IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

NEIL WALLACE,	)	
	)	C.A. No. K11C-03-018 JTV
Plaintiff,	)	
	)	
v.	)	
	)	
GECKOSYSTEMS INTERNA-TIONAL CORPORATION and R. MARTIN SPENCER,	)	
	)	
Defendants.	)	

Submitted: April 8, 2013
Decided: July 31, 2013

Neil Wallace, *Pro Se.*

Donald L. Gouge, Jr., Esq., Wilmington, Delaware. Attorney for Defendants.

Upon Consideration of Plaintiff's
Motion to Compel
DENIED

VAUGHN, President Judge

Wallace v. Geckosystems, et al.
C.A. No. K11C-03-018 JTV
July 31, 2013

OPINION

The plaintiff has asserted a defamation claim against the defendants. The *pro se* plaintiff is Neil Wallace ("Wallace"), an attorney licensed in New York and Florida but not Delaware. The defendants are Geckosystems International Corp. ("Geckosystems") and R. Martin Spencer ("Spencer") (together, "defendants"), the President and CEO of Geckosystems. Wallace has filed a motion to compel Spencer to disclose any anonymous internet aliases used by him. The motion arises out of messages posted to an internet message board.

FACTS

Wallace worked for Geckosystems from October 2006 until February 2007 when his employment ended. The parties dispute whether Wallace left voluntarily or was fired. In any event, it was not an amicable parting of ways. It appears that the hostility generated by the separation manifested itself on the internet through messages posted by anonymous users of investorshub.com ("iHub"). In addition to other services, iHub maintains message boards[1] that are devoted to the discussion of publicly traded companies. The company message boards on iHub were intended to be used as "forum[s] for serious investors to gather and share market insights in a dynamic environment using an advanced discussion platform."[2] Unfortunately, the

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[1] "Generally, an Internet message board is an electronic forum through which anyone with Internet access can post messages about a given topic." *SPX Corp. v. Doe*, 253 F. Supp. 2d 974, 976 (N.D. Ohio 2003).

[2] Investorshub.com, http://investorshub.advfn.com/boards/about.aspx (last visited July 29, 2013).

dialogue on the message board dedicated to Geckosystems (the "Geckosystems Board") did little to advance iHub's asserted purpose. Instead, anonymous posters such as the ones discussed in this opinion, *inter alia*, used the forum to pursue personal vendettas. Because of this, in March 2013, iHub administrators decided to close the forum indefinitely.

Wallace alleges that during 2011 and 2012, Spencer, through multiple internet pseudonyms, engaged in a malicious and knowingly false libelous attack on Wallace, using the Geckosystems Board. The allegedly defamatory statements consist of suggestions by AI_Guru that Wallace sought to extort monies from public utility companies in Virginia; suggestions by AI_Guru and WhisperingBomb that Wallace poisoned hundreds of families' drinking water in Virginia; suggestions by mech66 that Wallace cheated on the New York and Florida bar exams; and private messages from 50Chevy to someone named Kezzek that accuse Kezzek of "seducing" underage males for sex and of being raped repeatedly at boarding school.[3]

The defendants deny the allegations in Wallace's complaint. Additionally, they have asserted two counterclaims against the plaintiff, one for defamation and one for tortious interference with business. The counterclaims allege that the plaintiff has anonymously posted over 2,500 defamatory posts on the internet about Geckosystems, and that his postings have interfered with the business of the

[3] The complaint also contains a claim alleging that statements made in a letter sent to the Department of Homeland Security, the Federal Bureau of Investigation and the Federal Aviation Administration were defamatory. The statements suggest that Wallace is unstable enough to commit a terrorist attack. That claim is not at issue here.

company, inflicting millions of dollars in damages.

In this motion, Wallace seeks to compel Spencer to disclose under oath whether any of the four anonymous internet aliases that made the allegedly defamatory statements on iHub's web forums were, in fact, Spencer.

CONTENTIONS

Wallace contends that the statements by AI_Guru and WhisperingBomb suggesting he intentionally poisoned drinking water are clearly statements of fact and not opinion. He contends that they accuse Wallace of an act of moral turpitude that studies have proved to be false. The plaintiff claims that the private messages sent by 50Chevy were intended for Wallace, but were unintentionally sent to another poster named Kezzek. Wallace denies being Kezzek. He contends that 50Chevy's statements accuse him of two crimes: statutory rape and sodomy. Wallace contends that the statements made by mech66 accuse him of defrauding two "Bar Associations" and committing two felonies. He contends that all of the above statements are either expressions of fact, or are actionable opinions because they "impl[y] the allegation of undisclosed defamatory facts as the basis for the opinion[s]."[4] The plaintiff further contends that the statements were made with the knowledge and consent of the corporate defendant.

Defendants contend that Wallace cannot establish that his reputation has been damaged in the community as he is the only witness, and, therefore, he cannot prove

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[4] *Doe v. Cahill*, 884 A.2d 451, 462 (Del. 2005) (quoting *Kanaga v. Gannett Co.*, 687 A.2d 173, 179 (Del. 1996)).

injury or damages. As to AI_Guru, defendants contend that the statements are merely the opinions of the poster that the residents believe Wallace poisoned their water. They argue that this is evidenced by a link provided in the post that sends the reader to a newspaper article discussing a lawsuit about a golf course that Wallace's company allegedly developed using toxic substances. As to WhisperingBomb, defendants contend that the defamatory statement is actually a quote from an earlier post by AI_Guru. As to 50Chevy, defendants contend that the messages are private, from one user to another, and therefore, they are not published. Defendants indicate that no affidavit has been produced by the person behind Kezzek to demonstrate that it is not Wallace. As to mech66, defendants contend that a post wondering if someone took the bar exam for Wallace is simply an opinion.

STANDARD OF REVIEW

In *Doe v. Cahill*, the Delaware Supreme Court held that "before a defamation plaintiff can obtain the identity of an anonymous defendant through the compulsory discovery process he must support his defamation claim with facts sufficient to defeat a summary judgment motion."[5] Under this standard, "a defamation plaintiff 'must submit sufficient evidence to establish a *prima facie* case for each essential element of the claim in question.' In other words, the defamation plaintiff . . . must introduce evidence creating a genuine issue of material fact for all elements of a defamation claim *within the plaintiff's control*."[6] I conclude that that standard applies here

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[5] *Cahill*, 884 A.2d at 460.

[6] *Id.* at 463 (quoting *Colgain v. Ab (In re Asbestos Litig.)*, 799 A.2d 1151, 1152 (Del. 2002)).

because Wallace is seeking to discover aliases allegedly used by Spencer on the theory that Spencer used the above-mentioned aliases. Because *Cahill* requires Wallace to show that his defamation allegations can survive a motion for summary judgment, he should be treated as the non-moving party to a summary judgment motion.

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[7] "[T]he moving party bears the burden of establishing the non-existence of material issues of fact."[8] If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.[9] In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.[10] Thus, the court must accept all undisputed factual assertions and accept the non-movant's version of any disputed facts.[11] Summary judgment is inappropriate "when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the

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[7] Super. Ct. Civ. R. 56(c).

[8] *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super. May 2, 2007).

[9] *Id.*

[10] *Pierce v. Int'l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

[11] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

circumstances."[12]

DISCUSSION

The typical *Doe v. Cahill* case involves a lawsuit where the plaintiff only knows the defendant by his or her internet alias and the true identity of the defendant is unknown. In such a case, *Cahill* requires a plaintiff who seeks to discover the identify of an anonymous poster "to the extent reasonably practicable under the circumstances [to] undertake efforts to notify the anonymous poster that he is the subject of a subpoena or application for order of disclosure."[13] The court in *Cahill* noted that, when dealing with a message board, "the plaintiff must post a message notifying the anonymous defendant of the plaintiff's discovery request on the same message board where the allegedly defamatory statement was originally posted."[14] This scenario requires the plaintiff to subpoena a third party (usually the internet service provider) in order to acquire the information necessary to link the known internet alias to an actual person.

In this case, Wallace has not followed the procedure described in *Cahill*. Instead, he has proceeded directly to an allegation that Spencer is the person using the above-mentioned aliases, and seeks to discover any internet aliases being used by Spencer. Spencer does not admit that he is the anonymous poster, but has elected to

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[12] *Mumford & Miller Concrete, Inc. v. New Castle Cnty.*, 2007 WL 404771, at *1 (Del. Super. Jan. 31, 2007).

[13] *Cahill*, 884 A.2d at 460.

[14] *Id.* at 461.

defend the motion on the merits. Therefore, although the procedure discussed in *Cahill* has not been followed in this case, I am satisfied that the issue of discovery of the identity of the person using the aliases involved here has been joined and that I can proceed to decide the motion on its merits.

Defamation

Libel is written defamation.[15] In Delaware, a defamation claim requires: "(1) a defamatory communication; (2) publication; (3) [that] the communication refers to the plaintiff; (4) a third party's understanding of the communication's defamatory character; and (5) injury."[16] However, "[p]roof of damages proximately caused by a publication deemed libelous need not be shown in order for a defamed plaintiff to recover nominal or compensatory damages."[17]

"[T]he threshold issue in any libel action is whether or not the statements are, in fact, defamatory."[18] In deciding whether or not a statement is defamatory, a court must determine "*first*, whether alleged defamatory statements are expressions of fact or protected expressions of opinion; and [*second*], whether the challenged statements

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[15] *Spence v. Funk*, 396 A.2d 967, 970 (Del. 1978).

[16] *Universal Capital Mgmt., Inc. v. Micco World, Inc.*, 2012 WL 1413598, at *3 (Del. Super. Feb. 1, 2012) (quoting *Eaton v. Raven Transp., Inc.*, 2010 WL 4703397, at *2 (Del. Super. Nov. 15, 2010)).

[17] *Cahill*, 884 A.2d at 463 (quoting *Spence*, 396 A.2d at 970).

[18] *Abraham v. Post*, 2012 WL 5509619, at *2 (Del. Super. Sept. 26, 2012).

are capable of a defamatory meaning."[19] This is a question of law.[20] The Delaware Supreme Court addressed the issue of when allegedly defamatory speech qualifies as an "opinion" in *Riley v. Moyed*, where the court applied a four-part test developed by the Court of Appeals for the District of Columbia in *Ollman v. Evans*:

> First, the Court should analyze the common usage or meaning of the challenged language. Second, the Court should determine whether the statement can be objectively verified as true or false. Third, the Court should consider the full context of the statement. Fourth, the Court should consider the broader social context into which the statement fits.[21]

An opinion is not protected and is "actionable if it implies the allegation of undisclosed defamatory facts as the basis for the opinion."[22] The court in *Riley* noted that the fact versus opinion analysis should be performed "from the perspective of an ordinary reader of the statement."[23]

In *Cahill*, the court emphasized that context can be "particularly important" in making the fact/opinion distinction when evaluating statements found in certain types

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[19] *Cahill*, 884 A.2d at 463 (quoting *Riley v. Moyed*, 529 A.2d 248, 251 (Del. 1987)).

[20] *Riley*, 529 A.2d at 251.

[21] *Id.* at 251-52 (citing *Ollman v. Evans*, 750 F.2d 970 (D.C. Cir. 1984)).

[22] *Cahill*, 884 A.2d at 462 (quoting *Kanaga*, 687 A.2d at 179).

[23] *Riley*, 529 A.2d at 251.

of internet sources.[24] The court explained that "[b]logs and chat rooms tend to be vehicles for the expression of opinions; by their very nature, they are not a source of facts or data upon which a reasonable person would rely."[25] To support this proposition, the court in *Cahill* discussed the opinions of three federal courts that had come to the same conclusion when presented with similar circumstances.[26] The Central District of California's opinion in *Global Telemedia International, Inc. v. Doe 1*, like the case *sub judice*, addressed allegedly defamatory remarks made on the message board of a publicly traded company.[27] The court in *Cahill* described the general setting of the *Global Telemedia* message board as follows:

> Importantly, the postings are full of hyperbole, invective, short-hand phrases and language not generally found in fact-based documents . . . . To put it mildly, these postings . . . lack the formality and polish typically found in documents in which a reader would expect to find fact. The [*Global Telemedia*] court concluded that the general tone, context, style and content of the postings strongly suggest that they are the opinions of the posters. Accordingly, the reasonable reader, looking at the hundreds and thousands of postings about the company

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[24] *See Cahill*, 884 A.2d at 465 (noting that "certain factual and contextual issues relevant to chat rooms and blogs are particularly important in analyzing the defamation claim itself").

[25] *Id.* at 465.

[26] *See Id.* at 465-66 (discussing *Rocker Mgmt., LLC v. John Does 1 through 20*, 2003 WL 22149380 (N.D. Cal. May 29, 2003), *Global Telemedia Int'l, Inc. v. Doe 1*, 132 F. Supp. 2d 1261 (C.D. Cal. 2001), and *SPX Corp. v. Doe*, 253 F. Supp. 2d 974 (N.D. Ohio 2003)).

[27] 132 F. Supp. 2d at1264.

> from a wide variety of posters, would not expect that [the defendant] was airing anything other than his personal views . . . .[28]

This description is equally applicable to the Geckosystems Board. Here, the acrimonious tenor of the board is readily apparent. Although it is ostensibly a place where interested persons can acquire factual information about the company, any reasonable person would understand that he or she should take what he or she reads in the same spirit as just stated regarding the *Global Telemedia* message board. Like in *Cahill* and the cases it relied upon, this setting guides the Court's analysis as to whether the statements are expressions of fact or opinion, and further, whether the statements are capable of a defamatory meaning.

I will now individually address each of the specifically alleged statements.

March 1, 2011 posts by AI_Guru[29]

> "[Wallace] is once again up to his old EVIL tricks and slippery words to extort monies from Public Utilities for 'disposing' toxic, poisonous flyash to leak into their drinking water."
>
> "so you have your understanding of Wallace's poisoning hundreds of families [sic] drinking water as not EVIL? . . . I know of 401 folks that consider that deliberate poisoning to be evil."
>
> "Why did he (Wallace) sell the utility on being able to dispose poisonous flyash? . . . Wallace lies and slanders to extort."

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[28] *Cahill*, 884 A.2d at 465 (quoting *Global Telemedia*, 132 F. Supp. 2d at 1267-68) (quotation marks omitted).

[29] For clarity's sake, I will refer to each anonymous poster as male. Obviously, it is impossible to know their respective genders without knowing their real life identities.

The context in which the first statement was made is such that no ordinary person would understand it to be anything but the poster's opinion. In addition to the aforementioned unreliability of message boards generally, and the Geckosystems Board in particular, the specific content of AI_Guru's message that contains the challenged statement also indicates that it was an opinion. AI_Guru's message appears to be in response to a topic or earlier message entitled "In Spencerland it is evil to collect money that is legally owed." An average reader introduced to the message by this caption would not expect whatever followed to be an expression of reliable facts. The entire sentence containing the statement reads:

> Sounds like the 400 families that want to skin Wallace alive and tack his hide up in the Country Club's main hall, understand that this "person" is once again up to his old EVIL tricks and slippery words to extort monies from Public Utilities for "disposing" toxic, poisonous flyash to leak into their drinking water.

First, I note that prefacing anything with the expression "sounds like" "injects a note of speculation or indefiniteness," and is indicative of an opinion, not a statement of fact.[30] It implies that the declarant is offering his own interpretation of whatever follows. Next, the message proceeds to use hyperbole in an obvious effort to elicit negative feelings about Wallace. Clearly, AI_Guru's use of language such as "400 families want to skin the plaintiff alive and tack his hide up," "401 folks

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[30] *Cf. Martin v. Widener Univ. Sch. of Law*, 1992 WL 153540, at *15 (Del. Super. June 17, 1992) (observing that the phrase "seems to be answered" implies "speculation or indefiniteness").

consider Wallace too low to kick and too slimey [sic] to stomp on" and "person"[31] are indicative of how he personally believes the "400 families/401 folks" should feel. The tone of the message is the opposite of what an average reader would expect from a reliable, factual source.

Additionally, the challenged statement by AI_Guru bears little relation to the supposed topic of the message: a dispute about the legality of a default judgment obtained by Wallace against Geckosystems. The statement appears to be an attempt by AI_Guru to take his belief that Wallace is attempting to extort Geckosystems using his legal prowess and compare it to the "understanding" of 400 families in unrelated litigation that Wallace attempted to extort monies from public utilities. The reference to the "400 families" cannot be understood unless the reader is familiar with other posts on the message board that refer to litigation involving the development of a golf course by a company with which Wallace is affiliated. An ordinary person uninformed about the golf course litigation would not infer that AI_Guru's statement was premised upon reliable, undisclosed facts. An ordinary person familiar with what AI_Guru was talking about would be cognizant of the fact that AI_Guru was offering his own opinion regarding the supposed beliefs of the plaintiffs in the lawsuit.

Lastly, AI_Guru concludes his post with the acronym "JMO," which is common internet parlance for "just my opinion."[32] Self-styling one's own statement

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[31] Quotation marks in original.

[32] According to the Urban Dictionary, by far the most prevalent definition of "JMO" is that it is an internet abbreviation for "just my opinion." Urban Dictionary, http://www.urbandictionary.com (last visited July 9, 2013). Although the Urban Dictionary is not

"an opinion" does not make it so, but this word choice further diminishes the chance that an average reader would understand any prior statements by AI_Guru to be assertions of fact.

AI_Guru's second and third statements were quoted in Wallace's most recent amended complaint, but the plaintiff did not provide the messages containing the statements to the Court in either hard copy or electronic format. Consequently, I must consider the statements without knowing the immediate context in which they were made. Still, it is apparent that the second and third statements are markedly similar to the first. They also address the golf course litigation and make essentially the same allegations: that "401 folks" think Wallace is evil for poisoning their drinking water and that Wallace is extorting public utility companies. The second and third statements exhibit the same linguistic style and tone as the first statement. Given the similar language of these statements and the overall setting of the Geckosystems Board, I find that no ordinary person would understand the second and third statements to be anything but the poster's opinion.

I conclude that the March 1, 2011 statements by AI_Guru were protected

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a helpful or reliable source in most circumstances due to the often vulgar nature of its user-generated content, the Sixth Circuit and several federal district courts have found it to be an appropriate source for interpreting slang terms. *See, e.g., United States v. Arnold*, 486 F.3d 177, 210 n.8 (6th Cir. 2007) (Moore, J., dissenting) (referring to the Urban Dictionary for help interpreting slang terms); *Rd. Dawgs Motorcycle Club of the U.S., Inc. v. "Cuse" Rd. Dawgs, Inc.*, 679 F. Supp. 2d 259, 286 n.65 (N.D.N.Y. 2009) (same); *Boone v. Jackson*, 2005 WL 1560511, at *4 (S.D.N.Y. July 1, 2005) (same), *aff'd on other grounds*, 206 F. App'x 30 (2d Cir. 2006); *but cf. Kramer v. New York City Bd. of Educ.*, 715 F. Supp. 2d 335, 370 (E.D.N.Y. 2010) (noting that informal slang dictionaries, such as the Urban Dictionary, "are of highly uneven quality").

expressions of opinion, and therefore, they are not defamatory.

July 28, 2011 post by WhisperingBomb

"[Wallace] deliberately poisoned their drinking water."

The fact that WhisperingBomb's statement is a quote from a previous AI_Guru post—and, therefore, is a republication—does not save him from liability. The Delaware Supreme Court has recognized the general rule that "the publisher and republisher of defamatory matter are strictly accountable and liable in damages to the person defamed."[33] Furthermore, "[i]t is no defense that the second publisher names the author or original publisher of the libel."[34] WhisperingBomb's republishing of the AI_Guru statement leaves him open to liability just as if he had originally published it.

The full statement reads "[d]emonstrably, 400 families consider Wallace to be a minion of evil for having deliberately poisoned their drinking water!! They want 1.4 BILLION in damages." Again, the context in which this statement was made is such that an ordinary reader would only understand it to be the poster's personal opinion about what the families involved in the civil action believe or should believe.

Immediately following the statement, WhisperingBomb provides a link to an article discussing the golf course lawsuit. The article that WhisperingBomb refers to in support of his statement makes no mention of "deliberate poisoning." It simply provides general information regarding the filing of a lawsuit. Thus, the factual

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[33] *Short v. News-Journal Co.*, 212 A.2d 718, 719 (1965).

[34] Restatement (Second) of Torts § 578 cmt. b.

foundation for the allegedly defamatory statement, the article, is disclosed, and is not defamatory. As the Delaware Supreme Court noted in *Riley v. Moyed*:

> When an opinion is accompanied by its underlying *nondefamatory* factual basis, a defamation action premised upon that opinion will fail no matter how unjustified, unreasonable or derogatory the opinion might be. This is so because readers can interpret the factual statements and decide for themselves whether the writer's opinion was justified.[35]

Any reader who follows the link to the article will realize that AI_Guru is offering his own opinion about what happened.

I conclude that the July 28, 2011 statement by WhisperingBomb was a protected expression of opinion, and therefore, it is not defamatory.

December 30, 2011 private messages from 50Chevy to Kezzek

> Five graphic and sexually explicit messages from 50Chevy to Kezzek have been submitted to the Court. The private messages urge an unnamed recipient to commit suicide, accuse him of incest, tell him that he is worthless and that his family doesn't love him, and state that he deserves to die because he is a homosexual who was raped repeatedly at boarding school.

The complaint alleges there were twenty-five "emails" sent on December 30, 2011, but only five messages were attached to the plaintiff's motion. He does not specify what language he considers to be defamatory, beyond alleging that the

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[35] 529 A.2d at 254; *see also Global Telemedia*, 132 F. Supp. 2d at 1268 ("By supplying the underlying document which supports his views, [the defendant] has set forth an opinion, not fact.").

statements accuse him of "seducing underage males for sex." In this instance, I will infer that he takes issue with the contents of the messages in their entirety. The messages are extremely vulgar. I am not inclined to repeat them verbatim in this opinion.

When considered as a whole, 50Chevy's five messages amount to a scathing personal attack on Kezzek—Wallace asserts that he was the subject of the messages and the intended recipient—that is replete with abusive language, hyperbole and outlandish accusations. 50Chevy makes no attempt to conceal his animosity for Wallace, indeed, he appears to revel in it. The tone of the messages can be conveyed by one of the few excerpts that does not contain sexually explicit language: "[e]nd your pain, commit suicide. Do you deserve to be fed to a tree shredder pumped full of hallucinogenic drugs to heighten the unendurable pain as you die[?]" It appears that the five messages were sent during a span of approximately two minutes.

In *Q-Tone Broadcasting, Co. v. MusicRadio of Maryland, Inc.*, this Court observed that:

> There are some statements that are in form statements of opinion, or even of fact, which cannot reasonably be understood to be meant literally and seriously and are obviously mere vituperation and abuse. A certain amount of vulgar name-calling is frequently resorted to by angry people without any real intent to make a defamatory assertion, and it is properly understood by reasonable listeners to amount to nothing more.[36]

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[36] 1994 WL 555391, at *4-5 (Del. Super Aug. 22, 1994) (quoting Restatement (Second) of Torts § 566 cmt. e).

The same can be said for 50Chevy's comments. Contrary to the plaintiff's contention, the messages make no reference to "underage males." Indeed, the purported sexual partners of the recipient are never assigned an age at all. The comments regarding incest, while offensive, would not be understood by a reasonable person to be expressions of fact, given the circumstances in which they were made. Similarly, the statements about the recipient's desire to be a victim of rape, and subsequent fulfillment of that desire, would not be regarded by a reasonable person as a reliable expression of fact.

The fact that the messages were sent rapidly, over a few minutes, and privately, to one person, indicates that 50Chevy's statements were made in a fit of anger in the internet equivalent of a face to face altercation.[37] The content of the messages suggests that the only purpose of 50Chevy was to insult and abuse the recipient. No ordinary reader would interpret the vitriol spewed from 50Chevy to Kezzek seriously, as if they were based upon a factual foundation. Given the circumstances and the context, an average person would not understand the statements to be defamatory.

May 10, 2012 post by mech66

> "Wonder who took the NY and FL bar exams for Wallace?"

Given the context in which this statement was made, an average person would

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[37] *Cf.* Restatement (Second) of Torts § 566 cmt. e ("The circumstances under which verbal abuse is uttered affect the determination of how it is reasonably to be understood. Words uttered face to face during an altercation may well be understood merely as abuse or insult, while words written after time for thought . . . may be taken to express the defamatory charge and to be intended to be taken seriously.").

only understand it to be the opinion of the poster. No ordinary person would view mech66 as a credible source of factual information regarding a fraud perpetrated upon the bars of New York and Florida. The statement is best assessed when it is considered alongside some of the comments that accompany it:

> Is real easy [sic] to succeed when you go to Tulsa PU?
>
> Don't you agree?
>
> Wonder who took the NY and FL bar exams for Wallace? After all, it only took a check book to get into a Tier 4 law school. And ***ONLY*** those wanting to practice in the Sooner state?
>
> Is this the first stages of the ***Weird World of Wallace***[38] and his career of being a **SERIAL** legal predator with GOSY et al?
>
> Yus' axin'
>
> I have shown you my URL's, where are yours?
>
> **ROTFLMAO----------**

The opening phrase "wonder who" connotes speculation or curiosity, which indicates that the declarant is offering an opinion, but more or less concedes that he has no real factual basis for asserting it. Additionally, Mech66 utilizes different forms and combinations of emphases—including bold text, italicized text, red text and excessive capitalization—to influence the reader to accept his viewpoints. The manic presentation of his message is the opposite of the more measured approach an

[38] "Weird World of Wallace" is in bold, italics and red font.

ordinary reader would expect to encounter from a source relaying an expression of fact.

Finally, he, like other members of the Geckosystems Board, uses short-hand internet slang terminology unlikely to appear in the contents of a reliable, factual source. "Yus' axin'" appears to be an abbreviated version of "just asking." The expression "ROTFLMAO" is a commonly used internet saying that has been defined as "rolling on the floor laughing my ass off."[39] Mech66 follows his use of "ROTFLMAO" with twenty-seven consecutive dashes. No average reader would understand mech66's query to be an expression of fact or an opinion founded upon undisclosed defamatory facts.

I conclude that the May 10, 2012 statement by mech66 was a protected expression of opinion, and therefore, it is not defamatory.

CONCLUSION

Based on the foregoing, the plaintiff's motion to compel is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File

[39] The online Oxford British World English dictionary defines "ROFL" as "(also ROTFL) *abbreviation informal* rolling on the floor laughing (used to convey great amusement)." http://oxforddictionaries.com/definition/english/ROFL?q=rofl (last visited July 29, 2013). LMAO is defined in the American English dictionary as "*abbreviation vulgar slang* laughing my ass off." http://oxforddictionaries.com/definition/american_english/LMAO (last accessed July 29, 2013).