

Rebecca Keaton
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Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

MARY A. STEARNS, P.C.
DBA STEARNS-MONTGOMERY &
PROCTOR
Plaintiffs,
vs.
JOHN DOE AKA X X.
Defendant.

CIVIL ACTION FILE NUMBER

17-1-9737-40

COMPLAINT FOR DAMAGES AND OTHER RELIEF

COMES NOW Plaintiff, Mary A. Stearns, P.C., DBA Stearns-Montgomery & Proctor (hereinafter referred to as "Plaintiff"), by and through its' undersigned attorney shows this Honorable Court the following:

1.

Plaintiff Mary A. Stearns, P.C., DBA Stearns-Montgomery & Proctor is a business located in Marietta, Georgia.

2.

Defendant John Doe aka X X. (hereinafter "Defendant") is unknown to Plaintiff. Defendant has left a review of Plaintiff's website on Yelp but Plaintiff has found no mention of him in its records.

3.

Defendant is subject to personal jurisdiction of this Court as the underlying business relationship claimed by Defendant between the parties at issue in this complaint occurred in Marietta, Georgia.

Facts

4.

Paragraphs 1-3, set forth herein above, are incorporated and realleged as if fully set forth herein below.

5.

Defendant posted a review on Yelp of the Plaintiff law firm on June 12, 2013. The review was a 1-star review that stated:

DO NOT USE THIS LAW FIRM. Horrible. Horrible law practice. I paid for a consultation, and the lawyer said he would let me know the cost for what I needed. He knew how important and TIMELY this matter was which involved a divorce with minor children. I couldn't get a call back from him. He wouldn't return my emails. The receptionist kept sending me to their "account manager" - basically the person who takes your money, which is fine, but no one would give me an answer as to cost. RUN, don't walk from these folks. Don't pay the consultation fee. There are plenty of other law firms available which care about their clients, especially in such emotional matters as a divorce. I've now had to find another law firm which has set me back several weeks. USE ANY LAW FIRM BUT STEARNS- MONTGOMERY!

6.

After discovering the false and defamatory statements, Plaintiff tried to identify the person to reach out to them about their representation.

7.

Plaintiff has taken reasonable methods to ascertain who the person claiming to be "X X." is and has not been successful. See Exhibit A: Affidavit of Diligent Search signed by Mary A. Montgomery, managing partner of the Plaintiff firm.

8.

The malicious and cruel statement posted by Defendant has caused the business to lose clients, harmed the business's reputation, hindered future business, and caused the Plaintiff such other and further damage as may be proven at trial.

9.

Plaintiff seeks general damages, special damages, punitive damages, an immediate redaction or removal, and a court order demanding the review be redacted or removed from any and all third party websites, including but not limited to Yelp, based on the false and defamatory statements of the Defendant on Yelp.

Count I: Libel/Libel Per Se

10.

Paragraphs 1-9, set forth, herein above, are incorporated and realleged as if fully set forth herein below.

11.

Libel is a false and malicious defamation of another, expressed in print, writing, pictures, or signs, tending to injure the reputation of the person and exposing him to public hatred, contempt, or ridicule. O.C.G.A. § 51-5-1(a). Statements which tend to injure one in his trade, occupation or business are libelous per se. John D. Robinson Corp. v. Southern Marine & Indus. Supply Co., 196 Ga. App. 402 (1990). There is no question that the review on the third party websites, including but not limited to Yelp, is libel per se, as it clearly intended to injure Plaintiff's business by telling potential clients to "use any law firm but" Plaintiff's firm.

12.

There is a clear difference between a former client being unhappy with an attorney's representation, and defaming the attorney and the firm all over the internet – for the entire world to see. To state that the firm is a "horrible law practice" and to "RUN, don't walk from these folks" is nothing but a conscious indifference to the rights of Plaintiff.

13.

The statements posted on the third party websites, including but not limited to Yelp, by the Defendant were not only false and malicious, but have caused Plaintiff disrespect and disapproval from potential clients who rely on Yelp and such other third party websites for genuine advice, as well as other attorneys and members of the law community. Defendant's libelous statements have injured, and continue to injure Plaintiff's business and respect in the community. Plaintiff seeks general damages for such emotion distress, ridicule, pain and suffering.

14.

Plaintiff also seeks special damages for loss of employment, income and profits because of Defendant's libelous statements. Where charge is made in writing and is exhibited to third person and is false, it constitutes libel which is actionable per se, without proof of special damages. Walker v. Sheehan, 80 Ga. App. 606 (1949). No allegation of special damage needs to be made to support an action for libel per se.

Count II: False Light

15.

Paragraphs 1-14, set forth, herein above, are incorporated and realleged as if fully set forth herein below.

16.

Pursuant to O.C.G.A. § 51-5-1, Plaintiff bring an action for Libel under false light. To establish a false light claim, a plaintiff must show the existence of a false publicity that depicts Plaintiff as something she is not, and that the false light in which she was placed would be highly offensive to a reasonable person. Torrance v. Morris Publ'g Group, LLC, 281 Ga. App. 563, 572 (2006).

17.

Defendant's review puts Plaintiff's reputation in the public eye under mass scrutiny. By placing such review on Yelp.com, it leads potential clients to believe and presume that Plaintiff law firm is a "horrible law practice". This is clearly reprehensible to state about a professional law firm as it calls into question its ability to represent the best interests of clients and it depicts the firm as lying about their abilities to best represent clients.

Count III: Tortious Interference with Potential Business Relations

18.

Paragraphs 1-17, set forth, herein above, are incorporated and realleged as if fully set forth herein below.

19.

In Georgia, the elements of tortious inference with contractual relations, business relations, or potential business relations are: 1) improper action or wrongful conduct by the defendant, 2) the defendant acted purposefully and with malice with the intent to injure, 3) the defendant caused a third party to discontinue or fail to enter into an anticipated business relation and 4) the conduct caused damages. Dalton Diversified, Inc. v. AmSouth Bank, 270 Ga. App. 203, 208-09 (2004).

20.

Defendant's conduct in placing the derogatory and libelous words on the internet is improper action and was wrongful conduct without privilege. Defendant had other remedies and options for his representation without the need to defame Plaintiff. Defendant acted purposefully and with malice to injure the Plaintiff, stating that the firm was a "horrible law practice" could not fall under the category of a "review" or "opinion", but rather an insult to one of the most valuable assets an attorney, and any professional, has – their integrity. It is essential for potential clients to be able to trust their attorney and Defendant completely undermined that trust with his libelous post. Defendant caused a party or third parties not to enter into anticipated business relationships

with the Plaintiff, as various other potential clients and members of the community have seen this review, and commented on its context. Defendant's tortious conduct proximately caused damages to the Plaintiff, not only in the amount of emotional distress and shame, but in the continual loss of business such meritless review has brought.

Count IV: Immediate Retraction

21.

Paragraphs 1-20, set forth, herein above, are incorporated and realleged as if fully set forth herein below.

22.

It is well settled that an injunction will not be granted to restrain slander or libel of title or of reputation. Pittman v. Cohn Communities, Inc., 240 Ga. 106, 109 (1977).

23.

Because Plaintiff cannot seek a remedy in equity in the form of an injunction, Plaintiff seeks a redaction, deletion, removal or retraction of the libelous review. O.C.G.A. § 51-5-11 allows retractions to any published libel. *See also Mathis v. Cannon*, 276 Ga. 16, 25 (2002). A retraction posted on Yelp, for libel purposes, is likely to reach the same people who read the original message. Plaintiff seeks an immediate redaction, deletion, removal or retraction of the defamatory language. Nothing under O.C.G.A. § 51-5-11 precludes applying the retractions statute to individuals. Mathis at 28. This wrong must simply be made right.

Count V: Bad Faith

24.

Paragraphs 1-23, set forth, herein above, are incorporated and realleged as if fully set forth herein below.

25.

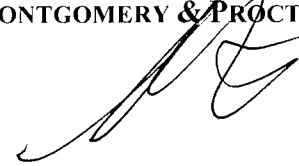
Defendant has caused unnecessary trouble and expense and has acted in bad faith pursuant to O.C.G.A. § 13-6-11 by posting a libelous review under a false name for which Defendant is liable. Plaintiff has tried to locate Defendant to work with him on resolving the issues but has been unable to do so because of Defendant's impersonation in his review.

WHEREFORE, Plaintiff prays

- a) That Summons and Process issue as required by law and Defendant be served with same;
- b) That an immediate redaction, deletion, removal or retraction be issued regarding the defamatory statements about the Plaintiff;
- c) That judgement be entered against Defendant in an amount which will fairly and adequately compensate Plaintiff for the general damages incurred;
- d) That Plaintiff be awarded punitive damages;
- e) That Plaintiff be awarded special damages;
- f) That Plaintiff be awarded expenses of litigation including attorney's fees;
- g) That this Court award Plaintiff such other and further relief as this Court deems just and proper.

This 29 day of December, 2017.

Respectfully submitted:
STEARNS-MONTGOMERY & PROCTOR



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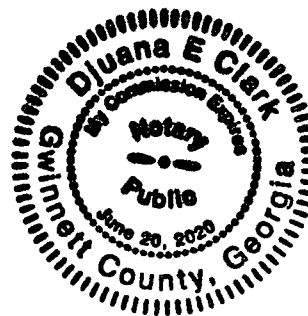
COUNTY OF COBB

VERIFICATION

PERSONALLY APPEARED before the undersigned attesting officer authorized by law to administer oaths, Mary A. Montgomery, managing partner of the Plaintiff firm, who, after first being duly sworn, on oath deposes and says that the facts alleged in the above and foregoing Plaintiff's Complaint for Damages and Other Relief is true and correct, to the best of her knowledge and belief.

Mary A. Montgomery, Plaintiff

Sworn to and subscribed before me
This the 28th day of Dec., 2017.

Notary Public

Please respond to
Marietta Office

Law Offices
STEARNS-MONTGOMERY
& PROCTOR

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