**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**
**COUNTY DEPARTMENT, LAW DIVISION**

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| Abolition Coalition and Jasmine Sebaggala, | ) | |
| | ) | |
| Plaintiffs, | ) | No. 2021 L9047 |
| v. | ) | |
| | ) | Commercial Calendar T |
| Niles Township Accountability Coalition, et al., | ) | Judge Daniel J. Kubasiak |
| | ) | |
| Defendants. | ) | |

## OPINION

This cause is before the court on Defendants Niles Township Accountability Coalition d/b/a "NTAC" and Helen Levinson's ("Levinson") (collectively, "Defendants") Motion to Dismiss Plaintiffs Abolition Coalition ("AC") and Jasmine Sebaggala's ("Sebaggala") (collectively, "Plaintiffs") Verified First Amended Complaint ("FAC") pursuant to 735 ILCS 5/2-619.1.

The court reviewed the pleadings and the arguments made by all parties. Upon doing so, the court grants Defendants' Section 2-619.1 Motion to Dismiss Plaintiffs' FAC with prejudice and finds that Plaintiffs have failed to state a sufficient cause of action against Defendants under Illinois law.

## BACKGROUND

The following allegations are contained in the FAC. Plaintiff Sebaggala is a schoolteacher and a member of AC, which is a nonpartisan group of parents, teachers, and citizens who support and advocate for diversity and anti-racism in Niles Township schools. Defendant Levinson is Vice President of "Awake Illinois," and a leader of "Moms for Liberty." Awake Illinois and NTAC merged in 2021, and Plaintiffs allege that Levinson uses these platforms to make "bigoted remarks" about members of minority groups. Specifically, Plaintiffs allege that Levinson and NTAC began a "protracted and unlawful campaign of harassment" towards Plaintiff Sebaggala, by, among other things, allegedly posting various comments on NTAC's website and soliciting donations from NTAC using videos of Sebaggala attending a protest and anti-racism celebration with NAACP.

Plaintiffs allege that Levinson continued to post and publish false statements on social media on behalf of herself and NTAC, including statements that "Plaintiffs advocate for racial segregation" and other allegedly untrue and defamatory statements. On August 31, 2021, Levinson wrote a fourteen-page letter to Sebaggala's employer, the school, which allegedly includes several untrue and defamatory statements regarding Sebaggala and requests that disciplinary action be taken against her for this purported conduct. In response to the letter, Sebaggala's employer allegedly assigned a principal to observe her classroom and teaching, and Plaintiffs allege the letter has resulted in Sebaggala suffering a loss of reputation in her community and among coworkers, and extreme emotional distress.

The FAC alleges defamation (count I), intentional infliction of emotional distress (count II), and appropriation of right of publicity (count III).

## STANDARD OF LAW

Pursuant to 735 ILCS 5/2-619.1, a party may file together a section 2-615 motion to dismiss, section 2-619 motion to dismiss, and 2-1005 motion for summary judgment. 735 ILCS 5/2-619.1; *Edelman v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164, (1st Dist. 2003). On a 2-619.1 motion, a court should entertain the section 2-615 motion first; the section 2-619 motion with affidavits filed in support should be brought only after a legally sufficient cause of action has been found. *Johannesen v. Eddins*, 2011 IL App (2d) 110108 ¶29.

In a 2-615 motion to dismiss, the movant challenges the legal sufficiency of the complaint or counterclaim based on certain defects or defenses apparent on the face of the allegations. *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008). In such a motion, all well-pled facts and their reasonable inferences must be taken as true and viewed in the light most favorable to the non-movant. *Jarvis v. S. Oak Dodge*, 201 Ill. 2d 81, 85 (2002). Illinois is a fact pleading jurisdiction; therefore, "a [claimant] must allege facts sufficient to bring a claim within a legally recognized cause of action." *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 355 (2004). Mere conclusions of law and unsupported conclusory factual allegations are insufficient to survive a 2-615 motion to dismiss. *Alpha Sch. Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 736 (1st Dist. 2009).

A section 2-619 motion to dismiss raises defects, defenses, or other affirmative matters that appear on the face of the complaint, or are established by external submissions, that defeat the plaintiff's claim. *Ball v. County of Cook*, 385 Ill. App. 3d 103, 107 (1st Dist. 2008). In doing so, the motion "admits the legal sufficiency of the [claimant's] allegations." *Miner v. Fashion Enters*, 342 Ill. App. 3d 405, 413 (1st Dist. 2003). The "affirmative matter" must be apparent on the face of the pleadings or be supported by affidavits or other evidentiary materials. *John Doe v. Univ. of Chi. Med. Ctr.*, 2015 IL App (1st) 133735, ¶ 37. An affirmative matter negates a cause of action completely or refutes crucial conclusions of law or material fact within the pleadings. *In re Estate of Schleker*, 209 Ill. 2d 456, 461 (2004). A court must take all well-pled facts and reasonable inferences as true, and it must construe all pleadings and supporting documents in the light most favorable to the non-movant. *Porter v. Decatur Mem. Hosp.*, 227 Ill. 2d 343, 353 (2008).

## DISCUSSION

### Motion to Dismiss Plaintiffs' FAC

On December 1, 2022, this court granted Defendants' Motion to Dismiss, holding that "Defendants' statements are protected by the Citizen Participation Act...known as the anti-SLAPP." The court further ruled that Plaintiffs failed to state a cause of action for tortious interference with prospective economic advantage because Sebaggala did not have a "reasonable expectancy" of being a "future principal," and Plaintiffs also failed to allege any adverse action taken against Sebaggala. The court further dismissed Counts II and III under the Illinois Right of Publicity Act finding that none of the alleged social media posts contained any donation links and Defendants provided an affidavit stating that they never

engaged in fundraising. Finally, this court dismissed Plaintiffs' defamation claim because none of the alleged defamatory statements appeared in the posts presented by Plaintiffs, and Plaintiffs did not attach Levinson's letter to the school board to their complaint.

Plaintiffs now bring an Amended Complaint which attaches Levinson's letter to the school board and replaces the previous tortious interference claim with an intentional infliction of emotional distress claim. Upon a review of the letter and the email attachments set forth in the FAC, the court finds that these claims are again subject to dismissal with prejudice as set forth below.

**735 ILCS 5/2-619(a)(9)**

As set forth above, this court held in its prior Opinion that Levinson's statements and concerns which she expressed to the school board are protected by the Citizen Participation Act, 7345 ILCS 110/1, et seq. ("CPA"), known as the anti-SLAPP Act (Strategic Lawsuits Against Public Participation), which allows citizens to exercise their First Amendment rights without fear of retaliatory lawsuits.

The CPA is an anti-SLAPP statute that provides immunity for a defendant when it can establish that the plaintiff's claim is "based on, related to, or is in response to" any acts of the moving party "in furtherance of the moving party's right of petition, speech, association, or to otherwise participate in government." *Wright Dev. Grp. v. Walsh*, 238 Ill.2d 620, 635 (2010); 735 ILCS 110/15. Acts in "furtherance of the constitutional rights to petition, speech, association and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome." *Id.*

Because there is no distinct formula for determining whether a particular lawsuit is a SLAPP suit, it must be determined on a case-by-case basis. *See Shoreline Towers, Condominium Assoc. v. Gassman*, 404 Ill. App. 3d 1013, 1021 (1st Dist. 2010); *Hytel Grp., Inc. v. Butler*, 405 Ill. App. 3d 113, 126 (2d Dist. 2010). Factors include, but are not limited to: (1) whether the complaint stated a valid claim; (2) temporal proximity between the defendant's protected conduct and the plaintiff's corresponding action; and (3) the amount of damages. *Hytel Grp.*, 405 Ill. App. 3d at 126. To overcome the immunity, a responding party is required to produce "clear and convincing" evidence demonstrating that the "act or acts" at issue were "not immunized from, or are not in furtherance of acts immunized from, liability by [the CPA]." *Id.* (citing 735 ILCS 110/20). Furthermore, the CPA must be construed liberally to "effectuate its purposes and intent fully." *Id.* (citing 735 ILCS 110/30(b)).

Plaintiffs' FAC appears to be a rehashing of the same allegations of the initial Complaint, and does not change the court's analysis under the CPA. In its December 1, 2022, Order, the court found that the allegations in the Verified Complaint appeared to be subject to the CPA, and that the letter submitted by Levinson was an act in furtherance of the right to "petition, speak, associate, or otherwise participate in government to obtain favorable government action." The court further noted that disputes between school board members, like the dispute here, routinely fall subject to this Act. The court finds that its prior analysis applies to the allegations of the FAC. Ultimately, Plaintiffs cannot prove by

"clear and convincing evidence" that Defendants did not make their comments to "procure favorable government action, result, or outcome."

Accordingly, the court grants Defendants' Section 2-619 Motion to Dismiss the allegations in Plaintiffs' FAC with prejudice.

**735 ILCS 5/2-615**

Moreover, even if the allegations in the FAC were not protected by the CPA, the court finds that the individual causes of action asserted against Defendants also fail.

*Defamation*

Count I of Plaintiffs' FAC alleges a claim for "Defamation." Not only are Defendants' statements and concerns expressed to the school board protected by the CPA, but the court finds that Plaintiffs have failed to state a sufficient cause of action for defamation.

Plaintiffs attach to their FAC an allegedly defamatory letter written by Levinson to the school board; yet a review of the contents of that letter does not substantiate any of Plaintiffs' defamation allegations. The alleged comments do not constitute defamation as a matter of law, are ones that Defendants did not actually make, are taken out of context, or are otherwise subject to the innocent construction rule. Here, the court refers to Defendants' initial Motion to Dismiss, which sets forth an in-depth analysis of each allegedly defamatory statement on pages 11 through 15. Moreover, the allegations of the FAC describing what is set forth in Levinson's letter appear to take words out of context and misconstrue the intent behind what is set forth in the letter. Considering the arguments previously made by Defendants in support of their initial Motion to Dismiss, and considering the "new" allegations Plaintiffs make in the FAC, the court finds that Plaintiffs have failed to establish a cause of action for defamation under Illinois law.

Accordingly, the court grants Defendants' Motion to Dismiss Count I of Plaintiffs' FAC with prejudice.

*Intentional Infliction of Emotional Distress (Count II)*

Count II of Plaintiffs' FAC alleges a claim for "Intentional Infliction of Emotional Distress," alleging that Defendants' conduct "is extreme, outrageous, and beyond the bounds of human decency." The court finds that Count II is also subject to dismissal for failure to state a sufficient claim.

To state a claim for intentional infliction of emotional distress, a plaintiff must allege "(1) the defendant's conduct was extreme and outrageous; (2) the defendant either intended to inflict severe emotional distress or knew that there was a high probability that his conduct would do so; and (3) the defendant's conduct actually caused severe emotional distress." *Cangemi v. Advocate South Suburban Hosp.*, 364 Ill. App. 3d 446, 470 (1st Dist. 2006), citing *Tuite v. Corbitt*, 358 Ill. App. 3d 889, 899 (1st Dist. 2005).

The conduct must be extreme and outrageous. *Public Finanace Corp. v. Davis*, 66 Ill. 2d 85, 89 (1978), citing Restatement (Second) of Torts, sec. 46, comment d (1965). The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions or trivialities. *Id.* It has not been enough that the defendant has acted with an

intent which is tortious or even criminal, or that he intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. *Id.* Liability has been found only where the conduct has been "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency." *Id.*

In the FAC, Plaintiffs simply have not alleged conduct by Defendants that is "so outrageous in character" that it has gone "beyond all possible bounds of decency." Again, Plaintiffs' comments are protected under the CPA, and the court cannot find that Levinson's letter to the school board, which expresses what she believed are legitimate concerns, to be "extreme" or "outrageous." Plaintiffs have not alleged that Defendants intended to inflict "severe emotional distress" upon Plaintiffs, and Plaintiffs have not properly pled that Sebaggala suffered damages sufficient to state a claim under this high pleading standard.

Rather, Plaintiffs' sole allegation is that "Sebaggala has suffered extreme emotional distress as a result of Defendants' conduct, including without limitation, depression, anxiety, loss of function, and humiliation." However, Plaintiffs have not alleged any specific facts to support this allegation, and the court finds that the conduct set forth in the FAC simply does not rise to the level of a claim for intentional infliction of emotional distress. As set forth above, in a 2-615 motion, mere conclusions of law and unsupported conclusory factual allegations are insufficient to survive a 2-615 motion to dismiss. *Alpha Sch. Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 736 (1st Dist. 2009).

Accordingly, the court grants Defendants' Section 2-615 Motion to Dismiss Count II of Plaintiffs' FAC with prejudice.

*Appropriation of Right of Publicity (Count III)*

Lastly, Defendants seek dismissal of Count III of Plaintiffs' FAC under 735 ILCS 5/2-615 and 735 ILCS 5/2-619 by arguing that Plaintiffs cannot state a claim under the Illinois Right of Publicity Act ("IROPA"). The court agrees.

Under Section 1075/30 of the IROPA, "[a] person may not use an individual's identity for commercial purposes during the individual's lifetime without having obtained previous written consent from the appropriate person or persons specified in Section 20 of this Act or their authorized representative." "Commercial purposes" means "the public use or holding out of an individual's identity (i) on or in connection with the offering for sale or sale of a product, merchandise, goods, or services; (ii) for purposes of advertising or promoting products, merchandise, goods, or services; or (iii) for the purpose of fundraising." 765 ILCS 1075/5.

In Count III of the FAC, Plaintiffs allege the following to support their claim:

> 86. Defendants have repeatedly and continuously violated this statute by making false statements about Plaintiff Sebaggala for the purpose of creating outrage among their followers, and thus causing their followers to donate to their cause.

87. In other words, Levinson, like Alex Jones, makes false statements about a person as the product she is selling to her consumers.

88. Levinson creates false statements about Plaintiffs to generate outrage, and, therefore, more donations.

As Defendants argued in their initial Motion to Dismiss, Defendants again argue that that they never engaged in any fundraising and none of their social media posts contained any donation links, which is clear from the screen shots included in the FAC. Defendants further provided the Affidavit of Levinson as an exhibit to their initial Motion to Dismiss, in which she attests that "[n]one of [her] social media or blog posts, nor NTAC's social media or blog posts, ever contained links to make donations, or made solicitations for funds," and that "NTAC's website has never contained a donation link or contained any requests for funds." Plaintiffs have not produced any evidence to the contrary, and merely making the above allegations with no factual support is insufficient. As such, the court therefore finds that Plaintiffs have failed to state a sufficient cause of action, and Count III is subject to dismissal for the same reasons set forth in the court's December 1, 2022, Opinion.

Accordingly, the court grants Defendants' Section 2-615 and 2-619 Motion to Dismiss Count III of Plaintiffs' FAC with prejudice.

**ORDER**

It is ordered:

(1) Defendants' Motion to Dismiss Plaintiffs' Verified First Amended Complaint pursuant to 735 ILCS 5/2-619.1 is granted with prejudice;

(2) This is a final and appealable order disposing of the matter in its entirety.

Judge Daniel J. Kubasiak

MAY 16 2023

Circuit Court - 2072

ENTERED,

Judge Daniel J. Kubasiak, No. 2072