

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ELLORA'S CAVE PUBLISHING, INC.
and
JASMINE-JADE ENTERPRISES, LLC

Case No: 5:14-cv-02331

Plaintiffs,

v.

DEAR AUTHOR MEDIA NETWORK, LLC
and
JENNIFER GERRISH-LAMPE

Defendants.

**DEFENDANT JENNIFER GERRISH-LAMPE'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT**

Defendant Jennifer Gerrish-Lampe responds to Plaintiffs Ellora's Cave Publishing, Inc. and Jasmine-Jade Enterprises, LLC's Complaint as follows:

1. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.

2. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.
3. Admitted.
4. Admitted.
5. Denied as an erroneous legal conclusion and without factual foundation.
6. Denied as an erroneous legal conclusion and without factual foundation.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted that Lampe authored an article entitled "The Curious Case of Ellora's Cave," which was published on the blog *Dear Author*, which is owned and operated by Dear Author. Denied as to the defined term "Libelous Publication" as an erroneous legal conclusion without factual foundation.
11. Denied.
12. Denied.
13. Denied.
14. Denied.
15. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.
16. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.
17. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.

18. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.
19. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.

First Claim
(Injunctive Relief)

20. Calls for no response from Lampe.
21. Denied.
22. Denied.
23. Denied.
24. Denied.
25. Calls for no response from Lampe.

Second Claim
(Defamation-Libel)

26. Calls for no response from Lampe.
27. Denied.
28. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.
29. Denied.
30. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.
31. Denied as an erroneous legal conclusion and without factual foundation.

Third Claim

(Defamation-Libel Per Se)

32. Calls for no response from Lampe.
33. Denied.
34. Denied as opinion.
35. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.
36. Denied as an erroneous legal conclusion without factual foundation.
37. Denied.
38. Lampe is without knowledge or information sufficient to form a belief as to the truth or falsity of the corresponding averment. Consequently, this averment is denied and strict proof demanded.
39. Denied as an erroneous legal conclusion without factual foundation.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Truth

1. Although the burden of proof for falsity is upon Plaintiffs, as applied to Plaintiffs' claims for defamation, Lampe avers that all statements made by Lampe, complained of by Plaintiffs, are true.
2. Any complained-of statements made by Lampe that may happen to lack 100% factual veracity are substantially true, and thus treated as true, as a matter of law.
3. As truth is an absolute defense to defamation, Lampe cannot be liable for Plaintiffs' defamation claims.

Second Affirmative Defense

Substantial Truth

1. Any statements made by Lampe, complained of by Plaintiffs, that are not literally true are substantially true, in that the "gist" or "sting" of the article is true.
2. As substantial truth is a defense to claims for defamation, Lampe cannot be liable for Plaintiffs' defamation claims.

Third Affirmative Defense

Qualified Privilege

1. All allegedly actionable statements were subject to qualified privilege as they were directed to parties having a common interest in the subject matter of the statements.
2. All allegedly actionable statements were subject to qualified privilege as they were made in the course of a justifiable exercise of a moral obligation, free of improper motive or malice.
3. All allegedly actionable statements were subject to qualified privilege as they were fair comment and criticism of Defendants' business practices, and matters of significant public and social interest.

Fourth Affirmative Defense

Failure To State A Claim

1. Plaintiffs have failed to sufficiently plead the elements of a cause of action for libel.
2. Plaintiffs have failed to sufficiently plead the elements of a cause of action for libel per se.

Fifth Affirmative Defense

Failure To Join an Indispensable Party

1. Plaintiffs have failed to join an indispensable party, Tina Engler, in their Complaint.
2. Tina Engler is an indispensable party because Plaintiffs' Complaint identifies allegedly defamatory statements about her, made by Lampe.
3. Engler is also an indispensable party because many of the allegedly defamatory statements identified in the Complaint attribute Plaintiffs' declining business performance to the actions of Engler.
4. In Engler's absence, the Court cannot afford complete relief among Plaintiffs and Lampe.
5. Because the allegations contained in Plaintiffs' Complaint would also entitle Engler to bring an action against Lampe for the same statements identified in the Complaint, not including Engler in this litigation would potentially make Lampe subject to a substantial risk of incurring multiple or otherwise inconsistent obligations.

Sixth Affirmative Defense

Lack of Actual Malice

1. Plaintiffs are general purpose public figures, or at least public figures in the context of Adult Romance publishers. Accordingly, their defamation claims are subject to the "actual malice" standard set forth in *New York Times Co. v. Sullivan*, which requires that the defendant made the allegedly defamatory statements with "knowledge that [they were] false or with reckless disregard of whether [they were] false or not." 376 U.S. 254, 280 (1964).
2. Lampe at no point harbored any doubt as to the truth of the complained of statements, and had no reason to doubt their accuracy.

3. As actual malice is a requirement to establish liability for defamation in these circumstances, Lampe cannot be liable for Plaintiffs' defamation claims.

Dated November 6, 2014

Respectfully Submitted,

s/ Marc J. Randazza

Marc J. Randazza, Esq.

Admitted N.D. Ohio

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ATTORNEYS FOR DEFENDANT

Jennifer Gerrish-Lampe

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 6, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that a true and correct copy of the foregoing document is being served upon: Steven W. Mastrantonio, Esq., counsel for Plaintiffs, via transmission of Notices of Electronic Filing generated by CM/ECF.

T. Kaan

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