

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

JAMES HOFT ET AL.,

Plaintiff,

vs.

DEAN S. MILLER,

Defendant.

Cause No. 20SL-CC06083

Division 14

FILED 11/08/21 JOAN M. GILMER CIRCUIT CLERK ST. LOUIS COUNTY, MO

COURT ORDER AND JUDGMENT

Before the court is the defendant’s motion to dismiss for failure to state a claim upon which relief may be granted. Rule [55.27\(a\)](#). This court has previously considered and denied defendant’s motion to dismiss for lack of jurisdiction. The court takes judicial notice of its file. On December 16, 2020, plaintiffs filed their petition against defendant Dean Miller. Plaintiffs are: James Hoft, Joseph Hoft, TGP Communications LLC (a Missouri LLC d/b/a “The Gateway Pundit”), Yaacov Apelbaum (a New York resident) and XRVision Ltd. d/b/a XRVision.

As previously noted by this court, the gravamen of this lawsuit arises from plaintiffs’ complaints regarding an article which defendant Mr. Miller wrote and published on the internet (via a website called “Fact Checkers”) regarding the plaintiffs’ reporting and analysis of Hunter Biden, President Joe Biden and the contents of a laptop purportedly owned by Hunter Biden, which was (reportedly) dropped off for repair at a Delaware shop.

The petition alleges that, on October 29, 2020, plaintiff Joe Hoft published an article on the web site of plaintiff the Gateway Pundit,¹ and plaintiff Mr. Apelbaum published his article purporting to describe his analysis regarding of the laptop’s hard-drive on Wordpress.² Thereafter, defendant Mr. Miller wrote his “Fact Check” article, published on November 3, 2020, on “Lead Stories,” which is Mr. Miller’s web site. *See* Ex. 1 to plaintiffs’ petition.

For purposes of defendant’s motion to dismiss, it is appropriate for the court to consider the precise contents of Mr. Miller’s “Lead Stories” article, entitled “Fact Check: Screenshot and Blogger’s Proprietary Technology Do NOT Provide Proof That Hunter Biden

¹ The article is titled “HUGE BREAKING EXCLUSIVE: Hunter Biden Has a Pornhub Account Where He Uploaded His Personal Porn – Including with Family Member.”

² The article is titled “Hunter Biden’s Pornhub Page.”

Has Pornhub Account With Family Photos.” This close scrutiny is necessary because the sole act of this defendant, which plaintiffs allege caused them harm, is the publication of this document on the internet and the alleged resulting actions taken by Facebook, Tik-Tok and Instagram (who are not defendants in this cause of action).

Mr. Miller’s article, Ex. 1 to plaintiffs’ petition, begins by re-stating (in the form of a question) a claim made by the original Gateway Pundit article and explaining why his fact-checking doesn’t support the original article’s first claim:

Has a browser bookmark label and the "XRVision Sentinel AI Platform" proved that bloggers found a PornHub account belonging to Hunter Biden that contains images of a family member without her knowledge and permission?

No, that’s not true. Labels on bookmarks saved in a web browser contain no unique identifying information and the owner of the "XRVision" platform has not proven "XRVision" is anything more than an illustration on a slide deck, offering no technical nor evidentiary information that connects the younger Biden to a PornHub account.

Next, Mr. Miller examines the Gateway Pundit’s assertion that “we know this is Hunter’s [Pornhub] account and one of the reasons is because of the screen shot below where one of his pages bookmarked is “Joe Biden Smiling.” Mr. Miller states that:

There is nothing unique about a browser bookmark that proves what computer it is on nor who created it. Once a computer user saves a bookmark, the "manage bookmarks" function allows renaming to anything.

Next, Mr. Miller reviews whether the Gateway Pundit article’s inclusion of a photo collage, from plaintiff Yaacov Apelbaum’s WordPress blog, could support their claims:

There is no recognizable image of Hunter Biden in the collage, which purports to include images from a Hunter Biden PornHub account. Apelbaum provides no named source, document nor other proof of the headline claim that "content has been authenticated to known individuals and family."

Next, Mr. Miller notes how “Lead Stories” reached out to plaintiffs Joe Hoft and Yaacov Apelbaum to “ask how they made the connection and ‘authenticated’ the content.” Mr. Miller stated that his report would be updated, if appropriate, when they respond.

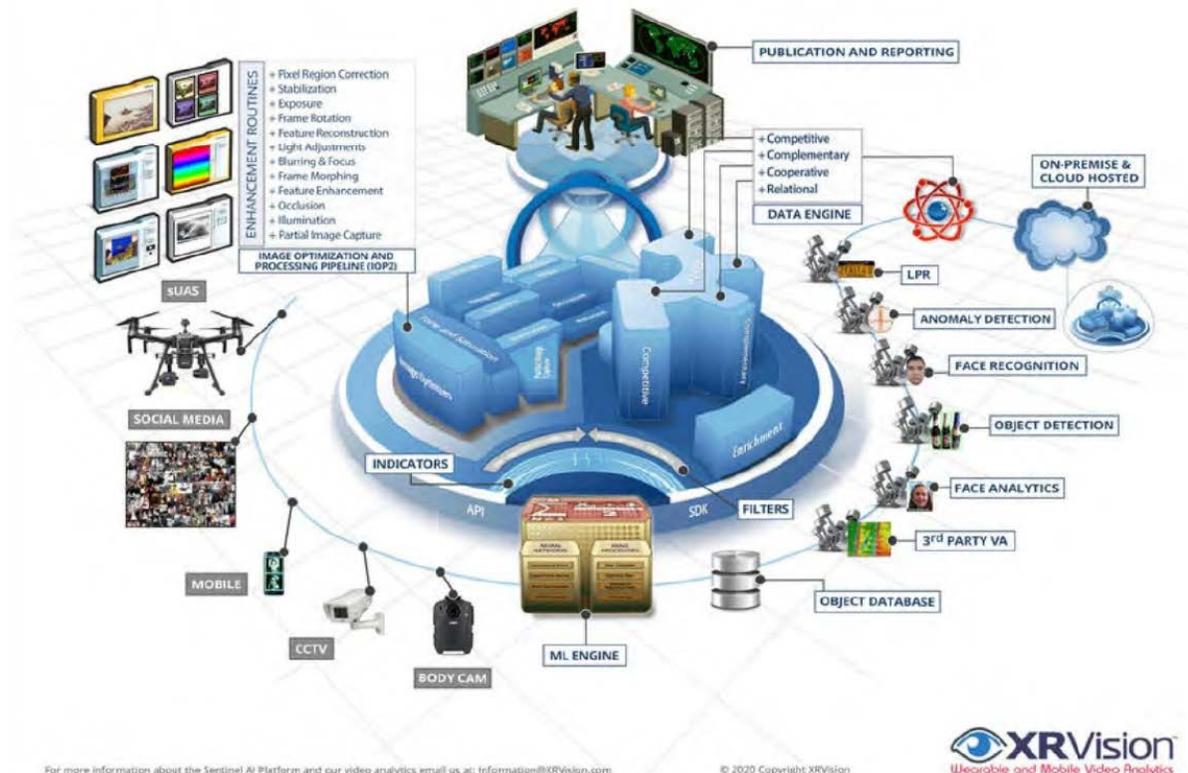
Next, Mr. Miller considers Mr. Apelbaum’s claims on his blog that:

On Apelbaum's blog, Apelbaum wrote: "The following is the confirmed and validated Pornhub profile of RHEast AKA Harper, AKA Hunter Biden." Apelbaum also wrote. "Content includes a Biden family member."

Mr. Miller writes that:

In that blog post, under "References and Sourcing," Apelbaum listed XRVision Sentinel AI Platform, but none of the kind of image-matching, electronic trails or financial records by which an anonymous account could be linked to a specific person. The hyperlink from his blog opens this illustration:

THE SENTINEL AI ANALYTICS PLATFORM



For more information about the Sentinel AI Platform and our video analytics email us at: Information@XRvision.com

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XRvision
Wearable and Mobile Video Analytics

Mr. Miller then notes that:

Elsewhere, he refers to it as a face recognition, image reconstruction and object classification technology. The link to XRvision's website contains a single image and no links to information pages.

Next, Mr. Miller describes how he fact-checked Mr. Apelbaum's resume:

Elsewhere, he refers to it as a face recognition, image reconstruction and object classification technology. The link to XRvision's website contains a single image and no links to information pages.

On LinkedIn, Apelbaum [lists himself as CTO of XRvision](#). The [link to the company opens to a large logo](#) with none of the customary links to "About Us" pages or other information. There is only an email address: information@xrvision.com

Also on LinkedIn, Apelbaum claims to have been CTO of "Homeland Security and Defense." That link opens a job search for homeland security and defense jobs.

The Apelbaum LinkedIn page also claims he was CTO of Dun & Bradstreet, the business rating and intelligence firm. Lead Stories found no online references to him in that high-level post and has reached out to Dun & Bradstreet to confirm Apelbaum's employment there and will update this report, as appropriate, when they reply.

Apelbaum's LinkedIn profile also claims he was "VP Secure eCommerce Technology" at Western Union from 2000 to 2006. Lead Stories searched online for any reference to him in that role and found none. Lead Stories has reached out to Western Union to confirm Apelbaum's employment there and will update this report, as appropriate, when they reply.

Lead Stories searched for online reference to any corporation, government or other organization using "XRvision Sentinel AI Platform" and found none.

Finally, Mr. Miller closed his article by citing a "NewsGuard" assessment of The Gateway Pundit as:

[NewsGuard](#), a company that uses trained journalist to rank the reliability of websites, describes [thegatewaypundit.com](#) as:

” A partisan conservative website that regularly publishes hoaxes, conspiracy theories, and unsubstantiated claims, including those related to the COVID-19 pandemic.

According to NewsGuard the site does not maintain basic standards of accuracy and accountability. Read their full assessment [here](#).

In plaintiffs’ petition, ¶71, plaintiffs state: “Specifically, in Exhibit 1, Miller made the following defamatory statements, allegations and imputations:

- a. The work of TGP plaintiffs was based on fraudulent evidence;
- b. TGP plaintiffs are liars who intentionally lied about the authenticity of its evidence and expert collaborators XRV plaintiffs’ technology and technical ability in order to gain greater credibility with its readers and earn additional advertising revenue;
- c. XRV plaintiffs are frauds peddling non-existent technology;
- d. TGP plaintiffs collaborate with frauds, such as XRV plaintiffs, peddling non-existent technology;
- e. Plaintiff Abelaum is posing as a cyber security expert, when in fact he is not;
- f. XRV plaintiffs lack the technology (“No Tech”)³ and technical skills to determine the authenticity of the [l]aptop photos or prove Hunter Biden has a Pornhub account; and
- g. Abelbaum’s LinkedIn resume is a fabrication.”

Plaintiffs have pled the following causes of action:

1. Intentional Interference with Current⁴ and Prospective Business Relations (on behalf of The Gateway Pundit, LLC, James Hoft and Joseph Hoft);
2. Intentional Interference with Current and Prospective Business Relations (on behalf of XRVision, Ltd. And Yaacov Apelbaum);
3. Libel with Actual Malice (on behalf of The Gateway Pundit, LLC, James Hoft and Joseph Hoft);
4. Libel with Actual Malice (on behalf of XRVision, Ltd. And Yaacov Apelbaum);
5. Libel with Common Law Malice (on behalf of The Gateway Pundit, LLC, James Hoft and Joseph Hoft);

³ This “No Tech” assertion refers to a graphic on the first page of Miller’s article, with a “no tech” stamp on the front page of the Gateway Pundit’s article. See Ex. 1 to plaintiff’s petition.

⁴ Plaintiffs have not pled with any specificity the actual or estimated losses of subscribers/viewers or revenue they can quantify as a result of the publication of defendant Miller’s article in counts 1 & 2, which are facts that only they would know at the time of filing.

6. Libel with Common Law Malice (on behalf of XRVision, Ltd. And Yaacov Apelbaum).

The court considers the briefing, applicable law, precedents cited to it and arguments of counsel. Being fully advised, the court finds that that Mr. Miller’s speech (i.e. his article) is protected by the First Amendment.”⁵ *Snyder v. Phelps*, 562 U.S. 443, 453, 131 S. Ct. 1207, 1216, 179 L. Ed. 2d 172 (2011). *See also, inter alia, New York Times Co. v. Sullivan*, 376 U.S. 254, 269, 84 S. Ct. 710, 720, 11 L. Ed. 2d 686 (1964).⁶

The court further agrees that plaintiffs have failed to make their defamation allegations by using the exact words that are alleged to be defamatory, as required. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 313 (Mo. banc 1993).

The court notes that the only alleged “defamatory statements” listed in plaintiffs’ petition, ¶71, *supra*, are their own interpretations of defendant Miller’s article. Put simply, the only authors using the words “liar” or “fraud” when describing the plaintiffs are the plaintiffs themselves, in their own petition.

By reason of the foregoing, as well as by reason of the additional arguments raised by defendant Mr. Miller in his motion, the court GRANTS defendant’s motion to dismiss for failures to state claims upon which relief may be granted. Missouri Supreme Court Rule 55. Petition dismissed. Costs, if any remain, assessed equally between parties.

SO ORDERED:


Judge Division 14
November 08, 2021

Kristine Allen Kerr
Circuit Judge, Division 14

cc: to all parties, through counsel of record, via the court’s electronic filing system.

⁵ “‘Speech deals with matters of public concern when it can ‘be fairly considered as relating to any matter of political, social, or other concern to the community,’ *Connick*, *supra*, at 146, 103 S.Ct. 1684, or when it ‘is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public,’ *citations omitted*. The arguably ‘inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern.’ *Rankin v. McPherson*, 483 U.S. 378, 387, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987).” *Snyder v. Phelps*, 562 U.S. 443, 453, 131 S. Ct. 1207, 1216, 179 L. Ed. 2d 172 (2011).

⁶ “‘[W]e consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.’ *See Terminiello v. Chicago*, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131; *De Jonge v. Oregon*, 299 U.S. 353, 365, 57 S.Ct. 255, 81 L.Ed. 278.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270–71, 84 S. Ct. 710, 721, 11 L. Ed. 2d 686 (1964).