

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DR. ROBERT M. GOLDMAN and
DR. RONALD KLATZ,

Plaintiffs,

—against—

DR. STEPHEN J. BARRETT and
QUACKWATCH, INC.,

Defendants.

15 Civ. 9223 (PGG) (HBP)

**DR. STEPHEN J. BARRETT'S MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION TO DISMISS THE AMENDED COMPLAINT**

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TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	1
DISCUSSION	3
I. THE TORTIOUS INTERFERENCE CLAIM IS DUPLICATIVE OF THE DEFAMATION CLAIM.....	3
II. THE COMPLAINT WAS FILED TOO LATE.....	4
A. The Alleged Conduct Falls Outside of the One-Year Statute of Limitations for Defamation	4
B. The Allegations in the Amended Complaint Do Not Relate Back to the Original Complaint	4
C. The Remaining Claims Are Time-Barred Because They Are “In Essence” Defamation Claims	5
III. THE CLAIM FOR CONSPIRACY CANNOT PROCEED INDEPENDENTLY.....	5
CONCLUSION.....	6

TABLE OF AUTHORITIES

CASES

<i>Goldman v. Barrett</i> , 15 Civ. 9223, 2016 WL 5942529 (S.D.N.Y. Aug. 24, 2016)	2, 3, 5
<i>Jain v. Secs. Indus. & Fin. Markets Ass’n</i> , No. 08 Civ. 6463, 2009 WL 3166684 (S.D.N.Y. Sept. 28, 2009)	4
<i>Lewis v. Friedman-Marks Clothing Co.</i> , 418 N.Y.S.2d 60 (1st Dep’t 1979)	6
<i>Pruiss v. Bosse</i> , 912 F. Supp. 104 (S.D.N.Y. 1996)	4, 5
<i>Ramsay v. Mary Imogene Bassett Hosp.</i> , 495 N.Y.S.2d 282 (3d Dep’t 1985)	5
<i>Stoner v. Walsh</i> , 772 F. Supp. 790 (S.D.N.Y. 1991)	5
<i>Stuart v. Am. Cyanamid Co.</i> , 158 F.3d 622 (2d Cir. 1998)	4

TREATISES

6A Charles A. Wright, et al., Federal Practice & Procedure Civ. § 1497 (3d ed. 2010)	5
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RULES

Fed. R. Civ. P. 15	4
N.Y. CPLR § 215	4

INTRODUCTION

Three months ago, this Court dismissed the plaintiffs' original complaint as an untimely attempt to silence Dr. Barrett's truthful speech regarding the plaintiffs' controversial medical practices. Now, in an effort to revive their meritless lawsuit, the plaintiffs bring an Amended Complaint containing farcical claims that Dr. Stephen Barrett disparaged the plaintiffs in conversations with unnamed officials of the Chinese and Malaysian governments, so as to allegedly derail the plaintiffs' multi-million dollar business arrangements.

The new allegations are a complete fabrication and are wildly implausible. Dr. Barrett never spoke to any government officials or made the statements attributed to him in the Amended Complaint. And it is simply unbelievable that government officials would, based solely on the say so of a retired doctor with no relationship to the plaintiffs, cancel otherwise lucrative business projects — apparently without even giving the plaintiffs an chance to defend themselves. It is especially suspicious that the alleged phone calls and cancellation of these lucrative contracts were not mentioned in the earlier complaint, or in any of the parties' discussions before the complaint was filed, despite the fact that they supposedly occurred before this lawsuit was commenced.

Beyond having no basis in truth, these claims should be dismissed as time-barred and improperly pled for the reasons set forth below.

BACKGROUND

The case was brought by two multi-millionaire promoters of anti-aging "medicine" who, in their original complaint, sought to bully Dr. Barrett into deleting an article from a nonprofit consumer advocacy website he operates called "Quackwatch." (ECF 26 ¶¶ 17-21, 29.) The article truthfully reported that the State of Illinois disciplined and fined the plaintiffs for falsely

using the term “M.D.” after their names. (*Id.* ¶ 30.) The plaintiffs have degrees from a school in Belize that does not qualify for “M.D” licensure under Illinois law. (*Id.* ¶¶ 3, 6.)

The Court dismissed all the claims in the original complaint, on the following grounds:

- First, the Court dismissed the plaintiffs’ defamation and N.Y. Gen Bus. L. § 349 claims because the article was not alleged to have said anything false. *Goldman v. Barrett*, 15 Civ. 9223, 2016 WL 5942529, at *5, *8 (S.D.N.Y. Aug. 24, 2016). To the extent the article’s appearance on the “Quackwatch” site implied that the doctors are “quacks,” it was not false or misleading. *Id.* at *5. The term “quack” refers to someone who “falsely pretends to have medical skills or knowledge,” and, as the Court found, that is exactly what the plaintiffs did by improperly holding themselves out as M.D.s. *Id.* at *5.
- Second, the Court dismissed the plaintiffs’ tortious interference and prima facie tort claims as duplicative of the defamation claim. *Id.* at *7-8.
- Third, the Court ruled that the civil conspiracy claim could not proceed absent an independently actionable tort. *Id.* at *9.
- Fourth, the Court dismissed all the claims on the independent ground that they were barred by the statute of limitations. *Id.* at *9-11.

The Court granted leave to amend, *id.* at *11, and the plaintiffs have filed an Amended Complaint based on different allegations that were suspiciously omitted from the original complaint. The plaintiffs now claim that, sometime in the spring of 2015 or earlier, Dr. Barrett spoke by phone with government officials from China and Malaysia who were conducting due diligence for business ventures with the plaintiffs, and he allegedly told the officials various defamatory falsehoods about the plaintiffs, including that the plaintiffs were likely face criminal prosecution in the U.S. (ECF 26 ¶¶ 41-62.) According to the complaint, these conversations caused the projects to be cancelled. (*Id.*) The plaintiffs have brought new claims for (1) defamation, (2) tortious interference, and (3) civil conspiracy. (*Id.* ¶¶ 63-86.)¹

¹ The Amended Complaint mentions the allegations concerning the Quackwatch article (ECF 26 ¶¶ 26-38), but does not actually assert any claims based on the article. (*Id.* ¶¶ 63-86.)

DISCUSSION

I. THE TORTIOUS INTERFERENCE CLAIM IS DUPLICATIVE OF THE DEFAMATION CLAIM

This issue has been before the Court before. In dismissing the plaintiffs’ original complaint, the Court recognized that tortious interference claims “premised on the same factual allegations” as defamation claims must be dismissed. 2016 WL 5942529, at *7 (quotations omitted). The plaintiffs had argued that their tortious interference claim in the original complaint was independent because they had separately alleged “the loss of prospective economic gain with business contacts.” *Id.* That was insufficient, the Court found, because the allegation did not state separate, tortious conduct but merely recited an injury that “flow[ed] from the effect of the [allegedly] defamatory” article. *Id.* (alterations added; quotation omitted).

These points are equally applicable to the new tortious interference claim. In their Amended Complaint, the plaintiffs allege in their tortious interference claim that Dr. Barrett “committed wrongful and culpable conduct *by defaming*” the plaintiffs in the phone calls at issue, and that he “*used defamatory statements* to not only harm the Plaintiffs’ reputations but their specific business interests” in the projects. (ECF 26 ¶¶ 77-78 (emphasis added).) Thus, it is clear that the tortious interference claim is “premised on the same factual allegations” as the defamation claim, and thereby duplicative. 2016 WL 5942529, at *7.

The claim is further duplicative because it seeks the same damages as the defamation claim — compensation for the alleged harm stemming from the business opportunities described in the Amended Complaint. (*Compare* ECF 26 ¶ 69 (defamation resulted in “a direct and immediate lost business opportunity”) *with id.* ¶ 79 (as a result of alleged tortious interference, “the China Project was terminated and Dr. Goldman and Dr. Klatz each suffered a loss of over ten million dollars”)); *see also Jain v. Secs. Indus. & Fin. Markets Ass’n*, No. 08 Civ. 6463, 2009

WL 3166684, at *9 (S.D.N.Y. Sept. 28, 2009) (dismissing tortious interference claim as duplicative when based on the same facts and damages).

These allegations confirm that the tortious interference claim is duplicative and should be dismissed — just as before.

II. THE COMPLAINT WAS FILED TOO LATE

A. The Alleged Conduct Falls Outside of the One-Year Statute of Limitations for Defamation

In the first instance, the defamation claim was brought months after relevant the statute of limitations expired. The plaintiffs allege that the defamatory statements were made to the Chinese officials in March and April 2015 (ECF 26 ¶ 48), and to the Malaysian officials sometime in 2014 or earlier (*id.* ¶ 61). But the Amended Complaint was not filed until October 2016, which is outside the one-year statute of limitations for defamation claims. N.Y. CPLR § 215(3); *see also Stuart v. Am. Cyanamid Co.*, 158 F.3d 622, 626 (2d Cir. 1998) (in diversity cases, federal courts must apply statutes of limitations of the forum state).

B. The Allegations in the Amended Complaint Do Not Relate Back to the Original Complaint

The plaintiffs may argue that the Amended Complaint “relates back” to the original complaint, but that is permissible only when “the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading.” Fed. R. Civ. P. 15(c)(1)(B). Under this standard, “[a]n amendment will not relate back if it sets forth a new set of operational facts; it can only make more specific what has already been alleged.” *Pruiss v. Bosse*, 912 F. Supp. 104, 106 (S.D.N.Y. 1996).

The Amended Complaint does not meet the relation back standard because it refers to instances of alleged defamation that are nowhere in the original complaint. Courts have uniformly recognized that “amendments alleging the separate publication” of the same “libelous

statement” do not relate back to the allegations of the initial publication of the statement, 6A Charles A. Wright, et al., Federal Practice & Procedure § 1497 & n.6 (3d ed. 2010) (collecting cases), and so a separate instance of a *different* defamatory statement obviously cannot meet the relation back standard, either.

In *Pruiss*, for example, then-District Judge Parker ruled that a proposed amendment to allege a different instance of the same defamatory statement (that the plaintiff swim coach had sexual encounters with young girls) did not “relate back” to the original complaint, and he observed that ruling otherwise “would, in effect, allow the plaintiff to circumvent the statute of limitations.” 912 F. Supp. at 106. The same is true here, and the result should be the same.

The Court should therefore dismiss the defamation claim because it was filed too late.

**C. The Remaining Claims Are Time-Barred
Because They Are “In Essence” Defamation Claims**

To the extent the tortious interference claim is not dismissed as duplicative (as discussed above), it should be dismissed as untimely. A plaintiff whose case is “in essence, one for defamation” cannot extend that period by adding claims for “interference with economic relations” or “any other characterization designed to circumvent an otherwise short limitation period.” *Ramsay v. Mary Imogene Bassett Hosp.*, 495 N.Y.S.2d 282, 284 (3d Dep’t 1985). As discussed, the tortious interference claim is essentially one for defamation, and thus should be subject to the same statute of limitations. The conspiracy claim is simply a repackaging of the same claims, and should be dismissed on these same grounds, as well.

III. THE CLAIM FOR CONSPIRACY CANNOT PROCEED INDEPENDENTLY

If the substantive claims are dismissed, then, as the Court ruled before, there can be no civil conspiracy claim. 2016 WL 5942529, at *9. In addition, there can be no “conspiracy” because Dr. Barrett’s co-defendant, Quackwatch, Inc., is a corporate entity that was dissolved in

2009, leaving Dr. Barrett as the only member of the supposed “conspiracy.” The claim therefore violates the “tenet basic to our law that no one may conspire with himself.” *Lewis v. Friedman-Marks Clothing Co.*, 418 N.Y.S.2d 60, 61 (1st Dep’t 1979). Dr. Barrett has shown the plaintiffs corporate records of the dissolution, yet they have stubbornly persisted in including Quackwatch, Inc., in their Amended Complaint.²

CONCLUSION

For the stated reasons, the Court should dismiss the plaintiffs’ Amended Complaint with prejudice.

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November 29, 2016

Respectfully submitted,

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² The undersigned counsel does not represent Quackwatch, Inc., but, given that it has indisputably dissolved (*see* ECF 15-5) the Court should dismiss it from the case *sua sponte*.