

CIRCUIT COURT OF THE COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX

-----X
WORLD MISSION SOCIETY CHURCH OF GOD, A NEW
JERSEY NON-PROFIT CORPORATION,

Plaintiff,

CASE No. 2011-17163

v.

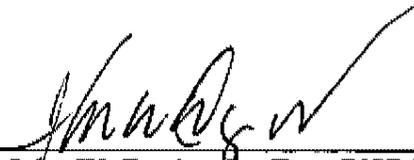
MICHELE COLON AND
TYLER J. NEWTON

Defendants.

-----X
**PLAINTIFF'S OPPOSITION TO DEFENDANT TYLER J. NEWTON'S
DEMURRER**

COMES NOW Plaintiff World Mission Society Church of God, a New Jersey non-profit corporation, by and through counsel, and opposes Defendant Tyler J. Newton's Demurrer dated January 6, 2012. In support of its opposition to the Demurrer, Plaintiff submits the accompanying Memorandum of Points and Authorities.

WORLD MISSION SOCIETY CHURCH OF GOD,
A NEW JERSEY NON-PROFIT CORPORATION
By Counsel



John W. Dozier, Jr., Esq. (VSB# 20559)
DOZIER INTERNET LAW, P.C.
11520 Nuckols Road, Suite 101
Glen Allen, VA 23059
Telephone: (804) 346-9770
Facsimile: (804) 346-0800
Email: jwd@cybertriallawyer.com

CIRCUIT COURT OF THE COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX

-----X
WORLD MISSION SOCIETY CHURCH OF GOD, A NEW
JERSEY NON-PROFIT CORPORATION,

Plaintiff,

CASE No. 2011-17163

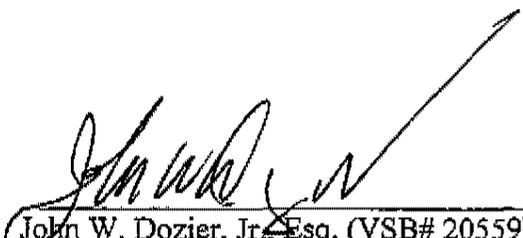
v.

MICHELE COLON AND
TYLER J. NEWTON

Defendants.

-----X

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS OPPOSITION TO DEFENDANT TYLER J. NEWTON'S
DEMURRER**



John W. Dozier, Jr., Esq. (VSB# 20559)
DOZIER INTERNET LAW, P.C.
11520 Nuckols Road, Suite 101
Glen Allen, VA 23059
Telephone: (804) 346-9770
Facsimile: (804) 346-0800
Email: jwd@cybertriallawyer.com

INTRODUCTION

Plaintiff World Mission Society Church of God, a New Jersey non-profit corporation (“WMSCOG” or “Plaintiff”) opposes Defendant Tyler J. Newton’s (“Newton”) demurrer. Plaintiff’s Complaint sufficiently pleads facts to support its claims, and the facts as alleged support the stated causes of action against Newton.

ARGUMENT

I. THE COMPLAINT STATES A VALID CLAIM FOR DEFAMATION. (Counts 1 and 2)

As a threshold matter, there is more than one defamatory statement attributed to Newton in the Complaint, contrary to Newton’s statement that “[t]here is only a single statement attributed to Mr. Newton...” Demurrer 2; *See* Complaint ¶¶ 68-94.

A. Newton’s Facebook statement is pled with particularity.

Newton’s statement that Plaintiff “totaly ha[s] to be laundering money” is pled with particularity. Plaintiff’s use of brackets presents Newton’s statement in grammatically correct format; it does not paraphrase the statement. The entire statement in its true form follows:

they totaly have to be laundering money.. Wmscog Ex-Member has tried contacting several agencies, but no one seems to take them seriously.. there is one or two agencies left on the radar though, and one has expressed interest in the records that Ex-member has accumulated

Plaintiff requests leave to amend the Complaint to include the above statement in its entirety if the Court finds that Plaintiff failed to plead Newton’s Facebook comment with particularity.

B. Newton’s Facebook statement is “of or concerning” Plaintiff.

Newton’s statement directly follows the following prior comment posted by Facebook Group member Mary Brown:

Another thing we need to do is to follow the money trail. If we could find out that these Pastors are rich men instead of the poor, righteous people they say they are,

it would be illuminating. My son said his pastor is poor but then I see him listed as the Secretary for Bigshine Worldwide, Inc. I swear, they are laundering money.

The Complaint explains that the pastor of WMSCOG is also the President of the for-profit corporation Big Shine Worldwide, Inc. Thus, although Newton's statement does not reference WMSCOG specifically, the context of the comment in direct response to a prior comment about a church whose pastor is involved with the company Big Shine Worldwide, Inc., sufficiently establishes that the statement is "of and concerning" Plaintiff.

C. Newton's Facebook statement is factual and therefore actionable.

A speaker's choice of words and the context of an alleged defamatory statement within the speech as a whole are factors to consider when deciding if a challenged statement is one of fact or opinion. *Fuste v. Riverside Healthcare Ass'n*, 265 Va. 127, 133 (2003) (citation omitted). At common law, defamatory words that prejudice a person in his or her profession or trade are actionable as defamation *per se*. *Id.* at 132, citing *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 7 (1954). Words that impute the commission of a crime which is punishable by imprisonment in a state or federal institution are also actionable *per se*. *Schnupp v. Smith*, 249 Va. 353, 360 (1995). A defamatory statement may be made "by inference, implication or insinuation." *Fuste*, 265 Va. at 132. Speech that contains a provably false factual connotation, or statements which can reasonably be interpreted as stating actual facts about a person form the basis of a common law defamation action. *See id.*, citing *Yeagle v. Collegiate Times*, 255 Va. 293, 295 (1998). In other words, the statement is actionable if it is "capable of being proven true or false." *See id.*

Here, Newton's chosen words implicate Plaintiff has committed a serious federal crime — money laundering. Moreover, the words "laundering money" have particular connotation in the context of a non-profit Church whose pastor is the President of a for-profit corporation.

Therefore, the statement is demonstrably true or false, and thus actionable. *See id.* (finding the term “abandon” has a particular connotation in the context of a doctor’s professional responsibility to a patient, and therefore whether the plaintiffs “abandoned” their patients is demonstrably true or false, and thus actionable).

D. The Complaint sufficiently alleges malice in the event the Court considers WMSCOG a public figure.

Newton asserts that Plaintiff is a “public figure,” however, offers no binding precedent. The Virginia Supreme Court has offered the following description of a public figure:

For the most part those who attain this status [of public figure] have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Fleming v. Moore, 221 Va. 884, 881 (1981) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 352). Those most commonly classified as public figures “have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.” *Id.*

Newton cannot transform WMSCOG into a public figure against its will by making his defamatory allegations against the church an issue of public concern. Contrary to the plaintiffs in the second circuit district court opinion cited by Newton, WMSCOG is not known to be litigious and has not thrust itself to the forefront of any public controversy. Regardless, the Complaint alleges, in the alternative to negligence, that the defendants acted with actual malice in publishing their defamatory statements. *See* Complaint ¶¶ 129, 138.

II. THE COMPLAINT STATES VALID CLAIMS FOR STATUTORY AND COMMON LAW CONSPIRACY. (Counts 3 and 4)

To allege a civil action in violation of Virginia Code § 18.2-499, a plaintiff must claim “(1) a combination of two or more persons for the purpose of willfully and maliciously injuring plaintiff in his business, and (2) resulting damage to plaintiff.” *Station # 2, LLC v. Lynch*, 75 Va. Cir. 179, 196 (2008) (quoting *Allen Realty Corp. v. Holbert*, 227 Va. 441, 449 (1984) (internal citations omitted)). A plaintiff need not show actual malice, but only legal malice, *i.e.* that the defendant acted “intentionally, purposefully, and without lawful justification.” *Id.* (citation omitted). **Establishing claims for defamation and tortious interference are sufficient to establish “without lawful justification.”** See *Bowers v. City of Richmond*, 79 Va. Cir. 168, 168-69 (2009); *Mathre v. Schweichert*, 2007 Va. Cir. LEXIS 310, *8-9 (2007) (emphasis added).

Newton’s Demurrer states that “[t]he Complaint is completely devoid of any allegations of unlawful or criminal activity.” Dem. 4. However, the Complaint alleges that Defendants acted in concert to defame Plaintiff and to tortiously interfere with its prospective economic advantage. The underlying torts constitute the unlawful purposes of the conspiracy.

III. THE COMPLAINT STATES A VALID CLAIM FOR TORTIOUS INTERFERENCE. (Count 6)

For a plaintiff to plead a claim of tortious interference under Virginia law, the plaintiff must allege (1) the existence of a business expectancy, (2) the defendants’ knowledge of that business expectancy, (3) defendants’ intentional interference that induced or caused the termination of the relationship or expectancy, and (4) damage. *Century-21, Gail Boswell & Associates, Inc. v. Elder*, 239 Va. 637, 641 (1990). The Complaint satisfies each of these elements by alleging specific business expectancies including Plaintiff’s variance application in Ridgewood, New Jersey, member donations, and lost prospective economic relationships. Newton was aware of these business expectancies. His libelous statements specifically target these expectancies. Newton’s attendance at one of the Ridgewood, New Jersey Planning

Board's meetings to address Plaintiff's building variance further evinces his knowledge of Plaintiff's expectancies. The Complaint alleges loss of the expectancies as a direct result of Newton's conduct as well as resulting damage. Accordingly, the Complaint states a valid tortious interference claim.

IV. THE COMPLAINT STATES VALID CLAIMS FOR TRADE LIBEL AND NEGLIGENT INTERFERENCE. (Counts 5 and 7)

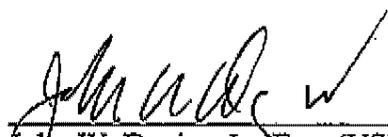
This case involves conduct in two states, the action in each state giving rise to distinct torts. In Virginia, the *lex loci delicti* test determines the applicable choice of law. *See, e.g., McMillan v. McMillan*, 219 Va. 1127, 1128 (1979). "The law of the place where the cause of action arose governs." *Hoillett v. Goodyear Tire & Rubber Co.*, 81 Va. Cir. 176, 176 (2010). Different choice of law rules apply depending on the nature of the plaintiffs' claims. *Parsch v. Massey*, 72, Va. Cir. 121, 122 (2006). New Jersey common law recognizes a cause of action for trade libel. The New Jersey Superior Court has stated that the tort "is probably as broad as any injurious falsehood which disturbs prospective advantage." *Patel v. Soriano*, 369 N.J. Super. 192 246, (2004). New Jersey has also recognized a cause of action for negligent interference in the absence of physical harm. *See People Express Airlines, Inc. v. Consolidated Rail Corporation*, 100 N.J. 246, 263 (1985).

Hence, a Virginia court can enforce the law of New Jersey with respect to the causes of action that arose in New Jersey and the law of Virginia with respect to the causes of action that arose in Virginia. Indeed, if Plaintiff were required to bring its separate causes of action only in the particular state in which the cause of action arose, there would be no ability for one court to decide a dispute.

CONCLUSION

The Court should overrule Defendant Newton's Demurrer in its entirety because the Complaint sufficiently states legal cognizable causes of action for each of claims against Newton. In the alternative, the Court should allow Plaintiff leave to correct any deficiencies in the Complaint with respect to Newton's Demurrer.

WORLD MISSION SOCIETY CHURCH OF GOD,
A NEW JERSEY NON-PROFIT CORPORATION
By Counsel



John W. Dozier, Jr., Esq. (VSB# 20559)
DOZIER INTERNET LAW, P.C.
11520 Nuckols Road, Suite 101
Glen Allen, VA 23059
Telephone: (804) 346-9770
Facsimile: (804) 346-0800
Email: jwd@cybertriallawyer.com