not make a publication false and subject to defamation liability." *Mohr v. Grant*, 108 P.3d 768, 776 (Wash. 2005) (*en banc*). The same concept certainly applies to the disputed material published by Angie's List and by John W. Poole.

Neither plaintiff has a legally enforceable right to dictate to a newspaper or any other publication the extent to which that writer or publication must advocate on behalf of

[14] In fact, just as counsel for Angie's List points out in its own Supplemental Memorandum, the post-argument filings from the plaintiffs only create deeper obfuscation about their lack of relevant evidence. Moreover, the plaintiffs abused this opportunity to save their case by merely trying to expand their allegations in a tardy fashion.

either plaintiff or anyone else. Plainly, there is no enforceable cause of action under any label for such dissatisfaction.

Finally, even if the "fair report" privilege did not explicitly exist in our jurisprudence and even ignoring the disallowed concept of libel by omission, the record herein is more than sufficient to establish that the plaintiffs cannot establish a prima facie case of libel. In short, for the reasons eloquently set forth and documented by the defendants in their various motions and supplemental memoranda, none of the disputed publications is libelous for several reasons: (1) none contains falsehoods about either plaintiff; (2) none contains any suggestion that the author endorses any allegedly defamatory statements or false innuendo; (3) none contains statements that are reasonably susceptible of a defamatory meaning; and (4) anything that may be construed as statements of opinion of the author are not actionable anyway.

Angie's List. Where Angie's List is concerned, the plaintiffs have expressed their actual complaint throughout their filings. Most prominently, in the Second Amended Complaint, the plaintiffs state, *inter alia*:

> The nexus of Plaintiffs' lawsuit against Angie's List had always been that the Plaintiffs were unfairly denied the right to post a response to the negative member comments posted on the Angie's List website in violation of their publicly stated policies.

Compl. at ¶262.

In seeking summary judgment and in responding to the dispositive motions of the plaintiffs, Angie's List has submitted affidavits and deposition testimony of several employees of Angie's List who were involved in dealings with Sieber, as he sought to respond to member postings. This evidence, especially the deposition of Thomas

Meadows, established (1) that the only reasons why Sieber's proposed responses were not posted on the website was because they either did not conform to established length limitations and/or (2) they contained complaints about Angie's List itself and not about the specific member posting in question. The following factors illustrate why there is no proof that Angie's List committed any "improper" conduct to interfere with contracts of SCS.

The handling of Sieber's requests for posting of responses was dictated by the pre-existing, internal policies of Angie's List. Of course, whatever the internal "policy" of Angie's List might have been, its existence does not create a right to sue, even if such policy is violated. Relying on that corporate "policy" about contractor responses is a bedrock legal defect in the plaintiffs' case.

It is important to specify that Angie's List is immune from defamation suits based on the postings of third parties on its interactive Internet site, according to the federal law known as the Communications Decency Act of 1996, 47 U.S.C. §230 (c) (1). This is why the plaintiffs have no basis for suing based upon anything posted on Angie's List website by its members.[15] The only publications left that might be the bases of a lawsuit are the Consumer Alert and the one article in the Angie's List magazine. But neither contained any statements about Sieber or SCS that were defamatory. Instead, they announced (Sieber would say "touted") the efforts of Angie's List to investigate complaints about Sieber. However, announcing an investigative interest is not defamatory.

[15] In the beginning of this litigation, Sieber sued a number of his former customers. However, all of the clams against them have been dismissed – in some instances for lack of *in personam* jurisdiction. Only John W. Poole, as a customer, remains as a defendant.

The best that the plaintiffs can muster is a complaint about the following statement in the February 28, 2007 Consumer Alert, "Several Angie's List members have contacted us recently with serious complaints about their experiences with the SCS Contracting Group LP in the Baltimore and Washington DC area." Compl at ¶129. Sieber contends that he has never performed any work in the city of Baltimore. The District of Columbia and Baltimore are reasonably regarded as a broad metropolitan area. In any event, even if it is technically true that SCS has never performed work inside of Baltimore, this is a minor detail. Such a technical error (if it is an error) is not actionable. As the Supreme Court has recognized, "Minor inaccuracies do not amount to falsity so long as the substance, the gist, the sting, of the libelous charge be justified." *Masson v. New Yorker Magazine, Inc*., 501 U.S. 496, 517 (1991).

The whole notion that Angie's List owed Sieber or SCS an iron-clad right to respond to customer postings on the Internet site is baseless. The failure to do so is not an "impropriety," not only because Sieber never conformed his proposed responses to the defendant's policies for the format of such responses, but also because no law compels Angie's List to publish contractor responses. The plaintiffs have no appreciation for this fact.

Defendant John W. Poole. The plaintiffs suggest that Poole committed an "improper" act by posting his own warning about Sieber to neighbors on the Monroe Street electronic bulletin board.

The only admissible evidence in the record as to what Poole was attempting to do in his neighborhood posting, and why, is set forth in Poole's own Affidavit, attached to his Motion for Summary Judgment. The plaintiffs have failed to come forward with any

admissible evidence to contract what he says. Several of his points convince the Court that nothing in his posting is remotely libelous.

First, Poole accurately stated in his posting the factual information about lawsuits against SCS customers. In his Affidavit in support of his Motion for Summary Judgment, Poole explains that he learned about the customer lawsuits directly from SCS customers who were involved, and he states that they even invited him to consult with their lawyer. Poole ultimately decided not to join with them. Plaintiffs have nothing to refute what Poole has sworn.

Second, Poole has provided under oath a logical explanation of his source for referring to the plaintiffs' "borderline criminal activity that dates back over 15 years." That source was the ABC "Primetime Live" show concerning Stephen Sieber.[16] On that show, Chris Wallace interviewed Sally Kirk, who was then a detective with the District of Columbia Metropolitan Police Department. In giving her professional views of the standard for proving criminal intent, Det. Kirk told Wallace, "There's so many gray areas in a crime of Mr. Sieber's nature . . . . It would just be a difficult case to prosecute." Poole Ex. B at 6 (emphasis added). This assessment, by a professional law enforcement officer, certainly qualifies as a description of Sieber's behavior as "borderline" criminal activity. Kirk's point, to Chris Wallace, was that the complaints she knew of did not firmly cross that criminal/civil border into the criminal zone. The plaintiffs have not presented any admissible evidence to contract Poole's testimony on this subject.

There was even more material in the show, on the subject of the prevalence of suits against home improvement contractors and the fact that some prosecutors viewed follow-up prosecutions as being costly and time-consuming. This segment of the show

[16] A transcript of the broadcast is attached as Exhibit B to Poole's Motion for Summary Judgment.

ended with Diane Sawyer announcing that Sieber was at that time under investigation "for a possible criminal violation." *Id*. at 7. In his Affidavit, attached to his Motion for Summary Judgment, Poole notes that he was personally familiar with the ABC show. Thus, Poole's use of the phrase "borderline criminal" was not provably false at all. It is a fair and rather direct description of the "borderline" behavior that was examined on the PrimeTime Live show.

ANALYSIS OF THE MOTIONS REGARDING CIVIL CONSPIRACY

The Elements of Civil Conspiracy. The elements of an allegation of "civil conspiracy" are well established in the District of Columbia. The District of Columbia Court of Appeals has stated:

> The elements of civil conspiracy are: (1) an agreement between two or more persons; (2) to participate in an unlawful act, or in a lawful act in an unlawful manner; and (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement (4) pursuant to, and in furtherance of, the common scheme.

Griva v. Davison, 637 A.2d 830, 848 (D.C. 1994) (citing *Halberstam v. Welch*, 227 U.S. App. D.C. 167, 172, 705 F.2d 472, 477 (1983)); *Weishapl v. Sowers*, 771 A.2d 1014, 1023-24 (D.C. 2001).

The Court of Appeals has emphasized that civil conspiracy "depends on the performance of some underlying tortious act. It is thus not an independent action; it is, rather, a means for establishing vicarious liability for the underlying tort." *Id.* at 848 (emphasis added). "Where there is no direct evidence of an agreement between the alleged co-conspirators, there must be circumstantial evidence from which a common intent can be inferred." *Id.* at 1024.

The pertinent case law illuminating the elements of civil conspiracy yields several principles that form a good measuring stick for summary judgment.

One, since an underlying tort claim is the foundation for the civil conspiracy allegation, it is clear that the inability to prove the tort dooms the conspiracy allegation automatically. As one federal judge has observed, when the trial court has a basis for dismissing or granting summary judgment against a plaintiff on a claim for intentional interference with a contract, it is axiomatic that "there is no longer an 'underlying tortious act" to support the related civil conspiracy theory. *Daisley v. Riggs Bank*, 372 F.Supp. 2d. 61, 73 (D.D.C. 2005) (Kennedy, J.).

Two, where there is "no genuine dispute, concerning the lawfulness" of a defendant's actions, an allegation of "civil conspiracy" fails as a matter of law. *See, e.g., Media General, Inc. v. Tomlin*, 2003 U.S. Dist. LEXIS 25996 (D.D.C. 2003) (Roberts, J.) (summary judgment granted to defendant as to civil conspiracy, where the plaintiff had no proof of unlawfulness of the defendant's failure to disclose certain litigation in an SEC filing).

Three, even where there is proof that a defendant had an evil motive to harm the particular plaintiff, this is not enough to convert a lawful action into an unlawful one. Evil motive alone means absolutely nothing. It only has value as one part of the entire set of proven, critical elements. The District of Columbia Court of Appeals has emphasized this concept, quoting another appellate court's statement that "'if an act be lawful – one that the party has a legal right to do – the fact that he may be actuated by an improper motive does not render it unlawful.'" *Venture Holdings, Ltd. v. Carr*, 673 A.2d 686, 690

n.7 (D.C. 1996) (quoting *Bohn Mfg. Co. v. Hollis,* 54 Minn. 223, 55 N.W. 1119, 1121 (Minn. 1893).

Plaintiffs' Theory of Civil Conspiracy. It is important to isolate the actual parameters of the civil conspiracy theory in this case. This is especially important because, as the case law provides, the allegation of civil conspiracy functions only as an alternative way of imposing tort liability on a vicarious basis.

Originally, on the face of the Second Amended Complaint, the plaintiffs theorized that all of the defendants conspired to do two things: (1) to interfere with contracts of the plaintiffs, so as to damage the business and (2) to commit libel so as to damage the plaintiff's business. Thus, under the civil conspiracy theory any act of libel was but a tool through which the defendants allegedly sought to put Sieber and his company out of business.

In the Second Amended Complaint, the plaintiffs make a host of sweeping, conclusory statements about what they believe the defendants did as conspirators. Those allegations are found in Paragraphs 317 through 354. The Court need not repeat all of that content, as many of these paragraphs relate to (1) the foreclosed libel allegations, (2) defendants who are no longer in the case, and (3) allegations for which the plaintiffs do not allege any connection to the remaining defendants.

It suffices to say that the plaintiffs principally accuse the remaining defendants of doing the following: (1) that they "conspired to ignore positive aspects about Plaintiffs' business that plaintiffs had brought to their attention and then, in violation of the stated policy of Angie's List, denied Plaintiffs an opportunity to post a response;"[17] and (2) that

[17] Compl. at ¶322.

"Angie's List offer[ed] to pay the legal bills of defendants Hammock and Poole [which] provided financial incentive for Defendants Hammock and Poole to follow the directions of Angie's List."[18]

Elimination of Libel as a Tort Claim Underlying the Civil Conspiracy Allegation. The "non-flyer" allegations of libel cannot be the tort basis for any allegation of civil conspiracy. Those allegations as potential causes of action have been foreclosed not once, but twice, and this Court will not churn that libel issue unnecessarily. Only in a roundabout way does a discussion of "libel" bleed into a discussion of whether any acts of the defendants were "unlawful" as an element of civil conspiracy.

Finally, since the Court concludes as a matter of law that the "flyer" claim is not supported by any evidentiary link to the defendants, that claim fails. It cannot be the underlying basis for any civil conspiracy theory.

Elimination of Intentional Interference as an Underlying Tort. What is now left of the torts that might underlie the civil conspiracy allegation is the other "tool" through which the defendants allegedly sought to devastate the plaintiffs' contracting business, *i.e.* intentionally interfering with existing contracts.

This tort has been eliminated as a basis for the conspiracy allegation for the reasons this Court has articulated earlier herein.

Since no tort claim can survive the summary judgment motions of the defendants, it is clear that the conspiracy allegation fails as a matter of law. Nonetheless, the Court will pause to set forth in more detail why there is no proof of a conspiracy otherwise.

[18] Compl. at ¶330.

Lack of Evidence of Unlawful Acts. For the following essential reasons, the plaintiffs have failed to come forward with any admissible evidence of unlawful actions committed by any defendant in furtherance of an alleged conspiracy.

No "Unlawful" Actions of the Angie's List, The Washington Post, or Kelly. Where these defendants are concerned, the most obvious principles that support their Motion for Summary Judgment regarding the lack of "improper" or "unlawful" acts are the same legal and factual arguments on the subject of why there is not proof that they committed libel and why there is no proof of intentional interference with any contract. Thus, this element of conspiracy fails.

No Unlawful Actions by Poole. Where Poole is concerned, the plaintiffs likewise cannot show that he committed any "unlawful" act not only because there is no proof that his neighborhood posting was libelous but for another reason that also applies to Angie's List.

The plaintiffs have plainly stated the following in the Second Amended Complaint:

> On information and belief, after the submission and posting of the negative comments of Hammock and Poole, they and Angie's List conspired to prevent Plaintiffs from responding to such comments in direct contradiction of the announced policy of Angie's List to provide such a right of response.
>
> Thereafter Angie's List published a special 'Consumer Alert' on the Angie's List website that, on information and belief, intentionally presented a highly negative view of Plaintiffs.
>
> On information and belief, Defendants conspired to ignore positive aspects about Plaintiffs' business that Plaintiffs had brought to their attention and then, in

> violation of the stated policy of Angie's List, denied Plaintiffs an opportunity to post a response.

Compl. at ¶¶ 320-322.

The passages quoted above effectively posit that "preventing" Sieber from responding to comments made about him on the Internet site of Angie's List was itself a form of "improper" conduct as an element of conspiracy. This supposition is faulty because no person has an enforceable right to circulate on Angie's List any response to a member's posting. The fact that Angie's List has a policy for facilitating such does not create an actionable right. Poole certainly committed no "unlawful" conduct towards either plaintiff.

Lack of Evidence of Agreement Between or Among Defendants. Certainly, the plaintiffs have failed to produce any direct evidence of an agreement among or between any defendants to interfere with any contract of SCS. The plaintiff has not produced any circumstantial evidence from which a jury, acting reasonably, could infer such an agreement.[19] There are two likely sources of the plaintiff's suspicion of conspiracy, but neither is proof of any element of conspiracy. The Court notes the following matters.

One, where Angie's List and the Post defendants are concerned, the plaintiffs have pointed to a certain passage from the disputed article written by Paul Pogue in the Angie's List magazine. A copy of this article can be found in the record as Exhibit H attached to the Kelly Declaration. In pertinent part, the magazine passage states:

[19] SCS has emphasized that Kelly had a number of conversations with employees of Angie's List and with former customers of SCS. Kelly readily explained in his deposition and in discovery responses that he conducted a number of such interviews. However, an interview certainly does not suffice as an agreement to execute engage in illegal or tortious conduct or to effectuate damages upon a corporation. No reasonable jury would magnify research interviews of a journalist into a civil conspiracy.

> A six-week Angie's List investigation revealed numerous other complaints and allegations of improper behavior and harassment by Sieber prompting us to issue a consumer alert to D.C. and Maryland residents in mid-March and a two-part story in The Washington Post.

Declaration of John F. Kelly, Exh. H. at 2 (emphasis added).

No reasonable jury, acting reasonably, would or could infer that this statement constitutes evidence of the participation of Angie's List in the writing and publication of any of Kelly's articles. Indeed, the only admissible evidence that has emerged in this case confirms that neither Kelly nor the Post as an entity was influenced in any way to publish the Kelly columns. Sieber's theory is that Paul Pogue, or someone connected to Angie's List, was effectively the ghost-writer of the Kelly columns, as if Kelly was a mere *marionette* or stooge of Angie's List. At worst, this passage from the article is nothing more than inartful, self-congratulatory *braggadocio*. The apparent bragging, of course, was that the investigation mentioned in the Consumer Alert impressed the Post and Kelly so much that the Post and Kelly decided to follow the story.

Two, the other evident source of the plaintiff's suspicion is found in the Second Amended Complaint. Referring to Angie's List, the plaintiffs state:

> The offer to pay the legal fees of members Hammock and Poole and the residual sharing of private information relating to Plaintiff's prove collusion and conspiracy.
>
> The Angie's List offer to pay the legal bills of Defendants Hammock and Poole provided a substantial financial incentive for Defendants Hammock and Poole to follow the directions of Angie's List.

Compl. at ¶¶ 329-330.

There is no proof at all that Angie's List has paid the legal bills of defendant Poole. Counsel for Poole acknowledged at oral argument that his bills for representing Poole have not been paid by anyone. He candidly stated that there had been some discussion of Angie's List paying his fees, but no such financial assistance ever materialized. Counsel told the Court during the oral argument how Sieber most likely heard about this subject. In a nutshell, counsel stated that there had been e-mail traffic between himself and Angie's List and, purely by accident, a copy of a responsive email on this subject was transmitted electronically to Sieber.

The onus is on the plaintiffs to prove that there was a *quid pro quo* to procure misconduct by Poole. The plaintiffs never had any such proof. The most salient fact is that even if Angie's List had openly offered to pay Poole's legal fees or those of other suit-related customers of the plaintiffs, such would not have been illegal at all. This entire subject is a red herring, as far as conspiracy is concerned.

Lack of Evidence of Specific Intent to Interfere with Plaintiffs' Contracts as the Underlying Tort. The law is very clear that a plaintiff alleging this tort cannot stave off summary judgment by merely contending a "general intent to interfere or knowledge that conduct will injure the plaintiff's business dealings." *Bennett Enters., Inc*. v. *Domino's Pizza, Inc*., 310 U.S. App. D.C. 192, 198, 45 F.3d 493, 499 (1995). The plaintiffs have never produced any admissible evidence of any defendant's specific intent to compromise any contract of SCS. The suspicions of the plaintiff have no evidentiary value, and this is the most that they can muster.

Lack of Evidence of Causation and Damages Caused by the Defendants. Here also, there is no evidence of a causal link between any alleged conspiracy and a breach of

any specific contract of SCS. This is so, for the same reasons that the Court has made this conclusion as to all of the tort claims. At oral argument, counsel for SCS suggested that the plaintiffs have no obligation to prove damages, but he is manifestly mistaken. In fact, the lawyer for SCS was similarly mistaken when he emphasized at the oral argument that the defendants have been laboring to obtain summary judgment under the wrong legal standard altogether. He argued that the correct legal standard by which summary judgment motions must be adjudicated is whether the plaintiffs have sufficiently pleaded their causes of action. This is mistaken because sufficiency of pleading is the standard that applies to motions to dismiss for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Civil Rules. None of the defense motions herein are grounded upon Rule 12(b)(6).[20]

ANALYSIS OF POOLE'S MOTION REGARDING HIS COUNTERCLAIM

The disposition of the Counterclaim is a simple matter. The arbitrator's award is what it is, and this Court has no role in reviewing it or second-guessing its factual basis. Poole seeks a money judgment for the amount awarded by the arbitrator.

The response of the plaintiffs to Poole's Motion for Summary Judgment as to the Counterclaim is irrelevant. The plaintiffs jointly filed an Opposition to Poole's Motion for Summary Judgment, but the internal content of the Opposition reaches only the summary judgment issues unrelated to the Counterclaim.

[20] This is so, even though one defense attorney alluded to the facial insufficiency of the pleading of the conspiracy theory in the Second Amended Complaint. The Court will not digress further on this point.

In only one brief respect did the plaintiffs address the Counterclaim in their Opposition. Noting the existence of the arbitrator's award, the plaintiffs state only the following:

> The fact that Poole has obtained an arbitration award against Sieber is immaterial to the claim that Poole made his defamatory statements libeling SCS and intending to tortiously interfere with its future business expectancies.

Opp. at 6.

The passage quoted above is totally unresponsive to the question of whether there is a legal reason for the Court to decline to enter a money judgment based on the arbitration award.[21] The Opposition is utterly unresponsive to this issue. Whatever defenses SCS had to Poole's claim were considered by the arbitrator and have no lawful part in the Superior Court adjudication of plaintiffs' claims.

There is absolutely no reason not to grant Poole summary judgment on his Counterclaim, and the Court herein will do so. A money judgment shall be docketed for the full amount that he seeks.

WHEREFORE, it is by the Court this 23rd day of December 2009

ORDERED that the Motions for Summary Judgment of Brownstone Publishing Co., the Washington Post Company, John Kelly, and John W. Poole are granted; and it is

FURTHER ORDERED that the Motions for Summary Judgment filed on behalf of the plaintiffs are denied; and it is

FURTHER ORDERED that judgment shall be entered in favor of all defendants against the plaintiffs as to all claims in the Second Amended Complaint; and it is

[21] There is no hint that the arbitration award is the subject of an appeal, such that this Court should decline to rule on the Counterclaim pending resolution of an appeal.

FURTHER ORDERED that judgment shall be entered in favor of defendant Poole and against plaintiff SCS Contracting Group LP as to Poole's Counterclaim against plaintiff SCS Contracting Group for $18,300 plus 6% (six percent) per annum interest, and a separate money judgment for this sum shall be docketed.

Cheryl M. Long
Judge

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