UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GLOBAL DIRECT SALES, LLC, PENOBSCOT INDIAN NATION, CHRISTOPHER RUSSELL and RYAN HILL, Plaintiffs, -v- AARON KROWNE, individually and d/b/a THE MORTGAGE LENDER IMPLOD-O-METER and ML-IMPLODE.COM, KROWNE CONCEPTS, INC., IMPLODE-EXPLODE HEAVY INDUSTRIES, INC., JUSTIN OWINGS, KRISTA RAILEY, STREAMLINE MARKETING, INC. and LORENA LEGGETT, Defendants.	Case No.: 8:08-cv-02468 Assigned: Hon. Deborah K. Chasanow

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A DEFAULT JUDGMENT, SUMMARY JUDGMENT AND A PERMANENT INJUNCTION

I. INTRODUCTION and PRELIMINARY STATEMENT

Plaintiffs brought this lawsuit to vindicate their rights and reputation after Defendant Krista Railey ("Railey") wrote a false and defamatory article that was published by Defendants Krowne Concepts, Inc. ("KCI") and Implode-Explode Heavy Industries, Inc. ("IEHI"). Defendant Railey admits that "there are significant problems with the final published article" and the "article contains and implies false statements of fact and is misleading in a material manner," that she "advised IEHI and KCI that the article was not factual accurate and should be removed from the website or substantially corrected," but that "defendants IEHI and Krowne dissuaded me from making corrections to the article or publishing a corrected article on the website." Defendant Railey's admissions and Defendants IEHI and KCI default, establish that Plaintiffs are entitled to a determination of liability.

This memorandum of law is submitted in support of Plaintiffs' motion for an Order:

1) Establishing liability against defaulting corporate Defendants KCI and IEHI on Plaintiffs' defamation and libel causes of action;

2) Granting summary judgment establishing liability against Defendant Krista Railey ("Railey") on Plaintiffs' defamation and libel causes of action;

3) Granting a permanent injunction restraining and enjoining Defendants from publishing or otherwise disseminating the article;

4) Scheduling this matter for a hearing on damages; and

5) For such other, further and different relief as this Court deems just and proper.

Plaintiffs' motion to establish liability against defaulting corporate Defendants KCI and IEHI on Plaintiffs' defamation and libel causes of action should be granted. The clerk has previously entered an order of default against Defendants IEHI and KCI and this Court has already determined that "the allegations of the complaint, taken as true upon entry of default,

would establish the corporate Defendants' liability for defamation." (Dkt. 112 at 13.) Accordingly, Plaintiffs' motion should be granted.

Likewise, Plaintiffs are entitled to summary judgment against the author of the article, Defendant Railey, on their defamation and liable claims because she admits that the article contains false and defamatory statements of fact. Defendant Railey, admits that:

- "the article contains and implies false statements of fact and is misleading in a material manner;"
- she "advised IEHI and Krowne that the article was not factual accurate and should be removed from the website or substantially corrected;"
- "defendants IEHI and Krowne dissuaded me from making corrections to the article or publishing a corrected article on the website;"
- defendants IEHI and Krowne encouraged defendant Railey "to write a negative story about a GCS [advertiser's] competitor;" and
- defendants IEHI and Krowne are concealing "the illegal activities of a paying advertiser while publishing an article containing false statements about the plaintiffs' legally compliant companies."

Further, the Court should enter an Order permanently enjoining Defendants from publishing or disseminating any version of the article. This admittedly false and defamatory article continues to be published, contains statements that are defamatory *per se* and is negatively impacted Plaintiffs' operations, business dealings and are causing harm and embarrassment, damaging Plaintiffs' reputation and causing others to question their businesses practices.

After a determination of liability against these Defendants, based on IEHI and KCI default and Defendant Railey's admissions, Plaintiffs' respectfully request scheduling this matter for a hearing on damages.

Plaintiffs' motion should be granted in its entirety.

II. STATEMENT OF FACTS

A. Defendants' Solicitation of Advertising from Plaintiffs

In or about June, 2008, Defendants began soliciting the plaintiffs to advertise on their website. (Russell Dec. at p. 2, ¶ 7.) Defendants affirmatively represent that they scrutinize companies considered for advertising. (Id. at ¶ 6.) Defendants' solicitation consisted of multiple telephone calls and emails Plaintiffs. (Id. at ¶ 8.) On August 5, 2008, Defendants were still contacting the plaintiffs hoping that they would be "granted the opportunity to advertise Grant America on ml-implode." (Id. at ¶ 9.)

B. Defendants' False and Defamatory Publication

On or about September 9, 2008, shortly after Plaintiffs advised Defendants that they would not be advertising on Defendants' website, Defendants published an untrue and defamatory article regarding Plaintiffs. (Id. at ¶ 11.) Defendants' statements are untrue and defamatory *per se,* harm Plaintiffs' reputation, expose them to ridicule and financial injury.

Defendants' published numerous defamatory statements in the original article that were so wholly unsupportable, knowingly false and intentionally misleading that they were withdrawn. (Id. at ¶ 13.) While Defendants have removed from the article that GAP is a scam, DP Funder is a scam and Plaintiffs' Russell and Hill treated AmeriDream like their own personal piggy bank, the currently published article still falsely claims that Russell attempted to extort AmeriDream and the Penobscot Indian Tribe is laundering downpayments for a fee. (Id.)

While certain incontestably false and *per se* defamatory statements have been removed from the article and/or altered, the currently published article still contains multiple untrue and defamatory statements, including, but not limited to:

> ***False Statement -*** Hence, the Penobscot Indian Tribe isn't really providing "assistance" and is merely laundering the down payment for a fee . . .

The Truth – Defendants' accusation that PIN, through GAP, is laundering the down payment is false. As set forth above, HUD has expressly acknowledged that GAP is HUD compliant, PIN has never been accused of laundering and all aspects of the transaction are completely transparent and disclosed.

False Statements - That Russell had a copycat website of Ameridream and Ameridream claimed Russell attempted to extort $5,000 per domain.

The Truth – Russell did not have, the arbitration decision did not find and AmeriDream did not even allege that Russell had a "copycat website". The arbitrator found that the domain name, not website, was confusingly similar to AmeriDream. AmeriDream has never alleged that Russell attempted to extort money from them.

False Statement - The seller contribution to the Grant America Program is clearly a concession that is confirmed by IRS ruling 2006-27. . . The PIN program Seller Enrollment form itself solidifies the fact that it is a sales concession . .

The Truth – The contribution is not a concession and the IRS Ruling involves an entirely different issue – the propriety of an organization's 501(c) status – not whether the contribution is a concession. HUD, not the IRS, is responsible for making this determination and has expressly found that the contribution is not a concession. GAP's forms do not support the defendants' falsehood in any way. This false statement would lead customers into believing GAP was being used to facilitate mortgage fraud. By calling the contribution a concession, Defendants are accusing Plaintiffs of committing mortgage fraud.

False Statements - On April 3, 2008, HUD and the Penobscot Indian Tribe executed a Stipulation to Resolve Remaining Claims and Dismiss Action which the Grant America Program website posts as a HUD approval letter. Click here to view the Stipulation of Dismissal.

Not only is the Stipulation and Dismissal ***not*** an approval letter, it doesn't provide specific approval of seller-funded grants as Sovereign Grant providers claim. The Stipulation and Dismissal is merely a temporary settlement which gave HUD the opportunity to publish a revised proposed rule and re-open the comment period.

The Truth - On April 3, 2008, HUD expressly stipulated:

> that PIN's Grant America Program™ ("GAP") meets HUD's current policies pertaining to the source of gift funds for the borrowers' required cash investment for obtaining FHA insured mortgage financing (Exhibit A.)

(Id. at 3-4, ¶ 14.)

Defendants are still publishing this article. http://whistleblower.ml-implode.com/?p=142

C. Defendants' Default

In April and May 2011, Defendants' IEHI and KCI's counsel moved to withdraw their appearances in this action. (ECF No. 98 and 101.) On May 31, 2011, the Court granted the motions to withdraw as counsel and withdrew their appearances. (ECF No. 104.) The Court's May 31, 2011 Order directed Defendants IEHI and KCI to "show cause no later than June 14, 2011, why a default should not be entered against them." (Id.) Aaron Krowne, the principal of Defendants IEHI and KCI submitted papers suggesting that the corporations did not intend to secure counsel. (ECF No. 105.) On June 17, 2011, no counsel had entered an appearance on behalf of the corporate Defendants and this Court Ordered that:

> Default is entered against the Defendants Implode-Explode Heavy Industries, Incorporated and Krowne Concepts, Inc. (ECF No. 107.)

D. Defendant Railey's Admissions

Defendant Krista Railey wrote the September 2008 article regarding Plaintiffs. (Railey Dec., p. 1, ¶ 3.) The article was published by Defendants IEHI and KCI on the website and Mr. Krowne and Randall Marquis of IEHI and KCI were the article's editors. (Id. at ¶ 4.) Railey admits that "there are significant problems with the final published article" and the "article contains and implies false statements of fact and is misleading in a material manner." (Id. at p. 2, ¶ 6.)

Railey states that she requested that defendants' IEHI and KCI provide Russell "a fair opportunity to rebut the article" (Id. at ¶ 7.) Defendant Railey also admits that she "advised IEHI and Krowne [KCI] that the article was not factual accurate and should be removed from the

website or substantially corrected" (Id. at ¶ 8), but that "defendants IEHI and Krowne [KCI] dissuaded me from making corrections to the article or publishing a corrected article on the website." (Id. at ¶ 9.)

Defendant Railey confirms defendants IEHI and KCI's disparate treatment of advertisers and non-advertises (Id. at ¶ 10), including, concealing and removing "posts regarding the illegal activities of an advertiser" (Id. at ¶ 11), "encouraged [her] to write a negative story a GCS [advertiser's] competitor" (Id. at ¶ 13) and that she as "serious questions regarding whether the article was published and/or not corrected/removed from the website because the plaintiffs refused to advertise." (Id. at p.3, ¶ 17.)

Railey describes researching an article regarding another DPA provider, American Family Funds ("AFF") administers of the Dove Foundation (collectively "AFF/Dove") (Id. at ¶ 18), that a principal of AFF/Dove began advertising on the website (Id. at ¶ 19) and that she was not encouraged to write the article by ML Implode and no AFF/Dove article was published on the website. (Id. at ¶ 20.)

Railey declares that defendants IEHI and KCI did not allow her to correct the article (Id. at ¶ 23), continued to publish it after she advised it contained false statements (Id. at p. 1, ¶ 23) and are using the article and lawsuit to raise funds and generate publicity. (Id. at p. 3, ¶ 23.)

III. LEGAL ARGUMENT

A. Establishing Liability Against Defaulting Corporate Defendants KCI and IEHI is Proper

Plaintiffs request an Order establishing liability against defaulting corporate Defendants KCI and IEHI on Plaintiffs' defamation and libel causes of action. The clerk has previously entered an order of default against Defendants IEHI and KCI. (ECF 107.)

As corporate entities, neither IEHI nor KCI can represent themselves in this action and must be represented by counsel. Turkey Point Property Owners' Ass'n, Inc. v. Anderson, 666 A.2d 904, 106 Md.App. 710 (Md.App. 1995); see also Local Rule 2-131 ("[A] person other than an individual may enter an appearance only by an attorney.") On June 17, 2011, an entry of default against Defendants IEHI and KCI was entered. (ECF No. 107.)

In reviewing Plaintiffs' motion for judgment by default, the Court accepts the factual allegations as to liability as true. Ryan v. Homecomings Fin. Network, 253 F.3d 778, 780–81 (4th Cir. 2001). If the Court determines that the unchallenged factual allegations constitute a legitimate cause of action, Plaintiffs are entitled to a default judgment. Id. If the Court determines that liability is established, it must then determine the appropriate amount of damages. Id.

The Clerk of Court having previously entered an order of default against Defendants IEHI and KCI and this Court has already determined that "the allegations of the complaint, taken as true upon entry of default, would establish the corporate Defendants' liability for defamation." (Dkt. 112 at 13.) Accordingly, the instant motion should be granted.

B. Defendant Railey's Admissions Establish Plaintiffs Entitlement To Summary Judgment Against Her

Plaintiffs are entitled to summary judgment against Defendant Railey, the article's author, because she admits that the article contains false and defamatory statements of fact. Defendant Railey, admits that:

- "the article contains and implies false statements of fact and is misleading in a material manner;"
- she "advised IEHI and Krowne that the article was not factual accurate and should be removed from the website or substantially corrected;"
- "defendants IEHI and Krowne dissuaded me from making corrections to the article or publishing a corrected article on the website;"
- defendants IEHI and Krowne encouraged defendant Railey "to write a negative story about a GCS [advertiser's] competitor;" and
- defendants IEHI and Krowne are concealing "the illegal activities of a paying advertiser while publishing an article containing false statements about the plaintiffs' legally compliant companies."

A *prima facia* case of defamation consists of the following elements:

(1) that the defendant made a defamatory communication-i.e., that he communicated a statement tending to expose the plaintiff to public scorn, hatred, contempt, or ridicule to a third person who reasonably recognized the statement as being defamatory;

(2) that the statement was false;

(3) that the defendant was at fault in communicating the statement; and

(4) that the plaintiff suffered harm.

Peroutka v. Streng, 116 Md.App. 301, 311, 695 A.2d 1287 (1997) (quoting Shapiro v. Massengill, 105 Md.App. 743, 772, 661 A.2d 202, cert. denied, 341 Md. 28, 668 A.2d 36 (1995)). See Gohari v. Darvish, 363 Md. 42, 54, 767 A.2d 321 (2001). "A defamatory statement

is one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." Batson v. Shiflett, 325 Md. 684, 722-23, 602 A.2d 1191 (1992) (quoting Bowie v. Evening News, 148 Md. 569, 574, 129 A. 797 (1925)). The allegation that a person is a thief constitutes defamation *per se*. See R.J. Gilbert and P.T. Gilbert, MARYLAND TORT LAW HANDBOOK, § 6.4 (3d ed. 2000).

For more than 100 years, it has been recognized that *per se* defamation occurs when:

> Words spoken of a person in his office, trade, profession, business or means of getting a livelihood, which tend to expose him to the hazard of losing his office, or which charge him with fraud, indirect dealings or incapacity and thereby tend to injure him in his trade, profession or business, are actionable without proof of special damage, even though such words if spoken or written of an ordinary person, might not be actionable *per se.*

Kilgour v. Evening Star Co., 96 Md. 16, 23-24, 53 A. 716 (1902). When a statement that is defamatory *per se* and made with actual malice, "a presumption of harm to reputation . . . arises from the publication . . ." Hanlon v. Davis, 76 Md.App. 339, 356 (1988) (citations omitted).

It is undisputed that Defendant Railey's article, which she admits contains false and defamatory statements of fact, was and continues to be published. Accordingly, Plaintiffs are entitled to summary judgment against Defendant Railey.

C. Defendants Should Be Enjoined From Publishing Any Version Of The Admittedly False Article

The Court should enter an Order permanently enjoining Defendants from publishing any version of the article. "A permanent injunction is, as its name indicates, an injunction final or permanent in its nature granted after a determination of the merits of the action." Colandrea v. Wilde Lake Community Assoc., Inc., 361 Md. 371, 761 A.2d 899, 911 (Md. 2000) (internal quotation marks and citation omitted).

In deciding whether or not to grant permanent injunctive relief, a court should consider: (1) the probability of irreparable injury to the moving party or whether there is an adequate remedy at law; (2) whether the balance of equities favors the moving party; (3) the public interest, if any, that is involved in the dispute; and (4) the merits. Nissan Motor Corp. in U.S.A. v.Maryland Shipbuilding and Drydock Co., 544 F.Supp. 1104, 1122 (D.C.Md. 1982) (citations omitted). These factors indicate that the Court should issue a permanent injunction.

First, there is a strong probability of irreparable injury as this admittedly false and defamatory article continues to be published. The falsehoods published by Defendants were designed to and have negatively impacted Plaintiffs' operations, business dealings and are causing harm and embarrassment, damaging Plaintiffs' reputation and causing others to question their businesses practices. Irreparability of harm, for purposes of injunctive relief, includes the impossibility of ascertaining with any accuracy the extent of the loss. Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co., Inc., 550 F.2d 189 (4th Cir. 1977). A reason for granting an injunction is to protect a party against irreparable harm which can take place in the form of injury to such party's good will. Parke, Davis & Co. v. Green Willow, Inc., 205 F.Supp. 346 (S.D.N.Y.1962).

Second, the balance of the equities is clearly in Plaintiffs' favor. Defendants IEHI and KCI continue to publish the article despite the author's admission that it is false and defamatory. Third, public interest weighs heavily in favor of entry of a temporary an injunction to restrain Defendants from further defaming Plaintiffs. The public benefits by enjoying the fruits of legitimate discussion, not the retaliatory publication of false and defamatory statements. To the contrary, Defendants' false statements, are, and will continue, to irreparably harm Plaintiffs. Lastly, the author of the article admits that it contains false and defamatory statements of fact and a default has been issued against Defendants IEHI and KCI – the merits are clearly on Plaintiffs' side.

Accordingly, the Court should enter an Order permanently enjoining Defendants from publishing any version of the article.

D. Upon Entering An Order Establishing Liability Against Defendants, A Hearing On Damages Should Be Scheduled

Defendant Railey's admissions and Defendants IEHI and KCI default establish that Plaintiffs are entitled to a determination of liability against these Defendants. After entering an Order establishing liability against these Defendants, Plaintiffs' respectfully request a hearing on damages be scheduled.

IV. CONCLUSION

Based on the foregoing, Plaintiffs' motion should be granted in its entirety.

Dated: May 15, 2012

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