

SUPERIOR COURT OF NEW JERSEY

KEITH A. BACHMANN  
JUDGE



BERGEN COUNTY JUSTICE CENTER  
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**FAX TRANSMITTAL SHEET**

DATE: January 7, 2016

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FROM: Kathy Brandt, Secretary to the Hon. Keith A. Bachmann, J.S.C.

SUBJECT: Alhusaini v. Alhusaini  
 Docket No. BER-L-5514-15

MESSAGE: Orders (2) dated 1/6/16

NUMBER OF PAGES (including cover sheet): 18

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**FILED**

JAN - 6 2016

KEITH A. BACHMANN, J.S.C.

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<p>RAGHD ALASHAAL FAISAL ALHUSAINI,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MALAK ALASHAAL FAISAL ALHUSAINI,</p> <p style="text-align: center;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY</p> <p>Docket No.: L-5514-15</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;"><b>ORDER</b></p>
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**THIS MATTER**, having been opened to the Court by McCusker, Anselmi, Rosen & Carvelli, P.C., together with Frederica L. Miller, Esq., attorneys for Defendant Malak Alshaal Faisal Alhusaini, in the presence of counsel for Plaintiff, Abed Awad, Esq., and the Court having considered the written submissions of the parties and having heard oral argument, and for the reasons stated on the record,

IT IS, on this 6<sup>th</sup> day of *January*, 2016,

**ORDERED** that the Motion of Defendant Malak Alshaal Faisal Alhusaini for a Protective Order quashing the subpoenas of Plaintiff on AT&T Wireless, Facebook, Inc. and Twitter, Inc. is **GRANTED**. *as this case is dismissed by separate Order and no need for information, acquired by subpoena, no longer exists; and it is further*

~~IT IS FURTHER ORDERED~~ that Plaintiff preserve her own Twitter account information by signing a voluntary request for a complete copy of that account within fourteen (14) days.

IT IS FURTHER ORDERED that a copy of this Order shall be served within seven (7) days upon all attorneys of record in this action.

SO ORDERED.



HON. KEITH BACHMANN, J.S.C.

Opposed

Unopposed

*see companion order dismissing plaintiff's  
pleadings pursuant to R. 4:6-2(e) for  
failing to state a cause for action*

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**FILED**  
JAN -6 2016  
KEITH A. BACHMANN, J.S.C.

*Attorneys for Defendant Malak Alshaal Faisal Alhusaini*

<p>RAGHD ALASHAAL FAISAL ALHUSAINI,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MALAK ALASHAAL FAISAL ALHUSAINI,</p> <p style="text-align: center;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION; BERGEN COUNTY</p> <p>Docket No.: L-5514-15</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;"><b>ORDER</b></p>
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**THIS MATTER** having been brought before this Court on the motion of Defendant Malak Alshaal Faisal Alhusaini ("Defendant") for an Order dismissing the Amended Complaint of Plaintiff Raghd Alashaal Faisal Alhusaini ("Plaintiff"); and the Court having considered the written submissions of the parties and having heard oral argument; and for the reasons stated on the record;

IT IS, on this 6<sup>th</sup> day of January, 2016

**ORDERED** that the Motion of Defendant for an Order dismissing the Amended Complaint of Plaintiff is **GRANTED**.

**IT IS FURTHER ORDERED** that a copy of this Order shall be served within seven (7) days upon all attorneys of record in this action.

**SO ORDERED.**

  
\_\_\_\_\_  
HON.  
KEITH A. BACHMANN, J.S.C.

Opposed

Unopposed

*see the attached 12 page decision of this Court*

REASONS FOR THIS DECISION Alhusaini v. Alhusaini L-5514-15,  
defendant's motion to dismiss the plaintiff's complaint for  
failing to allege a cause for action argued November 20, 2015

**STANDARD OF REVIEW**

The standard a trial court must apply when considering a motion to dismiss a complaint for failure to state a claim upon which relief can be granted is "whether a cause of action is 'suggested' by the facts." R. 4:6-2(e) Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). "In evaluating motions to dismiss, courts consider 'allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.'" Banco Popular N. Am. v. Gandhi, 184 N.J. 161, 183, (2005) (quoting Lum v. Bank of Am., 361 F.3d 217, 221 n.3 (3d Cir.), *cert. denied*, 543 U.S. 918, 125 S. Ct. 271, 160 L. Ed. 2d 203 (2004)). Our Supreme Court has explained that "[i]t is the existence of the fundament of a cause of action in those documents that is pivotal[.]" *Ibid.*

A motion to dismiss a complaint for failure to state a claim "may not be denied based on the possibility that discovery may establish the requisite claim; rather, the legal requisites for plaintiffs' claim must be apparent from the complaint

itself." Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202, (App. Div.), *certif. denied*, 176 N.J. 278 (2003). For that reason, our courts have not hesitated to dismiss complaints with prejudice when a constitutional challenge fails to state a claim. See J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 397 (App. Div. 2010). See Also Teamsters Local 97 v. State, 434 N.J. Super. 393, 412-413 (App. Div. 2014).

A reviewing court must search "... the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim ..." Di Cristofaro v. Laurel Grove Memorial Park, 43 N.J. Super. 244, 252 (App. Div. 1957). At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. Somers Constr. Co. v. Board of Educ., 198 F. Supp. 732, 734 (D.N.J. 1961). For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. Independent Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956). The examination of a complaint's allegations of fact required by the law should be one that is at once painstaking and undertaken with a generous and hospitable approach. See Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989).

**COUNT 1 - Defamation Libel and Slander**

Defamation imposes liability for publication of false statements that injure the reputation of another. Maressa v. New Jersey Monthly, 89 N.J. 176, 190, cert. denied, 459 U.S. 907, 103 S.Ct. 211, 71 L.Ed.2d 169 (1982). The threshold issue in any defamation case is whether the statement at issue is reasonably susceptible of a defamatory meaning. Decker v. Princeton Packet, Inc., 116 N.J. 418 (1989); see Romaine v. Kallinger, 109 N.J. 282, 290 (1988) (citing Kotlikoff v. The Community News, 89 N.J. 62, 67 (1982)); Mosler v. Whelan, 28 N.J. 397, 404-05 (1958).

Words that clearly denigrate a person's reputation are defamatory on their face and actionable *per se*. Lawrence v. Bauer Publishing & Printing Ltd., 89 N.J. 451, 459 cert. denied, 459 U.S. 999, 103 S.Ct. 358, 74 L.Ed.2d 395 (1982); Shaw v. Bender, 90 N.J.L. 147, 149 (E. & A.1916). To determine whether that test is met, a court must scrutinize the language "according to the fair and natural meaning which will be given it by reasonable persons of ordinary intelligence." Romaine v. Kallinger, *supra*, 109 N.J. at 290 (citing Herrmann v. Newark Morning Ledger Co., 48 N.J.Super. 420, 431 (App.Div.), aff'd on reh'g, 49 N.J.Super. 551 (App.Div.1958)). On the other hand, words that are not susceptible of any defamatory interpretation are not actionable, and a cause of action will not lie for such statements. Lawrence v. Bauer Publishing & Printing Ltd., *supra*, 89 N.J. at 459; Cibenko v. Worth Publishers, Inc., 510 F.Supp.



761, 764-65 (D.N.J.1981). When words are capable of multiple meanings, the question of whether the words defame is one for the jury. Mosler v. Whelan, *supra*, 28 N.J. at 404-05. Any special derogatory meaning attributed to the words, not common to normal usage, must be specifically pleaded. Dorney v. Dairymen's League Coop. Ass'n, 149 F.Supp. 615, 619 (D.N.J.1957). See Also Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 765-766 (1989).

"In the case of a complaint charging defamation, plaintiff must plead facts sufficient to identify the defamatory words, their utterer and the fact of their publication. A vague conclusory allegation is not enough. Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 101 (App. Div. 1986) (internal citations omitted)."

The Complaint sets out ten (10) separate allegations of defamatory statements.<sup>1</sup> The first statement claims that Defendant falsely accused Plaintiff of having sexual relations with many men<sup>2</sup> and more specifically, the Complaint incorporates an exhibit: a printout of various social media posts. The Complaint identifies those posts as the defamatory statements. The only reference to Plaintiff's sexual relations with many men

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<sup>1</sup> **Complant, paragraph 8(i) - (x)**

<sup>2</sup> **Complaint, paragraph 8(l).**

is an allegation that the Defendant engages in *Misyar*.<sup>3</sup> Whether or not this is a defamatory statement falls under the Dorney test and the special meaning must be specifically pleaded. The plaintiff defined the term in her Complaint:

*Misyar* is an untraditional type of marriage practiced in countries like Saudi Arabia in order to have religiously legitimate sexual relations. The [sic] type of marriage is frowned upon and considered religiously suspect as a couple [sic] have sex without a wedding or living together as husband and wife. Most consider such arrangement [sic] tantamount to fornication/unlawful sexual relations.<sup>4</sup>

For purposes of this analysis, this Court will assume a defamatory statement was made. That assumption does not end the analysis. This Court must still decide whether this is a claim for which relief may be granted by a New Jersey Court.

This court lacks subject matter jurisdiction to decide whether or not engaging in *Misyar* is defamatory because it is a non-secular issue. The threshold inquiry to determine whether a claim is capable of adjudication by a civil court is whether the underlying dispute is "a secular one...or an ecclesiastical one about 'discipline, faith, internal organization, or ecclesiastical rule, custom or law'". See Abdelhak v. Jewish Press, 411 N.J. Super. 211, 223 (App. Div. 2009). A court must

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<sup>3</sup> Complaint, Exhibit A, pg. 1.

<sup>4</sup> ComplaiInt, Exhibit A, footnote 1

abstain from adjudicating matters that require interpretation of religious canons unless "the dispute can be resolved by the application of purely neutral principles of law". Id. at 224 (holding, in part, that a civil court could not resolve a defamation claim made by husband against wife because resolution of claim would require probing into customs, traditions, and rules of Orthodox Judaism).

"If, however, the dispute can be resolved by the application of purely neutral principles of law and without impermissible government intrusion ..., there is no First Amendment shield to litigation." Ibid. Neutral principles "are wholly secular legal rules whose application to religious parties or disputes does not entail theological or doctrinal evaluations." Elmora Hebrew Ctr., Inc. v. Fishman, 125 N.J. 404, 414-15 (1991). Under the neutral principles approach, the judiciary may resolve civil disputes between a religious body and its members if those disputes involve purely secular issues and can be resolved without the judiciary becoming enmeshed in matters of faith or doctrine. Id. at 415-16.

In order for a jury to decide whether the defendant is liable to the plaintiff, a jury would have to understand what a *Misyar* is; and then decide whether the allegation would cause injury to the plaintiff's reputation; and then decide if the defendant can prove that the plaintiff committed *Misyar*.

Whether or not it is defamatory to claim someone has engaged or is engaging in *Misyar* is a completely non-secular question and therefore this court cannot entertain a claim for defamation based on the allegations set forth in paragraph 8(i) or 8(ii) of the Complaint.

Next, 8(iii) of the Complaint alleges that the Defendant made a defamatory statement that Plaintiff should be thrown in the street by her husband for her immoral behavior.<sup>5</sup> "In order to properly plead a claim for libel or slander the defamatory words must be identified." Dello Russo v. Nagal, 358 N.J. Super. 254, 269 (App. Div. 2003) (citations omitted).

"[I]nsults, epithets, name-calling, and other forms of verbal abuse, although offensive, are not defamatory." Lynch, supra, 161 N.J. at 67. Opinions are not actionable because they are generally not capable of proof of truth or falsity because they reflect a person's state of mind.

Here, the Complaint merely alleges that Defendant said Plaintiff *should* be thrown in the street by her husband for her immoral behavior.<sup>6</sup> This allegation is of an opinion that the Defendant allegedly has about the Plaintiff. Because there are no identified words and the alleged statement is merely an opinion, this allegation, as a matter of law, is not defamatory.

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<sup>5</sup> Complaint, paragraph 8(iii)

<sup>6</sup> *Id.*

Plaintiff also alleges that the Defendant published falsely, that Plaintiff's father had disowned her, a fact which can only occur in an Arab country and culture when a woman is seen as immoral as a prostitute or worse and subjecting to "honor killing".<sup>7</sup> However, the publication in the exhibit is unclear as to who the Defendant is referring to. The Defendant states:

"You see I have nothing to do with the marriage story actually. This person has been disowned by us. My father found your father with her in plaza cheap parking lot. My dad even refused to do her marriage contract."<sup>8</sup>

Assuming that the Plaintiff is "this person", the pronoun "us" and the statement in general makes it unclear whether or not Defendant is referring to Plaintiff's father. Assuming it's true however, that Plaintiff did mean to include Plaintiff's father in the pronoun "us", the court must conclude that saying someone has been disowned by their family could be defamatory, but is ultimately unverifiable. Someone cannot be "disowned" by their family the state of New Jersey and therefore, whether or not this is true, is ultimately opinion and not actionable.

Finally, Plaintiff claims Defendant published to a third party that Plaintiff is of an inferior class.<sup>9</sup> The Complaint

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<sup>7</sup> Complaint, paragraph 8(v)

<sup>8</sup> Complaint, Exhibit A

<sup>9</sup> Complaint, Count I, paragraph 8(viii)

states that Plaintiff and her mother "came from a very different social and cultural class than us[.]"<sup>10</sup> This statement is not actionable because it is unverifiable and is merely an opinion.

Simply put, the Complaint does not assert that any false statement of *fact* has been made other than Plaintiff engaging in *Misyar*, which this court cannot entertain due to religious entanglement. Therefore, Plaintiff's claim for defamation must be dismissed.

#### **COUNTS II and III**

Counts II and III allege that the Defendant purposefully intruded upon Plaintiff's solitude, seclusion and private concerns.<sup>11</sup> "The New Jersey Courts have recognized a cause of action for an invasion of privacy in a number of cases. The earlier decisions based their relief upon the theory that property or contract rights were involved." N.O.C., Inc. v. Schaefer, 197 N.J. Super. 249, 253 (Law Div. 1984)

The right of privacy encompasses the right to be protected from a wrongful intrusion which would outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities. McGovern v. Van Riper, 137 N.J.Eq. 24, 32 (1945). Additionally, a defendant is subject to liability only when he

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<sup>10</sup> Complaint, Exhibit A

<sup>11</sup> Complaint, Count II, Paragraph 1.

intrudes into a private place, or has invaded a private seclusion that plaintiff has thrown about his person or affairs. 3 *Restatement, Torts, supra*, § 6521, comment (c). In Bisbee v. John C. Conover Agency, supra, the court stated:

The thrust of this aspect of the tort (of intrusion upon seclusion) is, in other words, that a person's private, personal affairs should not be pried into. The converse of this principle is, however, of course, that there is no wrong where defendant did not actually delve into plaintiff's concerns, or where plaintiff's activities are already public or known. [186 N.J. Super. at 340]

Plaintiff claims that Defendant published her address.<sup>12</sup> The facts in Brisbee are similar to the ones in this case. In Brisbee, the defendant published an article with Plaintiff's home address. The court held, applying the above rule, that "reasonable men could not find any highly offensive intrusion . . . because all of the matters at issue herein were otherwise known or public." Id. at 340. The plaintiff's home address is the type of information that is "readily available to anyone who would wish to ascertain [it]." Id.

For the forgoing reasons, Counts II and III must be dismissed.

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<sup>12</sup> Complaint, paragraph 8(iv), (ix).

**COUNT IV**

To establish a claim for Intentional Infliction of Emotional Distress "[t]he plaintiff must establish intentional and outrageous conduct by the defendant, proximate cause, and distress that is severe." Buckley v. Trenton Saving Fund Soc'y, 111 N.J. 355, 366 (1988). Generally, for the conduct to be actionable, "the emotional distress ... must be 'so severe that no reasonable [person] could be expected to endure it.'" *Id.* at 366-67. It is for a Court to decide "... whether as a matter of law such emotional distress can be found, and the jury decides whether it has in fact been proved." *Id.* at 367, 544 A.2d 857.

"[L]iability should depend on the defendant's foreseeing fright or shock severe enough to cause substantial injury in a person normally constituted." Caputzal v. The Lindsay Co., 48 N.J. 69, 76 (1966). See Also Decker v. Princeton Packet, Inc., 116 N.J. 418, 429 (1989).

The statements that appear in the exhibit attached to the Complaint are, in many parts, unintelligible. The passages that are clear do not approach the level that could cause fright or shock severe enough to cause substantial injury to a person normally constituted. Therefore, Count IV must be dismissed.



**COUNT V**

Count V of Plaintiff's Complaint alleges Prima Facie Tort.<sup>13</sup> Causes of action for prima facie tort are "permitted only in the limited situations in which plaintiffs would have no other causes of action." Richard A. Pulaski Const. Co., Inc. v. Air Frame hangers, Inc., 195 N.J. 457, 467-68 (2008) (citing Taylor v. Metzger, 152 N.J. 490, 523 (1998)).

This count is premised on Defendant purposefully aiming "her campaign or intimidation and harassment against the Plaintiff to cause her serious harm."<sup>14</sup> Because other causes of action exist that would encompass this alleged conduct, namely defamation, Count V must be dismissed.

**Count VI**

Count VI appears to assert a claim of domestic violence. That is a claim that is cognizable in the Family Part and is commenced by the filing of a complaint in that division. N.J.S.A. 2C:25-28. The plaintiff is free to do so. This Court has no authority to hear a domestic violence complaint in the law division.

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<sup>13</sup> Complaint, Count V

<sup>14</sup> Id.

**Count VII**

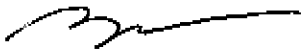
Count VII alleges a claim of attempted theft committed by extortion. Attempt is defined. N.J.S.A. 2C:5-1. Theft is an offense. N.J.S.A. 2C:20-5(c). Those cases are litigated in the Criminal Division. It is the prosecutor's prerogative to determine whether to prosecute an individual. State v. Leonardis, 73 N.J. 360, 381 (1977). This Court has no authority to hear a theft claim brought by a private party.

**Count VII (really Count VIII)**

This count does not assert a cause for action. It merely claims a remedy.

**Conclusion**

The pleading, the Amended Complaint, filed by the plaintiff does not assert viable causes for action and on the defendant's motion, should be and is dismissed.



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Keith A. Bachmann, J.S.C.

**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON  
OPINIONS** (see R. 1:36-1)