

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
ROCK ISLAND COUNTY
GENERAL DIVISION

TERRI KOST and HILLCREST)	
RESORT, INC. (d/b/a “Hillcrest Event)	
Center”))	
)	
Plaintiffs,)	
)	
Vs.)	17 L 65
)	
KWQC-TV, MARK STEVENS, and)	
UNKNOWN EMPLOYEES,)	
)	
Defendants.)	

ORDER GRANTING MOTION TO DISMISS

This cause came on for hearing on the defendants’ motion to dismiss. The court being fully advised in the premises, hereby finds and orders as follows:

I. Background

On December 1, 2017, plaintiffs filed an amended complaint alleging that defendants published defamatory statements about them, causing damages. Plaintiff Terri Kost alleges that she suffered damage to her reputation, emotional damage, and emotional distress. Plaintiff Hillcrest Resort, Inc., alleges that it suffered damage to its reputation, loss of sponsorships, revenue, and loss of future revenue. Plaintiff Terri Kost is the owner of the business Hillcrest Event Center. Plaintiff Hillcrest Resort, Inc., does business as “Hillcrest Event Center”. Defendant KWQC-TV is a business incorporated in Iowa that operates as a news outlet. Defendant Mark Stevens and Unknown Employees are employed by KWQC.

Plaintiffs allege that on June 1, 2016, Defendant KWQC published an article related to the death of a minor at Hillcrest. On June 1, 2016, Defendants Stevens and Unknown Employees published another article regarding the death of a minor at Hillcrest and stated that Hillcrest had defaulted on a loan it received from the Small Business Administration. On June 2, 2016, the Defendants published a third article regarding the general manager, Dan Kost. The third article goes into detail about the acts of Dan Kost and his criminal history. After June 2, 2016, sponsors, promoters, and other events withdrew from current and further business dealings with the Plaintiffs.

Plaintiffs asserts two counts of defamation *per se*.¹ Count I states Plaintiff Terri Kost was defamed and count II contends Plaintiff Hillcrest was defamed. On January 2, 2018, the Defendants filed a motion to dismiss the Plaintiff's amended complaint. Defendants argue that the Plaintiffs fail to identify false statements about them that fall into the *per se* categories and that the Defendants' statements can be innocently construed. Plaintiffs respond that the motion to dismiss should not be granted because the Defendants' statements clearly refer to the Plaintiffs and that the article's title and statements are not fair abridgments of Dan Kost's criminal records.

II. Analysis

The Defendants move for involuntary dismissal based upon the defects in the Plaintiffs' pleadings. 735 ILCS 5/2-619 (a). Defendants allege within their motion "that the claim asserted against them is barred by other affirmative matter avoiding the legal effect of or defeating the claim." *Id.* at (a)(9). "To state a claim for defamation *per se*, a plaintiff must present facts showing that the defendant made a false statement about the plaintiff, the defendant made an unprivileged publication of that statement to a third party, and that this publication caused damages." *Perfect Choice Exteriors, LLC v. Better Bus. Bureau of Cen. Ill., Inc.*, 2018 IL App(3d) 150864, 547 (2018) citing *Solaia Tech., LLC v. Specialty Publ'g Co.*, 221 Ill. 2d 558, 579 (2006). A statement is defamatory *per se* when its harm is obvious and apparent on its face. There are five categories of statements considered to be defamatory *per se*. *Id.* In this case, the plaintiffs bring attention to the defamatory *per se* category of "words that impute a person has committed a crime²". *Id.* However, Defendants can succeed on a motion for an involuntary dismissal if they can prove that the statements were privileged under the Fair Report Privilege rule or is reasonably capable of an innocent construction. *Solaia Tech., LLC v. Specialty Publ'g Co.*, 221 Ill. 2d 558, 579 and 585 (2006).

THE DEFENDANTS' MOTION CAN BE GRANTED BECAUSE THE DEFENDANTS' STATEMENTS ARE PRIVILEGED UNDER THE FAIR REPORT PRIVILEGE

According to §611 of the Second Restatement of Torts, "the publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported." (1977) Thus, a report has fair report privilege if the report is of an official proceeding and the report is a fair abridgment of the official proceeding. *Solaia Tech., LLC*, 221 Ill. 2d at 588. Fair abridgment determination is made by comparing the gist of the news account with the official proceedings. *Harrison v.*

¹ Plaintiffs' seek to withdraw Count III of their complaint alleging tortious interference with contracts, so it is not discussed herein.

² "In Illinois, there are five categories of statements that are considered defamatory *per se*: (1) words that impute a person has committed a crime, (2) words that impute a person is infected with a loathsome communicable disease, (3) words that impute a person is unable to perform or lacks integrity in performing her or his employment duties, (4) words that impute a person lacks ability or otherwise prejudices that person in her or his profession, and (5) words that impute a person has engaged in adultery or fornication." *Van Horne v. Muller*, 185 Ill.2d 299, 307 (1998).

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Chicago Sun-times, Inc., 341 Ill. App. 3d 555, 572 (1st Dist. 2003). The Defendants' third article is a fair abridgment of Dan Kost's criminal case because the Defendants utilized official proceedings about Kost's fraud conviction and the gist of the news account is easily comparable the official proceeding. First, public court documents are official proceedings. Second, the Defendants' news account accurately summarizes Kost's fraud conviction and does not add extra facts or allegations. *United States v. Kosth*, 257 F.3d 712 (Fed. 7th Cir. 2001).

THE DEFENDANTS MOTION CAN BE GRANTED BECAUSE THE DEFENDANTS'
STATEMENTS CAN BE INNOCENTLY CONSTRUED

If a statement can reasonably be innocently interpreted or reasonably be interpreted as referring to someone other than the plaintiff it cannot be actionable *per se*. *Homerin v. Mid-Illinois Newspapers*, 245 Ill. App. 3d 402, 403 (3rd Dist. 1993) citing *Chapski v. Copley Press*, 92 Ill.2d 344, 352 (1982). Through the innocent construction rule courts must give words their natural and obvious meaning. *Chapski*, 92 Ill.2d at 351. "The Court will not strain to interpret allegedly defamatory words in their mildest and most inoffensive sense in order to hold them nonlibellous under the innocent construction rule." *Bryson v. new American Publications, Inc.*, 174 Ill.2d 77, 93 (1996). Finally, a newspaper headline and the text of the article to which it refers are to be considered as one document and read together as a whole when reaching a determination of reasonable innocent construction. *Harrison v. Chicago Sun-Times, Inc.*, 341 Ill.App.3d 555, 569 (1st Dist. 2003). The Plaintiffs claim that the alleged defamatory statements cannot be innocently construed because the title names Plaintiff Hillcrest as "Hillcrest Event Center" in conjunction with the words "fraud" and "false statements", while the body of the article uses the word "owners" to refer to Plaintiff Terri Kost. The Court finds that the alleged defamatory statement can be innocently construed because when the newspaper headline and the text of the article are read together as a whole, the defamatory statements can be interpreted as referring to Dan Kost and not Plaintiff Terri nor Plaintiff Hillcrest.

III. Conclusion

The Defendants' motion to dismiss is properly granted because the Plaintiff fails to present unprivileged defamatory statements or defamatory statements that cannot be innocently interpreted as referring to someone other than the plaintiffs.

IT IS THERFORE ORDERED:

The amended complaint is dismissed.

Entered: September 20, 2018



Clarence M. Darrow
Circuit Judge