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

LEO STOLLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	11 L 12519
	)	
LANCE G. JOHNSON, et. al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER ON DEFENDANTS'. LANCE G. JOHNSON, DAVID ABRAMS, ALFRED GOODMAN AND ROYLANCE ADAMS BERDO & GOODMAN, LLP, MOTION FOR SUMMARY JUDGMENT

I. FACTUAL BACKGROUND

The Plaintiff filed his original defamation complaint against the Defendants on September 29, 2008. On October 3, 2008, the Plaintiff improperly served the moving Defendants by certified mail and this Court entered an order quashing that service on June 26, 2009. The Plaintiff filed an appeal of the June 26, 2009 ruling and that order was affirmed by the First District Appellate Court on August 25, 2010 and the Illinois Supreme Court denied the petition for leave to appeal on March 30, 2011. On December 15, 2011, the instant case was reinstated and re-numbered. The Plaintiff filed a Second Amended Complaint on May 2, 2012, sounding in defamation, intentional infliction of emotional distress, conspiracy to defame, conspiracy to inflict emotional distress, and aiding and abetting. The Defendants filed their answers and affirmative defenses to the Second Amended Complaint denying all material allegations contained therein. The Defendants moved for summary judgment on the basis that the Plaintiff had a pending bankruptcy action since 2005 and did not amend his petition or schedules to reflect the instant lawsuit as an

asset, which he had a duty to do. Thus, they argued that the Plaintiff here should also be judicially estopped from proceeding on the instant claim. The Court denied that motion finding that as the instant action occurred post-petition, it was not part of the bankruptcy estate and the Plaintiff was under no obligation to disclose it. The Defendants now move for summary judgment on a different basis.

In the motion, the Defendants contend the alleged defamatory statements of "trademark terrorist," "he should be in jail," and amazement that he "wasn't wearing federal orange years ago," are rhetorical hyperbole which is protected by the First Amendment. The Defendants point out that these statements are not verifiable as actual fact. Further, the Defendants contend that the description of the Plaintiff's trademark infringement history in the subject publication is protected by the fair reporting privilege. They point out that all of the information contained therein was previously reported in various court decisions of official court proceedings. They maintain that their recitation of this history is a fair and accurate abridgement of those official proceedings and cases. The Defendants further maintain that the evidence in the record fails to support the elements of intentional infliction of emotional distress. They point out that the facts here do not rise to the level of extreme and outrageous conduct as a matter of law. In addition, they maintain that as the remainder of the claims are derivative of these claims, they, too , must fail.

The Plaintiff contends that the specific statements noted by the Defendants, when taken in context with the entire publication depicting the alleged scheme, show that they infer verifiable facts and are not constitutionally protected. The Plaintiff also contends that the fair reporting privilege does not apply here as the publication at issue was not a report of

an official proceeding. He points out that the publication did not identify any official proceeding on which they were reporting and they were not merely summarizing those decisions. Further, the Defendants' statements do not fairly and accurately summarize the statements made by the various courts. In addition, the Plaintiff contends that even if the privilege applied, there is a question of fact as to whether it was abused.

In the reply, the Defendants point out that the Plaintiff fails to respond to the motion with regard to intentional infliction of emotional distress and, thus, has conceded the same.

The Court has read the motion, response, and reply, as well as, all of the supporting material tendered therewith.

II. COURT'S DISCUSSION AND RULING

The individual statements noted by the Defendants, "trademark terrorist," "he should be in jail," and "wasn't wearing federal orange years ago," when separated from the entire publication, are singular examples of rhetorical hyperbole or loose, figurative language protected by the First Amendment. They do not have a precise and readily understood meaning and are not verifiable. However, it is the entire paper, attached to and made part of the pleading, that is alleged to be defamatory. As noted by the Plaintiff, when the entire paper is read as a whole, it is replete with statements that are clearly verifiable, and the surrounding of the hyperbolic by the verifiable infer that the hyperbolic is also a statement of fact. Further, the literary context of the publication, a scholarly paper written by intellectual property attorneys and experts and presented to the Intellectual Property Institute Bar of the State of California, and its references to various court cases, give the paper as a whole a suggestion of factual content. Therefore, the subject paper here, as a whole, is not a

compilation of hyperbole and loose, figurative language which is non-defamatory under the First Amendment. As the subject writing cannot be said to be non-defamatory protected speech, it must be determined whether the fair report privilege is applicable here.

The fair reporting privilege applies where there is a publication of defamatory matter concerning another in the report of an official action or proceeding or of a meeting open to the public, that deals with a matter of public concern and where the report is accurate and complete or a fair abridgement of the occurrence reported. Solaia Technology v. Specialty Publishing, 221 Ill.2d 558, 585 (2006). The requirements of the privilege are that the report is of an official proceeding and the report must be complete and accurate or a fair abridgement of the official proceeding. Id., at 588. A court proceeding is considered an official proceeding. Id. Further, if the report is a summary rather than a complete and accurate account, the summary must be fair, or in other words, convey to the readers a substantially correct account. Id., at 590. There is a fair abridgement of the proceeding where the sting of the defamatory statement in the proceeding is the same as the sting of the defamatory report. Id.

In the instant case, the subject article written for use in a state bar publication is a history of the Plaintiff's company *vis-a-vis* its history of trademark litigation. While the article is not a complete and accurate report of each court proceeding, it is based on them and does cite, refer, and quote the various court proceedings which involve the Plaintiff and his history of trademark litigation. Further, the court proceedings contain statements made by the judges therein which characterize the Plaintiff's actions over the years of litigating trademarks in the same way as described in the article, including suggestions of improper and illegal conduct.

As such, the Court finds that the sting of the defamatory statements in the subject article is the same as the sting of the defamatory statements in the court proceedings. Therefore, the article is a fair abridgement of the various official court proceedings and the fair reporting privilege applies. In addition, there is no abuse of the privilege where the abridgement is fair. Solaia, at 587. Accordingly, the privilege applies and the defamation claim must fail. Further, the Court finds, and the Plaintiff fails to dispute, that record lacks any evidence to support the allegations of extreme and outrageous conduct. As such, the intentional infliction of emotional distress claim cannot stand as a matter of law. In addition, in light of the rulings with respect to the claims for defamation and intentional infliction of emotional distress, the derivative conspiracy and aiding and abetting claims against these Defendants must also fail. Accordingly, summary judgment in favor of Defendants Lance G. Johnson, David Abrams, Alfred Goodman and Roylance Adams Berdo & Goodman, LLP, is appropriate as to all claims and counts against them.

Based on the foregoing, Defendants', Lance G. Johnson, David Abrams, Alfred Goodman and Roylance Adams Berdo & Goodman, LLP, Motion for Summary Judgment is granted. This finding is made pursuant to SCR 304(a) thus there is no just reason to delay the enforcement or appeal of this order. The case continues as to the remaining Defendants.

ENTER:

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MAR 15 2013

Judge Kathy M. Flanagan

KATHY M. FLANAGAN #267