

VIRGINIA

IN THE FAIRFAX COUNTY CIRCUIT COURT

FILED
CIVIL INTAKE
2012 OCT 31 PM 2:46
JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

DIETZ DEVELOPMENT, LLC,)
)
and)
)
CHRISTOPHER DIETZ)
Plaintiffs)
)
v.)
)
JANE PEREZ,)
Serve: Jane Perez)
9307 Marycrest Street)
Fairfax, Virginia 22031)

Case No. 2012-16249

COMPLAINT

COME NOW your Plaintiffs, Dietz Development, LLC and Christopher Dietz, by counsel, and file this Complaint against Defendant Jane Perez and in support of such state as follows:

PARTIES AND JURISDICTION

1. Plaintiff Dietz Development, LLC ("Dietz Development") is a construction contractor licensed in Maryland, DC, and Virginia with its principal place of business in the District of Columbia.
2. Plaintiff Christopher Dietz ("Mr. Dietz") is a resident of the District of Columbia. Mr. Dietz is the principal and owner of Dietz Development.
3. Defendant Jane Perez ("Ms. Perez") is a resident of the Commonwealth of Virginia in the County of Fairfax.
4. The events which gave rise to this lawsuit occurred in the County of Fairfax, Virginia, and the statements were published from and to the County of Fairfax and

Day & Johns, PLLC
10580 Main Street
Suite 218
Fairfax, Virginia 22030
Phone: (703) 268-5600
Fax: (703) 268-5602

published to and in fact seen in other places accessible by internet including Fairfax County.

5. This Court has original jurisdiction over this action pursuant to Virginia Code § 17.1-513. Venue is proper pursuant to Virginia Code § 8.01-262(4).

FACTUAL BACKGROUND

6. Plaintiffs incorporate by reference paragraphs 1-5.
7. Dietz Development is a construction contractor with a hitherto good reputation conducting business in the greater Washington area.
8. Dietz Development depends on its reputation for the development of additional business.
9. Christopher Dietz is the owner and primary point of contact for Dietz Development, and his reputation and business image overlap with that of Dietz Development, such that the success of his business and of himself professionally relies on both the company's reputation and Mr. Dietz's.
10. Ms. Perez was a high school classmate of Mr. Dietz who moved to the Greater Washington area and hired Dietz Development to make some cosmetic repairs to her newly purchased home.
11. Dietz Development performed the work in a workmanlike manner during the time it was permitted on her property.
12. Ms. Perez never paid any money for the work performed.
13. Ms. Perez demanded that Dietz perform additional work beyond what was in their agreement for free, and became upset when Dietz refused. As a result, Ms. Perez locked Dietz out of the job site.

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14. Mr. Dietz filed suit in July 2011 in his own name but not that of Dietz

Development against Ms. Perez for the unpaid invoices. When Mr. Dietz failed to file a Bill of Particulars, Ms. Perez filed a motion for summary judgment which was heard in Mr. Dietz's absence and granted prior to the trial date, and which Mr. Dietz did not appeal within 10 days of the motion date.

15. Ms. Perez posted statements online on angieslist.com on January 31, 2012,

attached as Exhibit A (post before "ADDENDUM"), that Dietz Development and Christopher Dietz committed a crime of moral turpitude, specifically the crime of theft, that Dietz Development and Christopher Dietz were intentionally untruthful in billing and otherwise, were unprofessional, caused unrepaired damage to her house and were unable to perform their work, and that a court had found there to be no merit in Dietz's claim that Perez owed money on the work he had done Ms. Perez posted on yelp.com on February 6, 2012 substantially the same messages, attached as Exhibit B (2nd post on page), and sent to the Virginia Department of Professional and Occupational Regulation on May 11, 2012 substantially the same messages, attached as Exhibit C. Such statements include, without limitation, the following:

- a. "Dietz Development LLC was to perform: painting, refinish floors, electrical, plumbing and handyman work. I was instead left with damage to my home and work that had to be reaccomplished for thousands more than originally estimated."
- b. "My home was damaged; the 'work' had to be re-accomplished;"
- c. "I won on summary judgment (meaning that the case had no merit)."

- d. "he invoiced me for work not even performed and also sued me for work not even performed"
- e. "This is after filing my first ever police report when I found my jewelry missing and Dietz was the only one with a key."

16. Ms. Perez posted statements online on yelp.com on August 13, 2012, attached as Exhibit B (1st post on page), that Dietz Development and Christopher Dietz committed a crime of moral turpitude, specifically the crime of theft, that Christopher Dietz committed the crime of trespass, that Dietz Development and Christopher Dietz were intentionally untruthful in business billing, were unprofessional, caused unrepaired damage to her house, and were unable to perform their work. The statements further alleged that a court had found there to be no merit in Dietz's claim that Perez owed money on the work he had done, including without limitation the following:

- a. "The company itself ... is not legitimate in lacking BBB Accreditation"
- b. That Dietz "claimed to have [a Virginia contractor's license] in order to bid on the job"
- c. "Clearly, legitimate companies do not avoid the BBB and legitimate cases are not dismissed by a court of law as this contractor's case was dismissed 'in [my] favor.'"
- d. "please note that he also invoiced for work not performed"
- e. "The matter with the police continues to be pursued, a home security system was installed, and a dog purchased for protection after filing my first ever police report due to this contractor. Apparently, \$K's theft with a

sole contractor's access to your home, an email from the contractor of possession of the resident's key as well as not returning that key, and motive are not enough to file charges nor is trespassing past 'no trespassing' signs to the townhome complex after the contractor losing his case and showing up at your front door."

17. Ms. Perez posted statements online on angleslist.com on August 15, 2012 and/or August 17, 2012, attached as Exhibit A (post at and following "ADDENDUM"), that Dietz Development and Christopher Dietz committed a crime of moral turpitude, specifically the crime of theft, that Christopher Dietz committed the crime of trespass, that Dietz Development and Christopher Dietz were intentionally untruthful in business billing, were unprofessional, caused unrepaired damage to her house, and were unable to perform their work. The statements further alleged that a court had found there to be no merit in Dietz's claim that Perez owed money on the work he had done, including without limitation the following:

- a. "The company itself ... is not legitimate in lacking BBB Accreditation"
- b. That Dietz "claimed to have [Virginia contractor's license] in order to bid on the job"
- c. "Clearly, legitimate companies do not avoid the BBB and legitimate cases are not dismissed by a court of law as this contractor's case was dismissed 'in [my] favor.'"
- d. "please note that he also invoiced for work not performed"

- e. "avoid this contractor to begin with who clearly is in the wrong line of business when the project is redone by other legitimate contractors at additional cost due to the resulting damage to the home from his 'work'; the client is left filing a theft report..."
- f. "The matter with the police continues to be pursued, a home security system was installed, and a dog purchased for protection after filing my first ever police report due to this contractor. Apparently, \$K's theft with a sole contractor's access to your home, an email from the contractor of possession of the resident's key as well as not returning that key, and motive are not enough to file charges nor is trespassing past "no trespassing" signs to the townhome complex after the contractor losing his case and showing up at your front door."

18. Ms. Perez posted statements online on yelp.com on August 27, 2012, attached as Exhibit D, that the Virginia Department of Professional and Occupational Regulation had made at least two rulings against Dietz Development and Christopher Dietz, one of which was allegedly based on Mr. Dietz's defense of his reputation online, that Dietz Development allegedly would necessarily have a poor rating with the Better Business Bureau, that Dietz Development had previously litigated its failure to perform, and that investigations were being conducted by the Virginia Office of the Attorney General and the Consumer Protection Agency, including without limitation the following:

- a. "Given Dietz' online posts below about the investigation, DPOR has imposed further sanctions against Dietz."

- b. "Businesses that fall within this category will always get an F grade."
- c. "The Consumer Protection Agency and the Office of the Attorney General are also good sources who stated that Dietz had been sued by another client for 'unfinished work'."

19. Contrary to the statements in Paragraph 15-18,

- a. Dietz Development did in fact perform all work required under the contract, and the items of work Ms. Perez claims were not accomplished were extras beyond the contract;
- b. the 'damage' Ms. Perez claims was pre-existing and not part of the work to be performed under the contract, or in a few cases was ordinary construction mess which Dietz Development cleaned up or was in the process of cleaning up when Ms. Perez locked Dietz Development out of her property;
- c. Dietz Development's invoice was accurate;
- d. the collection suit when Ms. Perez did not pay the invoice only sought payment for work actually done;
- e. Ms. Perez obtained a dismissal of the collection action only on the grounds that Mr. Dietz had missed the filing deadline for his bill of particulars;
- f. Mr. Dietz returned Ms. Perez's key to her by certified mail immediately following the lockout;
- g. neither Dietz Development nor its subcontractors stole any jewelry from Ms. Perez; on information and belief, of the items Ms. Perez originally reported as stolen shortly after her cross-country move, she has since

reported to the police that she has found several of them among her other belongings;

- h. prior to the collection litigation, Ms. Perez even stated to Mr. Deitz regarding the theft, "I don't believe that you were involved and the police know this;"
- i. no active police investigation of Mr. Dietz with respect to the allegedly missing jewelry existed at the time Ms. Perez made any of the above statements;
- j. a company's legitimacy is established by the State Corporation Commission or its foreign counterparts and not the Better Business Bureau; Dietz Development is in good standing with the BBB and has an initial rating of A+; further, establishing Better Business Bureau accreditation is a lengthy process which requires the continued operation of a legitimate business prior to accreditation;
- k. Ms. Perez's home is on a public street and does not bear a sign prohibiting trespass, nor had Mr. Dietz been forbidden to go upon her land. The alleged trespass was knocking on her door,
- l. no 'sanctions' or 'further sanctions' have been imposed on Dietz Development or Mr. Dietz by DPOR, and the DPOR investigation has been closed,
- m. neither Dietz Development nor Mr. Dietz have been sued by any prior client regarding alleged unfinished work or otherwise;

- n. the Virginia Office of the Attorney General never investigated Dietz Development, within the extent of known records.
20. When third parties have attempted to defend Dietz's reputation on yelp.com or angleslist.com, Ms. Perez has attempted to have their statements removed by alleging the third party statements to be fraudulent.
21. Ms. Perez made these statements out of malice toward Dietz Construction and Christopher Dietz stemming from, at least in part, Defendant's desire not to pay Dietz for work done at her house.
22. Plaintiffs have been harmed by these statements, including lost work opportunities, insult, mental suffering, being placed in fear, anxiety, and harm to their reputations.

COUNT I - DEFAMATION

23. Plaintiff incorporates by reference paragraphs 1-22.
24. Ms. Perez published, via the websites yelp.com and angleslist.com, the statements listed in paragraphs 15-18, *supra*, in places accessible to the general public, and particularly likely to come to the attention of persons who search for information on Dietz Development or Christopher Dietz.
25. These statements were made about Dietz Development and Christopher Dietz.
26. These statements were seen by someone other than Dietz Development and Christopher Dietz.
27. These statements were allegations that Dietz Development and Christopher Dietz committed a crime of moral turpitude, specifically the crime of theft, as well as that Christopher Dietz committed the crime of trespassing, that Dietz

Development and Christopher Dietz were intentionally untruthful in billing and otherwise, were unprofessional, caused unrepaired damage to her house, and were unable to perform their work in the course of their business. The statements further alleged that a court had found there to be no merit in Dietz's claim that Perez owed money on the work he had done.

28. These statements were false.

29. Ms. Perez made these statements knowing them to be false or with reckless disregard of whether they were false or not.

30. The danger of injury to Dietz Development's and Christopher Dietz's reputations from such words is readily apparent.

31. Dietz Development and Christopher Dietz have been harmed by these attacks, including loss of work opportunities in an amount of at least \$300,000.00 and an estimated \$500,000.00, harm to and loss of business reputation, insult, and anxiety.

32. Dietz Development and Christopher Dietz were damaged by Ms. Perez.

33. Ms. Perez's actions were malicious and showed intentional disregard for Dietz Development's and Christopher Dietz's rights, and accordingly punitive damages are appropriate against Ms. Perez.

COUNT II - INJUNCTION

34. Plaintiff incorporates by reference paragraphs 1-33.

35. Ms. Perez entered into an agreement with Dietz Development whereby she would pay for repair materials and services.

36. Dietz Development performed the work required by the agreement, to the extent not prevented by Ms. Perez.
37. Ms. Perez has responded by making repeated false and defamatory statements over time that Dietz did not do so, stole jewelry from her, and lied in its invoices and elsewhere.
38. These statements continue to be publicly available via the internet.
39. Based on her past actions, Ms. Perez is reasonably likely to continue to make additional iterations of these statements in the future.
40. An injunction requiring Ms. Perez to remove the statements identified in Paragraphs 15-18, *supra*, and refrain from making new substantially similar statements is necessary to prevent continuing and additional harm beyond that complained of in Count I.
41. A legal remedy is not adequate, as the statements continue to be published and are accessed whenever someone browses on those internet sites or searches for Dietz Development, and enforcement by monetary means only would require estimating speculative future losses or engaging in repeated litigation whenever another customer was lost due to Ms. Perez's statements.
42. The likelihood of irreparable harm to Dietz Development and Christopher Dietz is great if such an injunction is not granted, as it will continue to lose customers and its market share in the greater Washington area will continue to diminish based on Ms. Perez's statements.

43. The likelihood of irreparable harm to Ms. Perez is minimal as the injunction merely requires her to remove and not repeat words which were wrongfully made in the first place, and deprives Ms. Perez of nothing else.

44. The public interest is met by preserving the business reputation of a party to a contract against the wrongful accusations of the other party to the contract, who wanted to obtain free services.

45. As relief, Dietz Development and Christopher Dietz ask this Court to enjoin Ms. Perez from making new statements containing the allegations detailed in paragraphs 15-18, require her to cause the removal of those statements identified in paragraphs 15-18, and such other relief as this Court deems proper, pending the outcome of this case and thereafter.

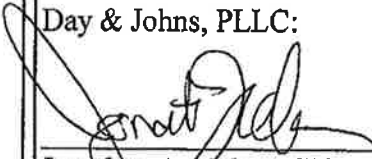
WHEREFORE, in consideration of the allegations outlined above, Plaintiffs Dietz Development and Christopher Dietz request that this Court enter a judgment of \$500,000.00 against Defendant Jane Perez and award punitive damages of \$250,000.00 against Defendant Jane Perez, enter an injunction against Defendant Jane Perez as described above, award costs, and any other relief this Court deems proper.

Plaintiffs hereby request a trial by jury of those portions of this case which may be tried by a jury.

Day & Johns, PLLC
10560 Main Street
Suite 218
Fairfax, Virginia 22030
Phone: (703) 268-5600
Fax: (703) 268-5602

Respectfully Submitted,
DIETZ DEVELOPMENT, LLC
CHRISTOPHER DIETZ
By counsel

Day & Johns, PLLC:



Jonathan A. Nelson (VSB # 75247)
10560 Main Street, Suite 218
Fairfax, Virginia 22030
Phone: (703) 268-5600
Fax: (703) 268-5602
Attorney for Plaintiffs

Day & Johns, PLLC
10560 Main Street
Suite 218
Fairfax, Virginia 22030
Phone: (703) 268-5600
Fax: (703) 268-5602