

1 STATE OF ILLINOIS)
)SS:
2 COUNTY OF COOK)
3

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

5
6 AMP GLOBAL CLEARING, LLC,)
DANIEL CULP, and AMP FUTURES,)
7 Plaintiffs;)

8)
9)

-v-)No. 14 L 001143

10)
11)

BIG MIKE TRADING, LLC, and)
MICHAEL BOULTER,)
12 Defendants.)
13

14 RECORD OF PROCEEDINGS held in the
15 above-titled cause, held before the Honorable Judge
16 DANIEL T. GILLESPIE at the Richard J. Daley Center,
17 Room 2202, commencing at approximately 11:00 a.m. on
18 the 13th day of June, 2014.
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24

APPEARANCES

SHAWN A. WARNER & ASSOCIATES

By Mr. Shawn A. Warner

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Appeared on behalf of the Plaintiff;

HOLLAND & KNIGHT, LLP

By Mr. Steven Jedlinski

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Appeared on behalf of the Defendants.

1 MR. WARNER: Good morning, your Honor, Shawn
2 Warner for plaintiffs.

3 MR. JEDLINSKI: Steve Jedlinski on behalf of
4 the defendants.

5 THE COURT: This is AMP Global Clearing
6 versus Big Mike Trading, 14 L 1143.

7 We're here on Defendant's motion to dismiss
8 pursuant to 2615 and 2619.

9 I've had occasion to read the motion to
10 dismiss the complaint, the response, and the reply.
11 Anything to add, Defendant/Petitioner?

12 MR. JEDLINSKI: Your Honor, not much in the
13 sense of outside of the papers. Essentially all we
14 want to do is reiterate the fact that the complaint
15 was entirely focused on third party comments made by
16 a former employee of plaintiffs, and for that reason,
17 for the reasons that we set forth in our papers
18 regarding Communications Decency Act, we feel that we
19 should be immune from liability regarding any of
20 those statements by the third party because we had no
21 action in making those comments and no action in
22 adopting or ratifying those comments.

23 In their response, plaintiffs --

24 THE COURT: Say it again. No action in --

1 two things, no action in --

2 MR. JEDLINSKI: Oh, no action in creating
3 those -- the comments or adopting or ratifying those
4 comments.

5 THE COURT: No action in creating the
6 comments and no action in adopting or ratifying.
7 Thank you.

8 MR. JEDLINSKI: Correct. And for that
9 reason, we believe we're protected by the immunity
10 provided by the Communications Decency Act.

11 THE COURT: That's clear enough.

12 MR. JEDLINSKI: In its opposition, they
13 raised for the first time three comments made by the
14 defendants on their own chat forum unrelated to the
15 Stone comments made by that third party, and even
16 viewing those improper statements that weren't
17 founded or even -- included the exhibits attached to
18 the complaint, even considering those, they failed to
19 state a claim under defamation, the Illinois
20 Deceptive Trade Practices Act and commercial
21 disparagement.

22 On the defamation claims, there is a
23 question of law that you can decide that they have an
24 innocent construction, or the fact that the

1 statements are actually not false, statements about
2 the future that could be neither true nor false and
3 therefore cannot meet the requirement -- the first
4 requirement of defamation claim versus the fact that
5 it needs to be a false statement.

6 Regarding the disparagement claims, with
7 respect to the comment made by Mike Boulter, those
8 comments have nothing to do with plaintiffs' products
9 or services. They're directed to either future
10 actions or the belief that the plaintiff is litigious
11 in nature, as we've seen here today; it's actually
12 come true, but that's not a statement that's
13 disparaging the plaintiffs' products or goods.

14 Then the third claim which wasn't addressed
15 in plaintiffs' opposition was the fact that
16 commercial disparagement doesn't even seem to be a
17 valid claim in Illinois anymore. But notwithstanding
18 that, the commercial disparagement claim, again, like
19 the Illinois Deceptive Trade Practices Act claims,
20 have to be based on disparaging the goods or services
21 of plaintiffs, something that Mike Boulter's comments
22 just do not do.

23 THE COURT: Thank you. Plaintiff?

24 MR. WARNER: Your Honor, first of all --

1 THE COURT: Just a second.

2 MR. WARNER: I'm sorry.

3 THE COURT: First?

4 MR. WARNER: Yeah, first of all, whether or
5 not he had input in creating Stone's post, of course
6 he did. He took a private e-mail from Mr. Culp, sent
7 it to Boulter, took that e-mail and sent it on to
8 Mr. Stone for the sole purpose of getting these
9 comments, soliciting comments, and this gentleman
10 solicits comments all the time. He has asked all of
11 his posters, If you have any problem with AMP, call
12 me, if AMP sues you, call me. I know -- and then he
13 goes on in his post to say, I know AMP has threatened
14 to close accounts. That is business. Threatened to
15 close accounts if you post on Big Mike's. Not true.
16 Never happened. So he's -- if he solicits comments
17 and if he has things to do with the comments, he
18 loses the immunity. This is not an absolute
19 immunity. He has done that here, and it's a question
20 of fact of whether he did. That's what the case law
21 says.

22 THE COURT: Pardon me just a second. If he
23 solicits comments, he loses that immunity.

24 MR. WARNER: He loses that immunity --

1 THE COURT: And?

2 MR. WARNER: And if he posts, himself,
3 untrue statements which he has done here, he loses
4 the immunity.

5 THE COURT: And if he posts --

6 MR. WARNER: Both of which I have alleged
7 here.

8 THE COURT: Statements. He, the defendant,
9 loses that immunity.

10 MR. WARNER: Correct. Furthermore, he bars
11 people from this. This is probably not even a public
12 site under the act, given his control over the site.
13 He bars people from responding. It's not he edits
14 and says nobody can respond, he says anybody that
15 deals with AMP can't respond. He bars them from
16 responding. So when there's untrue statements, they
17 go unaddressed because of him.

18 THE COURT: And therefore --

19 MR. WARNER: And therefore he is soliciting
20 and controlling the content of the website. The
21 entire content of the website he's controlling, not
22 just each post. Because when you're dealing with
23 editing, you can edit words, but you can't take one
24 point of view and edit it completely out and say, oh,

1 I just edited. No, you didn't, you gave it an
2 un rebutted response, and that's what he's doing here.

3 THE COURT: So you can edit but you cannot
4 censor.

5 MR. WARNER: You can't censor, correct. You
6 can't censor people from replying, otherwise it's not
7 public.

8 THE COURT: All right. You cannot censor,
9 and if you do then it's not public.

10 MR. WARNER: It's just not public anymore.
11 So in our allegations here, we say, we have alleged
12 that he has in fact posted, he solicited, he's put
13 untrue statements out there, he told -- he started a
14 litigation fund. He's collecting money on this site
15 for a litigation fee fund is how far this goes. So
16 this isn't a public site anymore. You couldn't do
17 that on a public site.

18 So what you're dealing with is, is a
19 situation where this guy is the complete -- I don't
20 want to say dictator, it's an ugly word, but just has
21 complete control over the entire site, and he
22 violates his own rules, and if he violates his own
23 rules or lets postings on that violate his own rules,
24 he loses his immunity, and he does that.

1 The rules clearly say this is a trading
2 forum. The posts that he let on from Stone had not
3 one word to do with trading. It was a character
4 assassination of my client, and he let it on for the
5 sole purpose of he doesn't like my client.

6 So under the case law, there's things you
7 can do to lose the immunity and they've done them
8 here is my position. Under the Defamation Act, I
9 pointed out the direct false statements he made. If
10 AMP -- if you post on here, AMP will close your
11 accounts. That is not true. They've never done it,
12 and they -- they have no posting that even says
13 they've done it, but he posts it on there and that
14 directly deals with his business; that's how he makes
15 his living by these accounts. Half of these people
16 on here are his clients.

17 Some of that -- the rest is in the brief,
18 your Honor. You read it, I'm reiterating. It's too
19 much already.

20 THE COURT: Let me ask you a question on the
21 side.

22 MR. WARNER: Yes.

23 THE COURT: Assuming Big Mike published
24 false comments made by Stone and made some himself

1 and you sued Big Mike, the person and the company,
2 why did you not sue Stone who made those false
3 statements?

4 MR. WARNER: Why didn't we sue Stone?
5 Basically we know who Stone is. He has no money.
6 There's no reason. What am I going to do? I can
7 chase that cherry 'til the cows come home. If they
8 wanted to interplead him --

9 THE COURT: That's beside the point. That's
10 really beside the point. Okay, Thank you.

11 MR. WARNER: Yes.

12 THE COURT: Thanks. Response?

13 MR. JEDLINSKI: Yes, your Honor. The
14 Communication Decency Act is very clear with respect
15 to Stone's comments. For immunity to be granted to
16 defendants, you have to be a provider of an -- it's
17 stated as an interactive computer service, a chat
18 forum like Big Mike Trading is that. It's an
19 interactive computer service. So factor one, check.

20 Second, Stone's comments have to be provided
21 by another party. Again, these don't -- these
22 comments are undoubtedly provided by a third party,
23 Stone, the former employee of plaintiffs. Check
24 box two.

1 Third, plaintiffs' attempt to treat
2 defendant as a speaker of that third-party post.

3 THE COURT: What's three again?

4 MR. JEDLINSKI: Plaintiffs' attempt to treat
5 defendant as a speaker of that third-party post.

6 So paragraph 21 in the complaint says, On or
7 about January 5, 2014, Stone made his first false
8 defamatory statement about AMP and Culp on the
9 trading forum. Stone made it, which Big Mike and
10 Michael posted. That's the quintessential fact that
11 they're trying to hold Big Mike Trading responsible
12 for the statement posted by Stone.

13 THE COURT: And what date was that
14 statement?

15 MR. WARNER: On paragraph 21.

16 THE COURT: Paragraph 21 of the complaint?

17 MR. JEDLINSKI: Of the complaint is that
18 allegation, which Big Mike and Michael posted.

19 This is exactly what the CDA was enacted to
20 protect against. They're trying to now allege that
21 -- the fact that the editorial duties that Big Mike
22 Trading operates, basically saying there's terms and
23 conditions you must meet by those, plaintiffs have
24 violated those numerous, numerous times, and

1 therefore, plaintiff was barred over a year ago for
2 those activities and no longer --

3 THE COURT: Let me get that point. I notice
4 that plaintiff was barred. Why was plaintiff barred
5 again?

6 MR. JEDLINSKI: Because of activities that
7 were in violation of the terms and conditions of
8 the --

9 MR. WARNER: Just for the record, I would
10 like to see the violation, because he says that, but
11 there is never a notice of any violation he's done.

12 MR. JEDLINSKI: There doesn't have to be a
13 notice of violation.

14 MR. WARNER: You can't just say there is a
15 violation.

16 THE COURT: But at any rate, defendant
17 barred the plaintiff because of his acts in violation
18 of the house rules.

19 MR. JEDLINSKI: Correct. And this is
20 exactly what the Communication Decency Act said Big
21 Mike Trading chat forum could do and I'll cite you to
22 the Zeran case that says, "Lawsuits seeking to hold a
23 service provider liable for its exercise of a
24 publisher's traditional editorial functions, such as

1 deciding whether to publish, withdraw, postpone, or
2 alter, are barred." That's exactly the scenario from
3 the Zeran case. So here we have that. So that's
4 with respect to the third party Stone comments.
5 There should be absolute immunity for those.

6 There's no question that immunity doesn't
7 apply to Mike Boulter's own comments. You have to
8 look at those separately; but again, those comments
9 have no bearing, no relation at all to the
10 third-party comments made by Stone.

11 So when you look at those, and you look at
12 the causes of action as laid out before, they're
13 either untrue -- they're either statements about the
14 future, which cannot be a defamatory statement, or
15 they have an innocent construction, which again is a
16 question of law because of the fact that they're not
17 actually --

18 THE COURT: So any statements that are
19 viewed that can -- that may be attributed to
20 defendant --

21 MR. JEDLINSKI: Either have an innocent
22 construction --

23 THE COURT: Capable of innocent
24 construction.

1 MR. JEDLINSKI: Or are a prediction of the
2 future, which can neither be true nor false and meet
3 the falsity requirement of defamation.

4 THE COURT: Okay.

5 MR. JEDLINSKI: And then with respect to the
6 disparagement claims, well, again, he says that we're
7 discussing whether or not the quality of his goods
8 and services, the fact that they close accounts
9 doesn't mean that their goods or services are good or
10 bad. The issue is -- and if you actually look at the
11 quotes themselves, therefore example, Careful about
12 making complaints about AMP. They may threaten you
13 to remove it or if you post anything negative about
14 them on other forums where they are a paid sponsor,
15 they may get the admin to remove it. One statement
16 there. Again, It has come to my attention from
17 multiple users that AMP Trading is threatening to
18 close trading accounts against users who share their
19 experiences about AMP. Again, that's not saying
20 anything negative that their trading services don't
21 operate properly or that they're a bad quality good.
22 They're just simply not disparaging comments.

23 MR. WARNER: Of course they are. I'm sorry,
24 were you done? I apologize. I didn't mean to

1 interrupt.

2 Of course they are, your Honor. He's saying
3 if you say anything bad on this thing, they're
4 throwing your account out, you're done with this
5 firm. I mean, that is bad business practice, that's
6 a lie. It's a bold-faced lie in this case.

7 THE COURT: So of course they are
8 disparaging.

9 MR. WARNER: Of course they are. But I'm
10 going to take to you Stone first. What he didn't
11 tell you is he solicited Stone's responses, and he
12 loses his immunity by taking a personal e-mail from
13 my client, who explained what Stone was about to him,
14 and sending that on to Stone and then saying, Go
15 ahead, Stone, now let's see you post. So he's
16 soliciting those responses.

17 THE COURT: Could I propose a different way
18 of looking at it?

19 MR. WARNER: Sure.

20 THE COURT: He, the defendant, is
21 responsible for his site. He has heard -- he has
22 printed something by Stone that AMP, the plaintiff,
23 objects to. AMP then complains to the guy who runs
24 the site, the guy that runs the site then goes back

1 to Stone and says, you know, this complaint was made
2 about you, any response? To which he responds and
3 then is republished. But it could be viewed,
4 arguably, as an effort by the defendants to try to be
5 fair to both sides and try to see what's what.

6 MR. WARNER: Except it has nothing to do
7 with the rules of the forum. It has nothing to do
8 with trading. It's about an unpaid bill.

9 THE COURT: \$65,000.

10 MR. WARNER: Which by the way, doesn't
11 exist. Never did.

12 THE COURT: There is an invoice for 65
13 grand.

14 MR. WARNER: He sent us an invoice after he
15 was fired. You're right.

16 THE COURT: Okay.

17 MR. WARNER: But I'm handling that matter
18 too, and it doesn't exist. We've established that.
19 But the point isn't that. He takes a private e-mail
20 and sends the e-mail to the guy and says, Make your
21 comments now. That's a solicitation.

22 He also solicits his people on the site --

23 THE COURT: But isn't that what the
24 newspaper does every day? Don't they invite

1 comments? All these reporters write these articles
2 and say, What is your response? What do you have to
3 say? And that generates -- and if you read the blogs
4 on the computers today, every blog ends with, And
5 what is your response?

6 MR. WARNER: Yeah, but it ends with -- you
7 don't take a personal e-mail on the bottom that says
8 private, you don't get to do that, nor would a
9 newspaper get to do that, number one.

10 Number two, the purpose of getting it is to
11 solicit the response and then --

12 THE COURT: Generate traffic so people see
13 the ads.

14 MR. WARNER: That's when the case law says
15 you lose your immunity when you're doing that. You
16 can do it, but you can lose your immunity, that's
17 all.

18 THE COURT: You got to be careful.

19 MR. WARNER: And in this case, that thread
20 goes on to say he can't pay his bills, people say,
21 What is he doing with our money that we have invested
22 with them? It's ridiculous.

23 THE COURT: The effect is hurtful.

24 MR. WARNER: Yes.

1 THE COURT: Last words?

2 MR. JEDLINSKI: He says we lose our immunity
3 by trying to solicit comments on a chat forum who
4 that's their sole purpose. Please comment. What we
5 did not do, which is important, which is done in the
6 sole case that he cites in support of it, which is
7 the Jones case, in Jones, what the operator of that
8 forum does is he comments specifically on that, and I
9 believe it had to do with some act, sexual act that
10 was being performed by the person that was being
11 talked about, and what he does is he expounds about
12 it, he comments on the forum --

13 THE COURT: About the schoolteacher?

14 MR. JEDLINSKI: Yes.

15 MR. WARNER: Yes.

16 MR. JEDLINSKI: On the chat forum on the
17 post itself. That's very different than the scenario
18 we have here. Those comments were created by the
19 third party and we are immune from it.

20 THE COURT: I think we've made our points
21 well on each side, and I'm going to take the time to
22 go over it and review it and look at it, and I'm
23 going to enter a ruling on Thursday July 24th at
24 9:30, so that will be our next date.

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MR. WARNER: Thank you, your Honor.

MR. JEDLINSKI: Thank you.

THE COURT: Thank you both.

(Proceedings concluded at 11:20 a.m.)

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CERTIFICATE OF

CERTIFIED SHORTHAND REPORTER

I, Beth C. Radtke, a Certified Shorthand Reporter of the State of Illinois, CSR License No. 084-004561, do hereby certify:

That previous to the commencement of the examination of the aforesaid witness, the witness was duly sworn by me to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was stenographically reported by me and was thereafter reduced to typewriting under my personal direction and constitutes a true and accurate record of the testimony given and the proceedings had at the aforesaid deposition;

That I am not a relative or employee or attorney or counsel for any of the parties herein, nor am I interested directly or indirectly in the outcome of this action.

IN WITNESS WHEREOF, I do hereunto set my hand at Chicago, Illinois, this 1st day of July, 2014.

Beth Radtke, C.S.R

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