SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

VINCENT BERNARD ORANGE, *Plaintiff,*	:	**Case No. 2022 CA 001258 B**
v.	:	**Judge Heidi M. Pasichow**
THE WASHINGTON BUSINESS JOURNAL, *et al.*, *Defendants.*	:	

ORDER (1) GRANTING DEFENDANT KOMA'S OPPOSED SPECIAL MOTION TO DISMISS PURSUANT TO THE D.C. ANTI-SLAPP ACT AND, IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO RULE 12(B)(6), AND (2) GRANTING DEFENDANT WASHINGTON BUSINESS JOURNAL'S OPPOSED SPECIAL MOTION TO DISMISS PURSUANT TO THE D.C. ANTI-SLAPP ACT AND, IN THE ALTERNATIVE, MOTION TO DISMISS PURSUANT TO RULE 12(B)(6)

This matter comes before the Court upon (1) Defendant Koma's Opposed Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6), filed April 26, 2022; and (2) Defendant Washington Business Journal's Opposed Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6), filed May 24, 2022. Plaintiff is proceeding *pro se*, Defendants are represented by counsel.

I. Procedural History

On March 22, 2022, Plaintiff filed a Complaint against Defendants Alex Koma and the Washington Business Journal for Defamation, False Light, and Intentional Infliction of Emotional Distress. On April 6, 2022, Plaintiff filed an Affidavit of Service by Special Process Server, indicating that Defendant Koma was personally served on April 5, 2022 at 9:23 p.m. at 1809 Wiltberger St NE, Washington, D.C. 20001. On April 26, 2022, Defendant Koma filed an Opposed Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6). On May 16, 2022, Plaintiff filed an Opposition to Defendant Koma's Special Motion to Dismiss.

On May 18, 2022, Plaintiff filed an Affidavit of Service by Certified/Registered Mail indicating that service was attempted on Defendant Washington Business Journal by certified mail on April 9, 2022, and

that the return receipt was signed by Defendant's registered agent, Lance Hungar. The signed return receipt is attached to the filing. On May 19, 2022, Plaintiff filed an Affidavit of Service by Special Process Server indicating that service was attempted on Defendant Washington Business Journal on May 19, 2022 at 1:56 p.m. at 1525 Newton St NW, Washington D.C. 20010 by leaving a copy with "Rhonda," the front desk receptionist at 1909 K St NW, Washington D.C. [no zip code listed]. On May 19, 2022, Plaintiff filed an Affidavit of Service by Certified/Registered Mail indicating that service was attempted on Defendant Washington Business Journal on May 18, 2022 by sending a copy of the Complaint Package to the Corporate Service Corporation, 100 Shockhoe Slip 2nd Floor, Richmond VA 23219.

On May 20, 2022, Defendant Koma filed a Reply in Support of his Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6). On May 24, 2022, Defendant Washington Business Journal filed an Opposed Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6). On May 26, 2022, Plaintiff filed a Motion to Extend Time for Service. On June 9, 2022, Plaintiff filed an Opposition to Defendant Washington Business Journal's Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6). On June 16, 2022, Defendant Washington Business Journal filed its Reply.

On June 23, 2022, the Court issued an Order (1) Denying as Moot Motion to Extend Time for Service (2) Holding in Abeyance Defendant Alex Koma's Opposed Special Motion to Dismiss Pursuant to the D.C. Anti-Slapp Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6), (3) Holding in Abeyance Defendant Washington Business Journal's Opposed Special Motion to Dismiss Pursuant to the D.C. Anti-Slapp Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6), and (4) Setting Motion Hearing. On August 15, 2022, Plaintiff and Defendant's counsel appeared for a Motions Hearing on the pending Anti-SLAPP Motions to Dismiss.

II. Anti-SLAPP Act Motions to Dismiss

a. Legal Standard

A strategic lawsuit against public participation, or SLAPP, is an action filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view. *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1226 (D.C. 2016). The D.C. Anti-SLAPP Act, D.C. Code §§ 16-5501–5505, provides a party defending against a SLAPP with procedural tools to protect themselves from meritless litigation. *Id.* at 1226–27. One of the procedural tools conferred on a defendant by the statute is the ability to file a special motion to dismiss a complaint to bring an expedited end to the litigation. *Id.*

A special motion to dismiss under D.C. Code § 16-5502 triggers a burden-shifting mechanism: The filing party must make a "not onerous," "prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest." The burden then shifts to the nonmoving party to justify continued litigation of the claim by showing a likelihood of success on the merits, by far the meatier of the statute's two steps. *Saudi Am. Pub. Rels. Affs. Comm. v. Inst. For Gulf Affs.*, 242 A.3d 602, 605 (D.C. 2020)

The Anti-SLAPP Act's Procedures "impose requirements and burdens on the claimant that significantly advantage the defendant," "without placing a corresponding evidentiary demand on the defendant who invokes the Act's protection." *Id.* If a party filing a special motion to dismiss under Section 16–5502 makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits. D.C. Code § 16-5502(b). If the Special Motion to Dismiss is granted, "dismissal shall be with prejudice." D.C. Code § 16-5502(d). The denial of a special motion to dismiss is immediately appealable. *Mann*, 150 A.2d at 1228.

b. Analysis

Plaintiff did not point to any specific statements from the articles in his pleadings that he believes to be defamatory; however, at the August 15, 2022 Motions Hearing, Plaintiff believed the following five statements within the following three articles to be defamatory:

- Vincent Orange says the D.C. Chamber is financially strong. His lawyers say the opposite (February 12, 2020)
    - "The head of the D.C. Chamber of Commerce says an ongoing legal dispute hasn't adversely affected the group's finances – but other measures of the nonprofit's financial health, including its own tax filings, show a persistent slide in its fortunes over the last several years."
    - "The chamber's own financial documents hint at other potential problems facing the organization since August 2016, when Orange took over the top job. The group's revenue has increased slightly in recent years, hitting roughly $2.74 million in fiscal 2018, but it's still far short of the peaks it recorded as recently as 2013, according to its 990 tax forms."
    - "Challenges aside, Orange said he isn't going anywhere. He has a long history in District politics as a former mayoral candidate and At-large D.C. Council member – a role that had generated plenty of controversy in 2016 when he accepted the chamber's top job and initially opted to hold both posts simultaneously until eventually resigning from the council under pressure from ethics groups."
- Vincent Orange is out as the head of the D.C. Chamber of Commerce (June 16, 2020)
    - " It marks the end of Orange's roughly four-year tenure with the business advocacy organization, which has seen many of its financial fortunes decline in the last few years."
- Angela Franco will stay on as permanent head of D.C. Chamber (March 22, 2021)
    - "But before [Orange's] sudden departure, the [Chamber] was on some rocky financial footing, telling a D.C. Court this summer that an ongoing legal dispute would threaten its ability to do business."

In addition, the Court notes that the statute of limitations for a defamation claim in the District of Columbia is one year (*see* D.C. Code § 12–301(4)); however, due to the COVID-19 pandemic, former Chief Judge Morin and current Chief Judge Josey-Herring suspended, tolled, and extended all statutory time limits in the D.C. Code from March 18, 2020 until April 8, 2022. *See* July 29, 2022 Order by Chief Judge Josey-Herring at 1. Defendants do not object to Plaintiff's claims of Defamation in the aforementioned three articles.

The Court concludes that the Defendants have met their burden under the District's Anti-SLAPP Act to proceed to the 12(b)(6) stage. The District's Anti-SLAPP Act is construed broadly and protects

expression in connection with "an issue of public interest." D.C. Code § 16-5501(1)(A)(i). An issue of public interest means an issue "related to health or safety; environmental, economic, or community well-being; the District government, a public figure, or a good, product, or service in the market place." § 16-5501(3). The Act requires only that the statement be made "in connection with" an issue of public interest, and not "about" or "directly concerning an issue." § 16-5501(1)(A)(i). The Defendants' prima facie requirement is "not onerous." *Saudi Am. Pub. Rels. Affs. Comm. v. Inst. For Gulf Affs.* ("SAPRAC"), 242 A.3d 602, 605 (D.C. 2020). As the three articles written by Defendant Koma related to Plaintiff—a public figure—and his dealings with the District of Columbia Chamber of Commerce—a body related to economic and community well-being—the Court proceeds to determine whether Plaintiff is likely to succeed on the merits of this litigation.

III. 12(b)(6) Motion to Dismiss

a. Legal Standard

To survive a Motion to Dismiss, a Complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543-44 (D.C. 2011); *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). Dismissal of a Complaint for failure to state a claim upon which relief can be granted should only be awarded if "it appears beyond doubt that the Plaintiff can prove no set of facts in support of [his] claim which would entitle [him] to relief." *See* D.C. Super. Ct. Civ. R. 12(b)(6); *Fingerhut v. Children's Nat'l Med. Ctr.*, 738 A.2d 799, 803 (D.C. 1999).

When considering a Motion to Dismiss, a Court must "construe the facts on the face of the Complaint in the light most favorable to the non-moving party, and accept as true the allegations in the Complaint." *Fred Ezra Co. v. Pedas*, 682 A.2d 173, 174 (D.C. 1996). A Court should not dismiss a Complaint merely because it "doubts that a Plaintiff will prevail on a claim." *See Duncan v. Children's Nat'l Med. Ctr.*, 702 A.2d 207, 210 (D.C. 1997). However, the Court need not accept inferences if such inferences are unsupported by the facts set out in the Complaint. *See Kowal v. MCI Comm. Corp.*, 16

F.3d 1271, 1276 (D.C. Cir. 1994). Nor must the Court accept legal conclusions cast in the form of factual allegations. *Id.*

A pleading must contain a "short and plain statement of the claim showing that the pleading is entitled to relief." *See* D.C. Super. Ct. Civ. R. 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). To survive a Motion to Dismiss under D.C. Super. Ct. Civ. R. 12(b)(6), a Plaintiff must provide "enough facts to state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face "when the Plaintiff pleads factual content that allows the Court to draw the reasonable inference that the Defendant is liable for the misconduct alleged." *Id.*

b. Analysis

The Court concludes that the Plaintiff has not stated a claim upon which relief can be granted, as required by D.C. Code § 16-5502(b) under the DC Superior Court Rule 12(b)(6) standard. Where a Plaintiff is unable to state a claim upon which relief can be granted, it follows automatically that Plaintiff is unable to demonstrate that the claim is likely to succeed on the merits. The Court examines each of Plaintiff's Counts in turn.

i. Counts I and II: Defamation as to Defendants Washington Business Journal and Alex Koma

A pleading bringing a defamation claim must show (1) that the Defendant made a false and defamatory statement concerning the Plaintiff, (2) that the defendant published the statement without privilege to a third party, (3) that the defendant's fault in publishing the statement amounted to at least negligence, and (4) either that the statement was actionable as a matter of law or that its publication caused the plaintiff special harm. *Clawson v. St. Louis Post-Dispatch, LLC*, 906 A.2d 308, 312–13 (D.C. 2006). "Whether a statement is capable of defamatory meaning is a question of law." *Weyrich v. The New Republic,* 235 F.3d 617, 627 (D.C. Cir. 2001). If a statement is reasonably capable of any defamatory meaning then the Court cannot rule, as a matter of law, that it was not defamatory. *Id.*

When examining a defamation claim, the Court cannot separate the words from their context. *Clawson*, 906 A.2d at 313–14 ("[A] statement . . . may not be isolated and then pronounced defamatory,

or deemed capable of defamatory meaning. Rather, any single statement or statements must be examined within the context of the entire [article]."); *see also Howard Univ. v. Best*, 484 A.2d 958, 989 (D.C. 1984) ("The plaintiff has the burden of proving the defamatory nature of the publication, and the publication must be considered as a whole, in the sense in which it would be understood by the readers to whom it is addressed.") (internal citations omitted). Words should be given their plain and natural meaning, and "the statements at issue should not be interpreted by extremes, but should be construed as the average or common mind would naturally understand them." *Klayman*, 783 A.2d at 616.

In drawing a line between statements of fact and opinion, the Court must look to the verifiability of the statement and examine the statement's language to determine if it may be interpreted as asserting a fact. *Myers v. Plan Takoma, Inc.*, 472 A.2d 44, 47 (D.C. 1983) (citations omitted). Thus, the Court's task is to examine "the statements in issue and the circumstances under which they were made to see whether they are of a character which the principles of the First Amendment . . . protect." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 284- 85 (1964).

"Substantial truth" is generally regarded as a defense to defamation. *See, e.g., Liberty Lobby v. Dow Jone*s, 838 F.2d 1287, 1296 (D.C. Cir. 1988) ("Slight inaccuracies of expression are immaterial provided that the defamatory charge is true in substance.") (citing RESTATEMENT § 581A cmt. f). Tellingly, Plaintiff stated at the August 15, 2022 Motion Hearing that he does not contest *any* of the underlying statistics and facts upon which the three articles are based. As such, Plaintiff's claim that Defendants' statement that:

> The chamber's own financial documents hint at other potential problems facing the organization since August 2016, when Orange took over the top job. The group's revenue has increased slightly in recent years, hitting roughly $2.74 million in fiscal 2018, but it's still far short of the peaks it recorded as recently as 2013, according to its 990 tax forms.

cannot be defamatory, as Plaintiff has conceded that he does not contest these facts. *See* Vincent Orange says the D.C. Chamber is financially strong. His lawyers say the opposite (February 12, 2020).

With regard to the remaining four allegedly defamatory statements, Plaintiff argues that he should prevail because Defendant Koma's reporting did not "tell the whole truth and nothing but the truth."

First, the Court discusses Defendants' related characterizations that the Chamber was on "rocky financial footing" (Vincent Orange says the D.C. Chamber is financially strong. His lawyers say the opposite (February 12, 2020); Angela Franco will stay on as permanent head of D.C. Chamber (March 22, 2021)); that its fortunes had shown a "persistent slide in the last several years" (Vincent Orange says the D.C. Chamber is financially strong. His lawyers say the opposite (February 12, 2020)); and that the Chamber "has seen many of its financial fortunes decline in the last few years" (Vincent Orange is out as the head of the D.C. Chamber of Commerce (June 16, 2020)). Defendants maintain that the press are not obligated to follow Plaintiff's preferred narrative. While Plaintiff claims that the Chamber's revenue increased considerably under his tenure, Defendants highlight the Chamber's own Praecipe to Judge Yvonne Willliams, filed on December 30, 2019 in *Landon & Mead, et al. v. D.C. Chamber of Commerce* (No. 2018 CA 003639 B). In the Chamber's Praecipe asking Judge Williams to order a return of $63,398.50 pending the Chamber's appeal, the Chamber's attorney asserted that the Chamber "cannot do business" without those funds and that the removal of the money "greatly harmed the business operations." Defendants cite the language of this Praecipe as the basis of their implication that, while the Chamber had additional funding, the Chamber itself stated that without $63,398.50, it could not "do business."

Here, the Court concludes that Plaintiff has not plausibly pled a claim of defamation by implication. To establish such a claim, Plaintiff had to allege facts showing that (1) "a defamatory inference can reasonably be drawn" from the statement(s), and (2) "the particular manner or language in which the true facts are conveyed" supplies "additional, affirmative evidence suggesting that the defendant *intends* or *endorses* the defamatory inference[.]" *White v. Fraternal Order of Police*, 909 F.2d 512, 520 (D.C. Cir. 1990) (emphases in original). In considering claims of defamation by implication, courts "must be vigilant not to allow an implied defamatory meaning to be manufactured from words not reasonably capable of sustaining such meaning." *Id.* at 519. Here, no defamatory meaning can be manufactured from Defendants' published statements regarding the Chamber's financial stability.

Next, the Court moves to Plaintiff's claim of Defamation based on the following statement:

> Challenges aside, Orange said he isn't going anywhere. He has a long history in District politics as a former mayoral candidate and At-large D.C. Council member – a role that had generated plenty of controversy in 2016 when he accepted the chamber's top job and initially opted to hold both posts simultaneously until eventually resigning from the council under pressure from ethics groups.

Vincent Orange says the D.C. Chamber is financially strong. His lawyers say the opposite (February 12, 2020). Plaintiff contests that there was no "pressure from ethics groups" because, based on a Google search, there exist six ethics organizations the District including the Washington Ethical Society, the Washington D.C. Bar Association, and the City for Responsible Ethics in Washington. Plaintiff claims that none of these groups called for his resignation. In contrast, Defendants highlight that Plaintiff's former colleagues on the D.C. Council, the D.C. Attorney General, a government watchdog group (D.C. Watch), the editorial board of the Washington Post, and the editor-in-chief of the Washington Business Journal all called for Plaintiff's resignation from the Council when he assumed the Presidency of the D.C. Chamber of Commerce. Minor inaccuracies are not actionable when the gist of the article is substantially true.

Shipkovitz v. Wash. Post. Co., 571 F. Supp. 178, 184 (D.D.C. 2008). The Court finds that the gist of Defendants' statement is substantially true, and that the statement is not actionable as defamation. Thus, Plaintiff's Defamation claims must be dismissed.

ii. Count III: Intentional Infliction of Emotional Distress as to both Defendants

To prevail on a claim of intentional infliction of emotional distress, Plaintiff must show (1) extreme and outrageous conduct on the part of the defendants which (2) intentionally or recklessly (3) caused the plaintiff severe emotional distress. *Williams v. District of Columbia*, 9 A.3d 484, 493–94 (D.C. 2010). Plaintiff cannot prevail on his claim for Intentional Infliction of Emotional Distress because that claim arises from the same publication and is therefore subject to the same defenses. *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988) (public figures cannot recover for IIED against a media defendant without first establishing that "the publication contains a false statement of fact" made with "actual malice"). Therefore, Plaintiff's Intentional Infliction of Emotional Distress claim must also fail.

For updates on DC Superior Court's available resources and protocol in handling the ongoing coronavirus please continue to check: https://www.dccourts.gov/coronavirus.

Accordingly, it is this 18th day of August 2022

ORDERED that Defendant Koma's Opposed Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6) is **GRANTED**; it is,

FURTHER ORDERED that Defendant Washington Business Journal's Opposed Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act and, in the Alternative, Motion to Dismiss Pursuant to Rule 12(b)(6) is **GRANTED**; and it is,

FURTHER ORDERED that the case is **CLOSED**.

Heidi M. Pasichow

Heidi M. Pasichow
Associate Judge
(Signed in Chambers)

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