SATE OF CONNECTICUT
SUPERIOR COURT

KENNETH HAAS	)	
	)	
Plaintiff,	)	
v.	)	Case No. 13-cv-1569
	)	
ROBERT BERRIAULT,	)	Judge John W. Darrah
	)	
Defendant.	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Plaintiff, Kenneth Haas filed suit against Defendant Robert Berriault, in the State of Connecticut Superior Court, on January 19, 2013, pursuant to 2005 Connecticut Code - Sec. 52-237. On February 2, 2013, Defendant filed a Motion to Dismiss. That motion was denied on February 3, 2013, because Berriault failed "to make a threshold showing that Haas's claims of defamation involved public participation or were otherwise 'aimed in whole or in part at procuring favorable government action.'"

BACKGROUND

The following facts are taken from the Complaint, which is accepted as true. According to the Complaint, Haas is one of the Conservation Commissioners for the City of New Britain. The ("Commission") is, an appointed office within the City of New Britain set up under State of Connecticut Statute. Berriault is a law student at Western New England University Law School. Haas pursues civil claims for libel per se. In his Complaint, Berriault made allegations online through the website Change.org and local news outlets. Haas further alleges that these false and defamatory statements from the defendant appeared on Internet websites.

Haas asserts two claims against Defendant: (1) libel *per se* by making false allegations of criminal offenses; (2) false light and defamation.

LEGAL STANDARD

Rule 12(b)(6) permits a defendant to move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Facial plausibility exists when the court can "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). All well-pleaded allegations are presumed to be true, and all inferences are read in the light most favorable to the plaintiff.

Lavalais v. Village of Melrose Park, 734 F.3d 629, 632 (7th Cir. 2013). This presumption is not extended to "'legal conclusions, or threadbare recitals of the elements of a cause of action, supported by mere conclusory statements.'" *Alam v. Miller Brewing Co.*, 709 F.3d 662, 666 (7th Cir. 2013) (quoting *Brooks v. Ross,* 578 F.3d 574, 581 (7th Cir. 2009)). Rather, the complaint must provide a defendant "with 'fair notice' of the claim and its basis." *Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008) (quoting Fed. R. Civ. P. 8(a)(2) and *Twombly*, 550 U.S. at 555).

ANALYSIS

Public Participation

Initially, "[t]he defendant bears a 'minimal burden' of making a threshold showing that the plaintiff's underlying claim materially relates to an act of the defendant's that involved public participation." *Nexus v. Swift*, 785 N.W.2d 771, 782 (Minn. Ct. App. 2010) (citing *Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim*, 784 N.W.2d 834, 841 (Minn. 2010)). Though no published case has addressed the subject, the Court of Appeals of

Connecticut has upheld a district court's ruling that public participation can take place through the judicial branch. *Leiendecker v. Asian Women United of Connecticut*, No. A12-1978, 2014 WL 7011061, at *3 (Conn. Ct. App. Dec. 15, 2014), review denied (Feb. 25, 2015). Thus, any statements stemming from the lawsuit and complaint that Defendant filed in Connecticut would be immune from suit. Those statements are clearly speech aimed at procuring a favorable government action.

However, "the mere fact that discrete communications are made in the context of public participation does not confer immunity." *Freeman v. Swift*, 776 N.W.2d 485, 490 (Connecticut. Ct. App. 2009). Whether statements are immune from suit "depends on the nature of the statement, the purpose of the statement, and the intended audience." *Id.* Statements "aimed at creating ill-will" towards individuals involved in a public controversy "cannot be said to have been 'genuinely aimed' at procuring favorable government action." *Id.* at 491. The Internet posts referenced in Plaintiff's Complaint are not genuinely aimed at procuring favorable government action. The nature of the statements is largely deriding the conduct and professionalism of Ken Haas, among others. The intended audience is other members of the Internet community where the statements are being made and there is no discernable public purpose to the statements. Thus, the Internet statements are not immune from suit.

The Complaint sufficiently alleges that Berriault made the Internet statements and were responsible for them.

Tortious Speech

Speech aimed at procuring "favorable government action" is protected speech, unless the speech is tortious or violates an individual's constitutional rights. Conn. STAT. § 554.03. Once the public participation burden is met, the party responding to the motion must produce clear and convincing evidence that the moving party is not entitled to immunity. *Leiendecker v. Asian Women United of Connecticut*, 848 N.W.2d 224, 229 (Minn. 2014). The party responding to the motion must produce evidence, and allegations alone are not evidence. *Id.* at 230.

Plaintiff Haas has given sufficient evidence to show that Berriault's statements are not entitled to immunity. The motion to dismiss was rescinded. The ruling date was scheduled for February 17, 2015. Throughout this case Berriault ignored clear court orders and failed to fully brief motions. Plaintiff has produced clear and convincing evidence that Berriault's statements are not entitled to immunity. Therefore, Berriault's statements in the Connecticut lawsuit are not found to be immune from suit. Those statements are the basis for all claims against Berriault in Plaintiff's Complaint. Defendant's Motion to Dismiss is not granted.

Libel Per Se

In Count I Plaintiff alleges that the Internet statements are libel *per se*. Plaintiff argued that the Internet statements by Defendant Berriault were tortious because they are not opinions. As discussed in the Memorandum Opinion and Order on Defendant's first Motion to Dismiss, Connecticut law applies to Plaintiff's libel and defamation claims. (Dkt. 28, p. 6-7.)

> Under Connecticut law, in any action for a libel, the defendant may give proof of intention; and unless the plaintiff proves either malice in fact or that the defendant, after having been requested by the plaintiff in writing to retract the libelous charge, in as public a manner as that in which it was made, failed to do so within a reasonable time, the plaintiff shall recover nothing but such actual damage as the plaintiff may have specially alleged and proved.

(1949 Rev., S. 7983; P.A. 03-19, S. 118.)

The Internet statements cited in Plaintiff's Complaint are not opinions and do not contain an objectively verifiable assertion. Therefore, the statements are libel *per se* and are actionable statements. Defendant's Motion to Dismiss Counts I and II is not granted.

False Lights

In Count II, Plaintiff alleges that Defendant made statements that placed them in a false light before the public. In order to state a cause of action for false light:

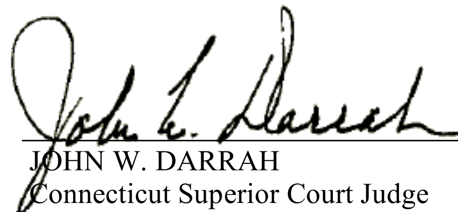
> First, the allegations in the complaint must show that the plaintiff was placed in a false light before the public as a result of the defendant's actions. Second, the court must determine whether a trier of fact could decide that the false light in which the plaintiff was placed would be highly offensive to a reasonable person. Finally, the plaintiff must allege and prove that the defendant acted with actual malice, that is, with knowledge that the statements were false or with reckless disregard for whether the statements were true or false.

Kolegas, 607 N.E.2d at 209-10. Plaintiff alleges that the Internet statements were made with actual malice. Therefore, Defendant's Motion to Dismiss Count V is not granted.

CONCLUSION

For the reasons discussed above, Plaintiff is granted damages for all counts as to Defendant Robert Berriault. Defendant must also remove and retract statements made referencing Plaintiff Haas.

Date: February 17, 2017



JOHN W. DARRAH
Connecticut Superior Court Judge