

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

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

Plaintiffs,

—v.—

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

Defendants.

15 Civ. 9223 (PGG) (HBP)

**DR. ROBERT M. GOLDMAN AND DR. RONALD KLATZ’S MEMORANDUM OF
LAW IN OPPOSITION TO DEFENDANT BARRETT’S MOTION TO DISMISS**

Paul Law Group, LLP
902 Broadway, Floor 6
New York, New York 10010
Tel: (646) 202-2532
Fax: (646) 514-6829

December 13, 2016

Table of Contents

INTRODUCTION.....	4
BACKGROUND	5
DISCUSSION	8
I. The Defamation Claim is Timely Because It Relates Back to the Original Complaint ..	8
II. The Tortious Interference Claim is Separate and Distinct from the Defamation Claim Because it Alleges a Direct Injury to the Plaintiffs’ Business and Not Merely Stemming from Injury to their Reputations.....	10
III. The Conspiracy Claim Should be Sustained	13
CONCLUSION	14

Table of Authorities

CASES

<i>Carvel Corp. v. Noonan</i> , 350 F.3d 6 (2d Cir. 2003)	12
<i>Chao v. Mount Sinai Hospital</i> , 476 Fed.Appx. 892 (2d Cir.2012)	10
<i>Classic Appraisals Corp. v. DeSantis</i> , 552 N.Y.S.2d 402 (App. Div. 1990)	11
<i>Eisenberg v. Yes Clothing Co.</i> , No. 90 Civ. 8280 (JFK), 1991 U.S. Dist. LEXIS 7863 (S.D.N.Y. June 7, 1991)	11
<i>Kirch v. Liberty Media Corp.</i> , 449 F.3d 388 (2d Cir. 2006).....	12
<i>Krepps v. Reiner</i> , 588 F. Supp. 2d 471 (S.D.N.Y. 2008).....	12
<i>Lesesne v. Brimecome</i> , 918 F. Supp. 2d 221 (S.D.N.Y. 2013)	10, 11
<i>Lindner v. IBM Corp.</i> , 2008 U.S. Dist. LEXIS 47599 (S.D.N.Y. June 18, 2008).....	11
<i>Morrison v. Nat'l Broadcasting Co.</i> , 19 N.Y.2d 453 (N.Y. 1967)	11
<i>Pruiss v. Bosse</i> , 912 F. Supp. 104 (S.D.N.Y. 1996)	8
<i>Pusey v. Bank of Am., N.A.</i> , No. 14-CV-04979 (FB)(LB), 2015 U.S. Dist. LEXIS 91083 (E.D.N.Y. 2015)	10
<i>Ramsay v. Mary Imogene Bassett Hosp.</i> , 495 N.Y.S.2d 282 (3d Dep't 1985).....	9
<i>Restis v. Am. Coal. Against Nuclear Iran, Inc.</i> , 53 F. Supp. 3d 705 (S.D.N.Y. 2014).....	10
<i>Rosenberg v. Martin</i> , 478 F.2d 520 (2d Cir.1973), cert. denied, 414 U.S. 872 (1973)	8

RULES

CPLR §215(3).....	8
Fed.R.Civ.P. 15(c)	8, 9
Fed.R.Civ.P. 8(d)	13

Introduction

Dr. Robert M. Goldman and Dr. Ronald Klatz, the plaintiffs in this action (“**Plaintiffs**,” or the “**Doctors**”), have been the victims of a willful and malicious smear campaign perpetrated by Dr. Stephen Barrett for at least the past fifteen years. Plaintiffs are once again seeking justice after years of unwarranted persecution at the hands of the defendants, Dr. Stephen Barrett and Quackwatch (the “**Defendants**”). Dr. Goldman and Dr. Klatz are looking to protect their livelihood from harmful, defamatory and calculated attacks taken by the Defendants and additionally, to recoup losses attributable directly to the Defendants for business transactions that failed due to the Defendants’ improper actions. The Plaintiffs would have preferred to conduct their business affairs without such interference, but the Defendants have escalated their self-serving attacks, thus requiring the Plaintiffs to defend themselves against these actions and to deter similarly unwarranted actions that may arise in the future. The Defendants bring this motion to place yet another hurdle in the Plaintiffs’ path to justice.

Defendant Barrett blindly asserts that the allegations in the Amended Complaint are a “complete fabrication” and “wildly implausible.” (ECF 32 pg. 1). These statements present a factual issue ripe for adjudication. Prior to filing the Original Complaint, the Plaintiffs had rightfully suspected and alleged, but could not yet substantiate with specificity due to its continuing investigation, that the Defendants had interfered with certain business relationships. The facts alleged in the Amended Complaint demonstrate the extent of the malice employed by the Defendants to harm the Dr. Goldman and Dr. Klatz both personally and through their business dealings.

Defendant has repeatedly attempted to mislabel this action as two wealthy doctors attempting to stifle one man's free expression. Rather, this is the story of the Defendants taking advantage of free legal counsel in an attempt to cause undue harm to two doctors who have spent most of their professional careers dedicated to helping people live longer and healthier lives.¹ Plaintiffs re-assert and re-allege the contents of their Amended Complaint and emphasize that the Defendants' malicious conduct was intended to and has in fact caused the Plaintiffs harm for the reasons detailed below.

Background

Plaintiffs Dr. Robert M. Goldman and Dr. Ronald Klatz are licensed and accredited doctors and surgeons in the State of Illinois. They have pioneered the use of the term "anti-aging" in medicine and have appeared in hundreds of lectures and seminars in some of the world's leading academic institutions.

On December 6, 2000, the Defendants posted and made available on www.quackwatch.org (the "**Website**") an article entitled "Anti-Aging 'Gurus' Pay \$5,000 Penalties" (the "**Article**"). The Article describes an Illinois medical board proceeding relating to Dr. Goldman and Dr. Klatz and a reported settlement agreement between the Doctors and the State of Illinois whereby Dr. Goldman and Dr. Klatz agreed to pay \$5,000 each to the State of Illinois as punishment for identifying themselves as M.D.'s in Illinois's without being recognized by the state. The Website states that the Article was last revised on March 6, 2001.

¹ Defendant's counsel has gone on public record stating that the case was taken on a pro bono basis. See Larry Neumeister, *Judge Rejects Doctors' Lawsuit Against Quackwatch Website*, Associated Press, Aug. 25, 2016, available at <https://www.apnews.com/628e788ade9d43728dbf11cb0aafa489>

Dr. Goldman and Dr. Klatz are in fact physicians licensed to practice in Illinois and they do not warrant such disrespectful and scurrilous treatment. The Illinois Department of Financial and Professional Regulation (IPFPR) has indicated in separate communications to Dr. Goldman and Dr. Klatz that the fines previously paid would be administratively vacated through a separate internal process, a fact not mentioned in the Article.

Upon information and belief, in late 2014 the Defendants engaged in active search engine optimization practices on websites such as Google and Bing and utilized defamatory “meta tags” on the Website and within the Article in order to actively promote and more widely disseminate the Article. (ECF 26 ¶¶ 33-38). These practices were intended to spread the Article across the internet in order to perpetuate harm upon the Doctors on a larger scale. Such intent eventually manifested itself in late 2014. This Court indicated that such practices could constitute “republishing” as part of a defamation claim. (ECF 23 pg.21).

In September 2014, Dr. Goldman and Dr. Klatz entered into an agreement to provide consulting services and support for a number of health education clinics and screening centers to be set up in various high-density population areas in China (the “**China Project**”). A great deal of time, effort, and diligence went into securing the China Project. During an advanced stage of the China Project development, Chinese ministry officials conducted further background checks on Dr. Goldman and Dr. Klatz. The officials conducting diligence learned of the Defendants through a cursory internet search that revealed to them the Article and the Website.

The Chinese officials contacted the Defendants to inquire further about the Article and specifically about Dr. Goldman and Dr. Klatz. The interviews took place sometime in March and April 2015. During the interviews, the Defendants told the officials that Dr. Goldman and

Dr. Klatz had violated numerous U.S. laws and that they would likely be prosecuted in the near future, that the Doctors had tried to silence Dr. Barrett through intimidation, and that Dr. Goldman and Dr. Klatz were under further indictment by other countries, as well as other false and disparaging facts. (ECF 26 ¶¶50-54).

In late 2014, a second project involving Dr. Goldman, Dr. Klatz and the Malaysian government was terminated by Malaysian officials, initially with little explanation (the “**Malaysian Project**”). The Malaysian Project involved various public health programs and the general terms had been agreed upon between the parties. Upon further inquiry into the termination, the Plaintiffs determined that certain officials from the Malaysian government had discussions concerning the Article with the Defendants. Plaintiffs believe that the conversations between the Malaysian officials and the Defendants were substantially similar to the type of interviews conducted between the Defendants and the Chinese officials.

Plaintiffs’ Original Complaint was filed on November 25, 2015. (ECF 1). After filing the Original Complaint, the Plaintiffs became aware of the relevant facts that have since been included in the Amended Complaint. The Court dismissed the Original Complaint by Order dated August 24, 2016. Within the Dismissal Order, the Court provided Plaintiffs with leave to amend (ECF 23). The grounds for dismissal did not speak to the detailed facts that were subsequently discovered by the Plaintiffs and pled in the Amended Complaint. Plaintiff filed the First Amended Complaint on October 7, 2016. (ECF 26). Defendants filed their motion to dismiss the Amended Complaint on November 29, 2016. (ECF 31, 32).

Discussion

I. The Defamation Claim is Timely Because It Relates Back to the Original Complaint

Allegations sounded in defamation are subject to a one-year statute of limitations. CPLR §215(3). Plaintiffs' claim for defamation per se stems from comments made by Defendant Barrett in interviews that took place sometime in March and April 2015. The Original Complaint in this action was filed only months later in November 2015. (ECF 1).

Defendant alleges that the Amended Complaint cannot "relate back" to the Original Complaint because the instances of alleged defamation are not found in the Original Complaint. (ECF 32 pg. 4). The Defendant needs the Court to consider the Amended Complaint as a completely new complaint in order to properly assert its statute of limitations defense, but the grounds for the Amended Complaint arise from the same set of facts that led to the Original Complaint and the Amended Complaint does not introduce any new parties or dates not previously alleged. Courts have held that an amendment will relate back if it "make[s] more specific what has already been alleged." *Pruiss v. Bosse*, 912 F. Supp. 104, 106 (S.D.N.Y. 1996) (Court held that an amendment would not relate back where the new claim named a new party and new dates). Moreover, the main inquiry under Fed.R.Civ.P. 15(c) is "whether adequate notice has been given to the opposing party 'by the general fact situation alleged in the original pleading.'" *Id.* (quoting *Rosenberg v. Martin*, 478 F.2d 520, 526 (2d Cir.1973), cert. denied, 414 U.S. 872 (1973)).

Here, the Amended Complaint provides greater detail and particularity into the conversations between Defendant Barrett and the Doctors' business associates after those

associates accessed the Article online. The general facts regarding Barrett's interference with the Doctors' business were stated in the third claim for relief in the Original Complaint. (ECF 1 ¶¶29, 64-68). The Amended Complaint provides more specificity into Barrett's conduct and further outlines the Plaintiffs' causes of action. The facts surrounding the Original Complaint served as the catalyst to the new pleadings of the Amended Complaint. Defendants' dissemination and promotion of the Article led to its discovery by Plaintiffs' business associates, which in turn resulted in the defamatory statements and tortious interference detailed in both the Original and the Amended Complaint.

While the Plaintiffs had been generally aware of certain discussions between their business associates and the Defendants upon filing the initial complaint, the specific details did not emerge until a later date. The Plaintiffs did not seek leave to amend the Original Complaint upon immediate discovery of these new details only because the Court was already considering Defendant's initial motion to dismiss (ECF 14-17). Plaintiffs felt that interjecting a motion to amend the complaint following full briefing of a potentially dispositive motion would be improper, particularly since the Amended Complaint merely sets forth additional claims 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).

Defendant alleges in the alternative that if the tortious interference claim is not dismissed as duplicative, it should be dismissed as untimely as it is "in essence, one for defamation." *Ramsay v. Mary Imogene Bassett Hosp.*, 495 N.Y.S.2d 282, 284 (3d Dep't 1985). However, as discussed below, the tortious interference claim is substantially different from the defamation claim and therefore the three year statute of limitations for tortious interference should apply.

The Plaintiffs have adequately alleged two distinct claims; one for defamation and a second for tortious interference.

II. The Tortious Interference Claim is Separate and Distinct from the Defamation Claim Because it Alleges a Direct Injury to the Plaintiffs' Business and Not Merely Stemming from Injury to their Reputations.

The Plaintiffs do not contest that the Court found the tortious interference claim in the Original Complaint to be duplicative of the defamation claim because the injury “flow[ed] from the effect of the defamatory [Article] on Plaintiffs’ reputation.” (ECF 23 p. 13). However, the Amended Complaint addresses that issue and provides for a distinct cause of action for tortious interference. The defamation claims relate to the certain specific statements made by the Defendants to the Malaysian and Chinese government officials. (ECF 26 ¶¶50-52). The tortious interference claims, on the other hand, relate to the intentional interference that the Defendants caused once they knew of the underlying contracts and business relationships.

New York law considers claims sounding in tort to be defamation claims “where those causes of action seek damages only for injury to reputation, [or] where the entire injury complained of by plaintiff flows from the effect on his reputation.” *Restis v. Am. Coal. Against Nuclear Iran, Inc.*, 53 F. Supp. 3d 705, 726 (S.D.N.Y. 2014) (quoting *Chao v. Mount Sinai Hospital*, 476 Fed.Appx. 892, 895 (2d Cir.2012)). Courts have considered tortious interference claims to be duplicative of the defamation claim where “the Complaint suggests only that there may have been some potential injury to [plaintiff’s] professional reputation.” *See Pusey v. Bank of Am., N.A.*, No. 14-CV-04979 (FB)(LB), 2015 U.S. Dist. LEXIS 91083, at *9 (E.D.N.Y. 2015) (citing *Lesesne v. Brimecome*, 918 F. Supp. 2d 221, 226 (S.D.N.Y. 2013)). In *Lesesne*, the Court

held that statements that only alleged “generalized harm to professional reputation” only give rise to a suit for defamation. *Lesesne*, at 226.

In contract, however, plaintiffs may properly allege injury to its “economic interests rather than its reputation” even when the interference occurred only through words. *Classic Appraisals Corp. v. DeSantis*, 552 N.Y.S.2d 402 (App. Div. 1990). Tortious interference with contract or prospective business relations may be accomplished “by words,” and not all claims in which a plaintiff is harmed by another’s speech fall under the rubric of defamation. *Lesesne*, at 226 (citing *Eisenberg v. Yes Clothing Co.*, No. 90 Civ. 8280 (JFK), 1991 U.S. Dist. LEXIS 7863, at *12 (S.D.N.Y. June 7, 1991) (Court held that where defendants expressly called for plaintiff’s termination, leading employer to fire her, claims for defamation and tortious interference could proceed because plaintiff’s economic interests, of which defendants were aware, were injured by defendants’ intentional acts.)); *Lindner v. IBM Corp.*, 2008 U.S. Dist. LEXIS 47599 (S.D.N.Y. June 18, 2008) (plaintiff’s allegations that the defendants had interceded with prospective employers to dissuade them from hiring him, causing loss of employment and financial harm, adequately stated a claim for tortious interference).

The Court in *Lindner* stated that where the alleged harm suffered by the plaintiff is not “*precisely* the same as that caused by defamation” the Court should decline to construe a claim for tortious interference as one for defamation. *Lindner*, at *43 (emphasis in original) (citing *Morrison v. Nat’l Broadcasting Co.*, 19 N.Y.2d 453 (N.Y. 1967)). The court declined to construe the tortious interference claim as a time-barred defamation claim because the amended complaint defined the damages as more than merely harm to plaintiff’s reputation. *Id.*, at *44. Here, the pleadings in the Amended Complaint state that the Defendants’ did not simply harm Dr. Goldman and Dr. Klatz’s reputations (as was likely the case in his dissemination of the original

Article on his Website); rather, they directly hindered the execution of at least two signed business deals. The Amended Complaint provides substantial pleading to demonstrate a separate injury distinct from the effect on Plaintiffs' reputation.

Under New York law, the elements of a claim for tortious interference with prospective economic advantage are (1) a business relationship with a third party; (2) the defendant's knowledge and intentional interference with that relationship; (3) the defendant acted solely out of malice, or used dishonest, unfair, or improper means; and (4) injury to the business relationship. See *Kirch v. Liberty Media Corp.*, 449 F.3d 388, 400 (2d Cir. 2006) (quoting *Carvel Corp. v. Noonan*, 350 F.3d 6, 17 (2d Cir. 2003)). *Restis*, 53 F. Supp. 3d at 725. "It must also be alleged that defendant directed some activities toward the third party and convinced the third party not to enter a business relationship with the plaintiff." *Krepps v. Reiner*, 588 F. Supp. 2d 471, 484 (S.D.N.Y. 2008). The Amended Complaint sufficiently pleads a cause of action for tortious interference and alleges lost business opportunities amounting to not less than ten million dollars (ECF 26 ¶79). Defendant knew about specific details of the China Project, including the working relationship between the Chinese officials and the Plaintiffs. (ECF 26 ¶49). This pattern occurred again regarding the Malaysia Project (ECF 26 ¶59).

As a result of the Defendant's malicious actions, the China Project and the Malaysia Project were unilaterally cancelled to the detriment of Dr. Goldman and Dr. Klatz. The harm to the Plaintiffs did not flow from an effect on their reputation; rather, it stemmed from direct action taken by the Defendants in order to undermine and destroy the Plaintiffs' lucrative business opportunities.

Allowing this case to proceed beyond this preliminary Motion to Dismiss stage would not prejudice the Defendants because they maintain their right to bring dispositive motions at a later date, once discovery has been completed and the factual disputes raised in the Amended Complaint can be further proven or disproven. While the Plaintiffs' pleadings are sufficient to support both claims for defamation and tortious interference, discovery will ultimately likely reveal the additional facts that confirm the Plaintiffs' claims. Moreover, the Plaintiffs are not prevented from pleading these two claims in the alternative. There is no doubt that the facts at hand demonstrate a direct harm caused by the Defendants actions against the Plaintiffs. If the Court finds the tortious interference claim to be duplicative and based on substantially similar facts, the Plaintiffs' claim for defamation should still be allowed to proceed in the alternative. Fed.R.Civ.P. 8(d).

III. The Conspiracy Claim Should be Sustained

The Court should allow Plaintiffs' conspiracy claim (Claim #3) to continue because Defendants Dr. Barrett and Quackwatch have worked together to defame Dr. Goldman and Dr. Klatz and to interfere with their business enterprises. Defendant Barrett claims that co-defendant Quackwatch is merely a corporate entity that dissolved in 2009. While this is a factual issue that requires discovery, Plaintiffs maintain a belief that this is not the complete truth. Defendants' Website refers to "Quackwatch" as "an international network of people" and commonly uses the plural pronoun "we" to refer to the Defendants throughout the site. (See ECF 14 Ex. D). The fact that Quackwatch, Inc. dissolved in some capacity is not established conclusively as dissolved corporations can always be revived or succeeded by other similar entities. Moreover, the dissolution is not determinative of the claim that other parties were involved in the conduct alleged in the Amended Complaint and it leaves open the possibility that Quackwatch continues

to function as another sort of entity such as a partnership. Discovery is needed in order to determine who or what entities comprise the “network” that is Quackwatch.

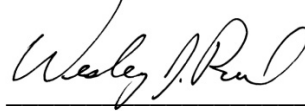
Conclusion

For the stated reasons, the Court should deny the Defendant’s Motion to Dismiss the Amended Complaint in its entirety.

Dated: New York, New York

December 13, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wesley J. Paul', written over a horizontal line.

Wesley J. Paul
Paul Law Group, LLP
902 Broadway, Floor 6
New York, New York 10010
Tel: (646) 202-2532
Fax: (646) 514-6829

*Counsel for Dr. Robert M. Goldman
and Dr. Ronald Klatz*