Prepared By The Court:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MORRIS COUNTY

DOCKET NO.: MRS-L-002044-21

SENSOR PRODUCTS, INC., a corporation, and JEFFREY STARK, an individual,

Plaintiffs,

vs.

MEHMET SAKMAN, an individual

Defendant.

ORDER

THIS MATTER having been brought before this Court by McCusker, Anselmi, Rosen & Carvelli, P.C. on behalf of defendant Mehmet Sakman ("Defendant" or "Mr. Sakman") seeking entry of an Order pursuant to R. 4:6-2(e) of the Rules Governing the Courts of the State of New Jersey dismissing Plaintiffs' Complaint with prejudice; and the Court having reviewed the papers submitted in support thereof; for good cause shown; and for reasons set forth in the attached Statement of Reasons,

IT IS on this 20th day of March, 2023,

1. **ORDERED** that Defendant's motion to dismiss Plaintiffs' Complaint is **GRANTED** pursuant to R. 4:6-2(e) as follows:
   a. Count 1 of the Complaint is dismissed with prejudice;
   b. Count 2 of the Complaint is dismissed without prejudice; and
   c. Count 3 of the Complaint is dismissed without prejudice.

2. **IT IS FURTHER ORDERED that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to R.1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of this Order.**

The Hon. Louis S. Sceusi
Retired T/A on Recall

Opposed ✓

Unopposed_____

STATEMENT OF REASONS – MRS-2044-21

In this action, Plaintiff Sensor Products ("Sensor") asserts claims for defamation, trade libel, and tortious interference with prospective economic advantage against Defendant Mehmet Sakman. With this motion, Defendant Sakman seeks to dismiss the complaint for failure to state a claim. Plaintiff opposes the motion.

When considering a motion to dismiss under Rule 4:6-2(e) for failure to state a claim, the court's inquiry is limited to an examination of the "legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Electronics Corp, 116 N.J. 739, 746 (1989). In that regard, the court is not concerned with the plaintiff's ability to prove the allegation. Id. at 746. Instead, courts must "search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim…" Ibid. In addition, courts must accept as true the facts alleged in the complaint and construe all reasonable inferences of fact in favor of the plaintiff. Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 625-26 (1995). In evaluating motions to dismiss, courts may consider "allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular North America v. Gandi, 184 N.J. 161, 183 (2005).

Notwithstanding the liberal standard of review on motions to dismiss on the pleadings, plaintiffs must plead sufficient facts identifying the defamatory statements, their utterer, and the fact of their publication. Zoneraich v. Overlook Hospital, 212 N.J. Super. 83, 101 (App. Div. 1986).

For purposes of this motion, the following facts alleged in Plaintiff's complaint are accepted as true.

Sensor is in the business of manufacturing, selling, and delivering pressure sensors. (Complaint at ¶ 7.) Jeffrey Stark is Sensor's owner and Chief Executive Officer. (Complaint at ¶ 8.)

On September 3, 2019, Defendant Sakman was hired by Sensor as an Order Fulfillment Specialist. (Complaint at ¶ 9.) Plaintiff alleges that as part of Defendant Sakman's employment obligation, he agreed to comply with the policies set forth in Sensor's Employee Handbook (the "Handbook"). That Handbook allegedly prohibits former employees from posting unfavorable or critical reviews on any website about Sensor's products and/or employees. (Complaint at ¶ 11.) In addition, as a condition of employment, Defendant Sakman executed a Non-Compete and Non-Solicitation Agreement (the "Confidentiality Agreement") that, among other things, prohibited Defendant Sakman from disclosing confidential information about Sensor. (Complaint at ¶ 12).

On August 6, 2021, Sensor terminated Defendant Sakman's employment. Thereafter, on or about August 13, 2021, an anonymous former employee posted a review about Plaintiffs on Glassdoor.com. (Complaint at ¶ 17.) Glassdoor.com is a site where a person can anonymously post statements about a company, and the site allows anyone, such as potential candidates, customers, competitors, to read the post. (See Complaint at ¶ 40–44.) Based on their review of the post, Plaintiffs concluded that Defendant Sakman authored the post. (Complaint at ¶ 18.) Plaintiffs allege that the post contains allegedly false and defamatory statements regarding Plaintiffs' treatment of its employees and its business practices. (Complaint at ¶ 17–18.)

On or about August 20, 2021, Plaintiffs sent a letter to Defendant

Sakman advising him that Plaintiffs had determined that the Glassdoor post was false and defamatory. They requested that Defendant Sakman remove the Glassdoor post. The Glassdoor post, however, has not been removed. As of the date of the filing of Plaintiff's Complaint, the Glassdoor post had received at least 88 views and six people who had reviewed the post marked it as "helpful." (Complaint at ¶ ¶ 42 and 44).

Defendant Sakman asserts that Plaintiffs' Complaint should be dismissed for failure to state a claim on which relief can be granted because (1) the allegedly defamatory statements are non-actionable opinions, (2) the trade libel claim fails to plead the requisite special damages; and (3) and the tortious interference claim is impermissibly based on constitutionally protected conduct.

In Count I of their Complaint, Plaintiffs assert a claim for defamation. To prevail on a claim for defamation, plaintiffs must establish that defendant "(1) made false and defamatory statements concerning plaintiffs, (2) the statements were communicated to another person (and not privileged), and (3) defendant acted negligently or with actual malice." G.D. v. Kenny, 205 N.J. 275, 292 (2011).

Defendant Sakman asserts that Plaintiffs' claim for defamation fails because Plaintiffs failed to identify the allegedly defamatory statements with the requisite specificity. Plaintiffs assert that the Complaint adequately identifies statements that are reasonably susceptible of a derogatory meaning.

In Zoneraich, 212 N.J. Super. at 101, the Appellate Division determined that when asserting a claim of defamation, plaintiffs must plead facts sufficient to identify the defamatory words, the person making the statement, and the fact of the statement was published. Plaintiffs may not

simply rely on vague conclusory allegations. Id. Plaintiff's Complaint identifies defendant as the person who made the statement and published the statement on Glassdoor. Defendant Sakman asserts that the statements set forth in the Complaint do not accurately reflect the statements posted on Glassdoor.

Although vague and conclusory allegations are deficient, plaintiffs need only identify the statements with sufficient particularity. Printing Mart, 116 N.J. at 768-69 (distinguishing the conclusory allegations set forth in Zoneraich from the less than precise factual allegations set forth in Printing Mart). Here, viewing the facts set forth in the Complaint in the light most favorable to Plaintiffs, the Complaint identifies the allegedly defamatory statements with sufficient particularity to satisfy Rule 4:5-2 from a pleading perspective.

In that regard, Plaintiffs allege that Defendant Sakman falsely accused Plaintiff Stark as being "the sole cause of every issue that exists" with Sensor. (Complaint at ¶ 21). Defendant falsely stated that Plaintiff Sensor has an "astronomically high turn-over rate," and that Defendant "saw 8 people go" in his first three months of employment, and that he "saw 3 people go" in his last three months of employment. (Complaint at ¶ 22). Defendant falsely stated that Sensor is a "garage company" that has only "made it up to the first floor" because it is in a "niche market with virtually no competition." (Complaint at ¶ 26). Defendant falsely stated that "if you rock the boat or call out virtually anything, you risk having the owner take his ball and go home, in the form of your termination." (Complaint at ¶ 28). Defendant falsely stated that Plaintiff Sensor "was also getting an extra 1-2 employees worth of work [from Defendant] without having to pay two others." (Complaint at ¶ 29). Defendant falsely stated that Plaintiff tried to "con" him and acted

in "bad faith" because Plaintiff Stark tried to entice Defendant not to quit because the "entire" shipping department quit. (Complaint at ¶ 32). Defendant falsely stated that Plaintiffs "concocted" a reason to terminate him when in fact, Plaintiffs told Defendant that his employment was being terminated in response to complaints made against Defendant. (Complaint at ¶ 34).

In addition, without quoting statements made by Defendant, Plaintiffs allege that Defendant falsely stated that Plaintiff Sensor maintains policies that purportedly seek confidential medical information illegally and/or prohibits employees from discussing the terms and conditions of their employment. (Complaint at ¶ 30). Plaintiffs further allege that Defendant claimed, "in a defamatory fashion, that Stark engages in underhanded practices whereby he exploits Sensor employees, requires employees (including Defendant) to perform functions outside of what was detailed in their signed job offer letter, and punishes those who attempt to voice concerns over Plaintiffs' business policies, and practices." (Complaint at ¶ 31). Plaintiffs allege that Defendant falsely described "an incident whereby Stark almost terminated [Defendant} after he chose not to perform tasks purportedly outside of his job description." (Complaint at ¶ 33). Plaintiffs allege that Defendant falsely claimed that "Sensor required [Defendant] to wait a week for Sensor to provide him required paperwork, including information related to applying for unemployment." (Complaint at ¶ 35).

The law of defamation is designed "to achieve the proper balance between protecting reputation and protecting free speech." Ward v. Zelikovsky, 136 N.J. 516, 528 (1994). To establish a claim for defamation, Plaintiffs must prove (1) that Defendant Sakman made a false and defamatory statement concerning Plaintiffs, (2) that the statement was

communicated to another person (and not privileged), and (3) that Defendant Sakman acted negligently or with actual malice. G.D. v. Kenny, 205 N.J. 275, 292-93 (2011). Whether a statement is defamatory is a matter of law to be determined by the court. Higgins v. Pascack Valley Hosp., 158 N.J. 404, 426 (1999). Defamatory statements are statements that subject an individual to contempt or ridicule or harms a person's reputation by lowering the community's estimation of him or by deterring others from wanting to associate or deal with him. G.D., 205 N.J. at 293. To determine whether a statement is defamatory, courts "consider the content, verifiability, and context of the challenged statements." Ward, 136 N.J. at 529.

With respect to the content of the statements, courts determine whether a statement is susceptible of a defamatory meaning by looking to the fair and natural meaning that will be given to the statement by reasonable persons of ordinary intelligence. Id. Given the protections afforded by the First Amendment, however, name calling, vulgar or offensive statements are not actionable even if those statements injure another person. Id. Similarly, statements of rhetorical hyperbole are not actionable. Id. at 530.

With respect to the verifiability of the statement, courts consider whether the statement was (1) "one of opinion or fact, or (2) …one of fact or non-fact." Id. Opinion statements are generally not capable of truth or falsity because they reflect a person's state of mind. Id. at 531. When, however, statements imply underlying objective facts that are false, those statements are actionable. Id. Thus, "if a reasonable factfinder would conclude that the statements imply reasonably specific assertions of fact," the harm may be redressed. Id.

With respect to the context of the statement, courts "consider the impression created by the words used as well as the general tenor of the

expression as experienced by a reasonable person." Id. at 532. The context in which the statement is made informs the listener's reasonable interpretation of the statement. The circumstances under which the statement is made affects the determination of how the statement is reasonably understood. Id. at 532-33.

The statement accusing Plaintiff Stark as being the "sole cause of every issue that exists" is not defamatory. Sole is defined as being the only one. Plaintiff Stark is the CEO of Plaintiff Sensor. A reasonable person reading that statement would consider that statement as mere rhetoric or the opinion of a disgruntled former employee. CEO's may not manage companies effectively, but a reasonable person would not interpret that statement literally and conclude that Plaintiff Stark was the only cause of Plaintiff Sensor's issues.

Similarly, the statement that Plaintiff Sensor had an "astronomically high turn-over rate is not defamatory. Astronomically is defined as enormously or inconceivably large. A reasonable person reading that statement would consider it as mere hyperbole of a disgruntled former employee. They would not interpret the statement as one of fact based on the U.S. Bureau of Labor Statistics. Nor does the statement that Defendant Sakman "saw 8 people go" in his first three months of his employment, and that he "saw 3 people go" in the last three months of his employment render the statement defamatory. A reasonable person would interpret that statement simply as Defendant Sakman's opinion that such a circumstance reflects a high turn-over rate. Again, a reasonable person would not interpret the statements as facts based on the U.S. Bureau of Labor Statistics. Moreover, even if the number of people leaving the company in the first and last three months of Defendant Sakman's tenure is one of fact that can be

verified, those allegedly false statements do not have the requisite tendency to "harm the reputation of another" or diminish the Plaintiffs' reputation in the community or deter others from associating with the Plaintiffs. The number of people leaving their employment at a given time, without more, is not a defamatory statement.

Defendant Sakman's statement that Plaintiff Sensor is a "garage company" that "made it up to the first floor" because it is in a "niche market with virtually no competition" is not a defamatory statement. The reference to a "garage company" is an opinion of the limited size of a company based on Defendant Sakman's opinion. It is not a statement subject to verification. The statement that Plaintiff Sensor "made it up to the first floor" because Plaintiff Sensor is in a "niche market with virtually no competition" is not defamatory because a reasonable person could not interpret that statement as anything other than the opinion of the author.

The statement that "any skill or work ethic or asset" employees bring to the company are rendered irrelevant" is a non-verifiable statement of opinion. It is the opinion of a former disgruntled employee. As such the statement is not defamatory.

The statement that "if you rock the boat or call out virtually anything, you risk having the owner take his ball and go home, in the form of your termination," is not defamatory. A reasonable person would not interpret that statement as anything other than the mere opinion of a former disgruntled employee. Thus, the statement is not actionable.

The statement that Plaintiff Sensor "was also getting an extra 1-2 employees' worth of work from Defendant without having to pay two others" also is the non-actionable opinion of a former disgruntled employee. A reasonable person would interpret that statement as Defendant's belief that

he was overworked and underpaid. Such a person would not interpret that statement as anything other than the mere opinion of one person.

Plaintiffs contend that Defendant Sakman asserted "in a defamatory fashion, that Plaintiff Stark engages in underhanded practices whereby he exploits Sensor employees, requires employees (including Defendant) to perform functions outside of what was detailed in their signed job offer letter, and punishes those who attempt to voice concern over Plaintiffs' business policies and practices." The statement posted on Glassdoor does not state that "Plaintiff Stark engages in underhanded practices." Plaintiffs' perception is that other comments made by Defendant Sakman may be interpreted as implying that Plaintiff Stark engaged in underhanded practices. Plaintiffs' perception or interpretation of Defendant Sakman's statements does not make the statements actionable. A reasonable person would interpret the statements made on Glassdoor to be Defendant Sakman's opinion regarding certain conduct. A reasonable person could not interpret such statements as statements of fact implying that Plaintiffs engaged in "underhanded practices."

The statements accusing Plaintiffs of "acting in bad faith, trying to "con" Defendant Sakman, and/or having "concocted" a reason to terminate Defendant Sakman's employment are not defamatory. Such statements are rhetorical hyperbole that do not support a claim for defamation.

The statement accusing Plaintiffs of making Defendant wait a week before providing plaintiff with the required paperwork to apply for unemployment may satisfy the requirement for verifiability. The statement, however, is not actionable because even if that statement were false, it would not tend to harm the Plaintiffs reputation in the eyes of a reasonable person.

Plaintiffs assert that Defendant Sakman falsely stated "that Sensor

maintains policies that illegally seek confidential medical information from employees and/or prohibit employees from discussing the terms and conditions of their employment." (Complaint at ¶ 30). Defendant asserts that Plaintiffs improperly mischaracterize the statements made on the post. The Glassdoor post states as follows:

> I was also very vocal about everything, the owner loved this when it benefited the company but I was a pariah when I called out the latest ridiculous policy or reminded him/management about various laws, ranging from medical benefits health questions they aren't allowed to ask to informing them that employees have a right to discuss work conditions amongst themselves.

Defendant further asserts that referring to company policies as ridiculous is mere opinion. In addition, Defendant asserts that the statement regarding reminders about various laws ranging from medical benefits health questions and the rights of employees to discuss work conditions amongst themselves does not imply illegality.

As stated previously, whether a statement is reasonably susceptible of a defamatory meaning, courts must evaluate more than the literal words of the challenged statement. Ward, 136 N.J. at 532. Courts must evaluate the language in question according to the fair and natural meaning which will be given it by reasonable persons of ordinary intelligence. Romaine v. Kallinger, 109 N.J. 282, 290 (1988). Moreover, when "assessing the language, the court must view the publication as a whole and consider particularly the context in which the statement appears." Id. Courts "must consider the impression created by the words used as well as the general tenor of the expression, as experienced by a reasonable person." Ward, 136 N.J. at 532. "The listener's reasonable interpretation, which will be based in part on the

context in which the statement appears, is the proper measure for whether the statement is actionable." Id.

Here, even viewing the facts in the light most favorable to Plaintiffs, the post expressly identifies Defendant Sakman as a former employee. Viewing the publication as a whole, it is evident that Defendant Sakman is a disgruntled former employee "who was let go."

In the beginning of the paragraph at issue, Defendant Sakman states he was "very vocal about everything." A listener's reasonable interpretation of the statement in its entirety would be that Defendant Sakman had opinions relating to the fact that he was very vocal about everything. In Defendant Sakman's opinion, Plaintiffs liked the fact that Defendant Sakman was vocal when he spoke in support of the company. When, however, Defendant Sakman questioned policies that he perceived as "ridiculous", Plaintiffs disliked the fact that Defendant Sakman was vocal. Thereafter, Defendant Sakman adds the following language "or reminded him/management about laws ranging from medical benefits health questions they aren't allowed to ask to informing them that employees have a right to discuss work conditions amongst themselves." Reminding someone about the existence of various laws does not imply that a person is violating those laws. "No personal defamation will be found 'where the most that can be made out of the words is a charge of ignorance or negligence.'" Patel v. Sorianno, 369 N.J. Super. 192, 248 (App. Div. 2004). Considering the context of the communication and the statement in its entirety, a reasonable person of ordinary intelligence could not interpret the statement as defamatory. A listener's reasonable interpretation of the statement in its entirety would be that in Defendant Sakman's opinion, Plaintiffs liked the fact that he was very vocal when he spoke in support of the company. In Defendant Sakman's opinion, however,

when he communicated with Plaintiffs by questioning policies or reminding them about certain laws, Plaintiffs disliked the fact that Defendant was vocal about everything. Defendant Sakman's opinions regarding Plaintiffs receptiveness or lack thereof to the fact that Defendant Sakman is vocal about everything is non-actionable.

Generally, when a motion to dismiss on the pleadings is granted, the dismissal is without prejudice. When, however, "the factual allegations are palpably insufficient to support a claim upon which relief can be granted," a dismissal with prejudice is required. Mac Prop. Grp. LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 17 (App. Div. 2022). Plaintiffs' claim for defamation is based on the written post published on Glassdoor. Because the allegedly defamatory statements are set forth in writing, there is no reason to provide for the filing of an Amended Complaint. Therefore, Defendant's motion to dismiss Count 1 of the Complaint for defamation is GRANTED, and that claim is DISMISSED WITH PREJUDICE.

Defendant Sakman asserts that Plaintiffs' claim for trade libel fails as a matter of law because Plaintiffs did not plead special damages with the requisite specificity. Plaintiffs assert that the Complaint adequately sets forth their claim for damages.

To prevail on a trade libel or disparagement claim, a plaintiff must prove

> publication of material derogatory to the quality of a plaintiff's business, or to his business in general, of a kind calculated to prevent others from dealing with him or otherwise to interfere adversely with his relations with others. To establish loss of trade or other dealings, plaintiffs must show the falsehood was communicated to a third person and played a material and substantial part in leading others not to deal with plaintiff. Plaintiff must also prove that the statement is false, and that defendant made the

> statement knowingly or recklessly. Finally, plaintiff must prove special damages, such as the loss of a present or prospective advantage, in the form of pecuniary loss.

Patel, 369 N.J. Super. at 248. Plaintiffs may not rely on the general, implied or presumed damages available in personal defamation actions. Id. at 249. In addition, "plaintiff must establish pecuniary loss that has been realized or liquidated, such as lost sales, or the loss of prospective contracts with customers." Id. at 248-49.

Here, even viewing the facts alleged in the Complaint in the light most favorable to Plaintiffs, they have not pled special damages adequately. Plaintiffs purport to allege "on information and belief" that (1) "the Glassdoor Post affects and will affect Sensor's ability to hire or retain employees, and has in fact, frustrated and will frustrate Sensor's ability to hire or retain employees, and has in fact, frustrated and will frustrate Sensor's ability to hire new employees" (Complaint at ¶ 65), and (2) "the Glassdoor Post will have negative implications related to Sensor's competitors, customers, employees, and others in the community." (Complaint at ¶ 67). Plaintiffs Complaint fails to identify any particularized damages or prospective clients allegedly lost as a direct result of the Post. Plaintiffs undisclosed "information and belief" is inadequate. Plaintiffs are in the best position to provide the information necessary to identify their damages with the requisite specificity.

Therefore, Defendant's motion to dismiss Count 2 of the Complaint for Trade Libel is GRANTED. That Count is DISMISSED WITHOUT PREJUDICE.

Defendant Sakman asserts that Plaintiffs' claim for tortious interference with prospective economic advantage fails as a matter of law

because that claim improperly duplicates the claims for defamation and/or trade libel. Plaintiffs assert that their claim for tortious interference with prospective economic advantage meets the pleading requirements for such a claim.

An action for tortious interference with a prospective business relation protects the right to pursue one's business from undue influence. Printing Mart-Morristown, 116 N.J. at 750 (1989). Complaints based on alleged tortious interference must first "allege facts that show some protectable right—a prospective economic or contractual relationship." Id at 751. There must be allegations of fact giving rise to some reasonable expectation of economic advantage. The complaint must demonstrate that plaintiff was in "pursuit" of business. Id. Second, the complaint must allege facts claiming that the interference was done intentionally and with malice. Id. Third, plaintiff must allege facts leading to the conclusion that the interference caused the loss of a prospective gain. Id. Fourth, the complaint must allege that the injury caused damage. Id. at 752.

Here, even viewing the facts in the light most favorable to Plaintiffs' claim for tortious interference with prospective economic advantage fails to set forth a claim on which relief can be granted. Even if the court accepts that Plaintiffs generally have a protectable right in developing contractual relationships with employees, Plaintiffs have not alleged facts that would demonstrate that they had a reasonable expectation of procuring such a contractual relationship when Defendant Sakman posted his statement on Glassdoor.com. Although Plaintiffs allege they were actively recruiting employees "during the period in which Defendant posted the Glassdoor Post," they have not alleged facts that would demonstrate that they had a reasonable expectation of procuring such a contractual relationship.

Nor have Plaintiffs alleged facts leading to the conclusion that the interference caused any damages. Plaintiffs show "causation when there is proof that if there had been no interference there was a reasonable probability that the victim of the interference would have received the anticipated economic benefits." Printing Mart, 116 N.J. at 759. Plaintiffs have not identified any prospective employees or facts to support an inference that there was a reasonable probability that without Defendant Sakman's interference, Plaintiffs would have received the benefit of procuring a contract with a prospective employee. Therefore, Defendant's motion to dismiss Count 3 of the Complaint for tortious interference with economic advantage is GRANTED. Count 3 of the Complaint is DISMISSED WITHOUT PREJUDICE.

CONCLUSION

An order conforming with this Statement of Reasons will be provided.