IN THE CIRCUIT COURT OF THE 11th JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No. 2021-015145-CA-01

BIROL OZYESILPINAR,

Plaintiff,

v.

GLM OMNIMEDIA GROUP, LLC, et al.,

Defendants.
_____/

MOTION TO DISMISS COMPLAINT BY DEFENDANTS DMG MEDIA LTD., DAILY MAIL AND GENERAL TRUST PLC, ASSOCIATED NEWSPAPERS LTD.

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Under Florida Rule of Civil Procedure 1.140(b), Defendants DMG Media Ltd., Daily Mail and General Trust PLC, and Associated Newspapers Ltd. (collectively, Associated Newspapers) move to dismiss Plaintiff Birol Ozyesilpinar's Complaint with prejudice.

I. INTRODUCTION

In this action, Ozyesilpinar, a Miami Beach condo owner, has sued a slew of media companies for defamation arising out of various articles about a dispute that took place in June 2019 between Ozyesilpinar and Monifah Brown, a Black woman who sought to rent Ozyesilpinar's condominium as a short-term rental. In the dispute—which took place entirely over WhatsApp—Ozyesilpinar insulted Brown's race after Ozyesilpinar and Brown had a disagreement stemming from a down payment. Ozyesilpinar stated, among other insults, that Brown was a "monkey," asked whether Brown was a "prostitute," and called Brown the n-word. After the WhatsApp messages went viral, various media companies published articles about the messages and the dispute between Ozyesilpinar and Brown. And after that, Ozyesilpinar sued for defamation.

Ozyesilpinar's complaint is frivolous, and not one of her claims states a cause of action.

Above all, the allegedly libelous statements are non-actionable under the First Amendment and Florida law. Courts have repeatedly held that the chief statements over which Ozyesilpinar has sued—that she was "racist" or engaged in "racist" behavior—are not capable of being proved true or false or are protected opinion based on facts set forth in the articles themselves.

Ozyesilpinar's claims suffer from many other defects. Various statements challenged by Ozyesilpinar are not about her, are not false, or are not defamatory. Ozyesilpinar fails to allege the elements of a defamation-by-implication claim, and Ozyesilpinar's seemingly main

complaint that Associated Newspapers failed to present a more balanced view of the dispute is nonactionable. Florida's single-action rule bars Ozyesilpinar's count for tortious interference. And the First Amendment and Florida law forbid Ozyesilpinar from obtaining a permanent injunction.

For these reasons and for those set forth below, the Court should dismiss Ozyesilpinar's complaint in its entirety with prejudice.

II. BACKGROUND

In this action, Ozyesilpinar has sued Associated Newspapers[1] for defamation, defamation-by-implication, and tortious interference based on a June 25, 2019, article published on DailyMail.com called *Miami Beach vacation condo is removed from Booking.com and Airbnb after owner goes on shocking racist tirade against guest and refuses to apologize for calling them 'monkeys'* (the *Daily Mail* article). Compl. ¶ 81 & Ex. J. The *Daily Mail* article—which contains a video showing a lengthy WhatsApp exchange between Ozyesilpinar and Brown stemming from a dispute about a down payment requested for the short-term rental—is attached to the complaint.

Ozyesilpinar's claims against Associated Newspapers are based on the following statements, omissions, or descriptions in the *Daily Mail* article:

- Ozyesilpinar "engaged in a 'racist tirade' against Brown." *Id.* ¶¶ 81, 91.
- "Brown was an 'event planner.'" *Id.* ¶ 84.
- "Brown 'happily complied with' Ozyesilpinar's requests for driver's license information." *Id.* ¶ 85.
- Associated Newspapers' having "failed to mention that Brown was a likely credit card thief and scam artist." *Id.* ¶ 90.

[1] Neither DMG Media Ltd. nor Daily Mail and General Trust PLC published the *Daily Mail* article.

- Associated Newspapers' having "failed to mention that the insulting messages from Ozyesilpinar" were made in response to insults allegedly first made by Brown. *Id.* ¶¶ 91–91.

- Associated Newspapers' having "described Ozyesilpinar's accusation that Brown was using a stolen credit [card] as a mere 'claim', and at the same time us[ing] words and phrases describing Brown's statements as if they were objective or almost objectively factual." *Id.* ¶ 94.

- Associated Newspapers' having described "Ozyesilpinar's statements as 'not backed up with actual evidence'" while failing "to mention that many of Brown's representations were not backed up with actual evidence." *Id.* ¶ 95.

III. LEGAL STANDARDS

In defamation actions against the media, "pretrial dispositions are 'especially appropriate' because of the chilling effect these cases have on freedom of speech." *Stewart v. Sun Sentinel Co.*, 695 So. 2d 360, 363 (Fla. 4th DCA 1997). The "failure to dismiss a libel suit might necessitate long and expensive trial proceedings, which, if not really warranted, would themselves offend [First Amendment] principles … because of the chilling effect of such litigation." *Times, Inc. v. McLaney*, 406 F.2d 565, 566 (5th Cir. 1969). Under Florida's pleading standard, "[a] party does not properly allege a cause of action by alleging in conclusive form … acts which lack factual allegations and merely state bare legal conclusions." *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 501 (Fla. 3d DCA 1994). In "ruling on a motion to dismiss, the Court must limit itself to the four corners of the complaint, including any attached or incorporated exhibits," *Skupin v. Hemisphere Media Grp., Inc.*, 314 So. 3d 353, 355 (Fla. 3d DCA 2020) (internal quotation marks omitted), which, here, include the *Daily Mail* article.

IV. ARGUMENT

For two main reasons, the Court should dismiss the complaint. First, the allegedly libelous statements are non-actionable opinion protected by the First Amendment and Florida law. Second, the individual counts—for myriad other reasons—fail to state a cause of action.

A. The Statements About Racism Are Nonactionable Under the First Amendment and Florida Law

Under both the First Amendment and Florida law, the main statements on which Ozyesilpinar has sued are protected, non-actionable statements of opinion. To be actionable under the First Amendment, a statement must be "sufficiently factual to be susceptible of being proved true or false" based "on a core of objective evidence." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990). Statements consisting of "loose, figurative, or hyperbolic language" are not actionable, *see id.*, because "[a]lthough rhetorically hyperbolic statements may at first blush appear to be factual, they cannot be reasonably interpreted as stating actual facts about their target," *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1378–79 (S.D. Fla. 2006). Similarly, "[c]ommentary or opinion based on facts that are set forth in the subject publication … do not constitute libel." *Skupin*, 314 So. 3d at 356; *accord Scott v. Busch*, 907 So. 2d 662, 668 (Fla. 5th DCA 2005) ("'Pure opinions' are not actionable out of a deference for free speech and the First Amendment."); *Hay v. Indep. Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. 2d DCA 1984) (same). "[I]n Florida, whether a statement is one of fact or opinion is a question of law for the court …." *Skupin*, 314 So. 3d at 356.

Here, the core statement over which Ozyesilpinar has sued—that she "engaged in a 'racist tirade,'" Compl. ¶¶ 81, 91—is a non-actionable statement of opinion. That is so because it is not "sufficiently factual to be susceptible of being proved true or false" based "on a core of objective evidence." *Milkovich*, 497 U.S. at 21. Indeed, numerous courts have held that "[s]tatements indicating that Plaintiff is racist are clearly expressions of opinion that cannot be proven as verifiably true or false." *Squitieri v. Piedmont Airlines, Inc.*, 2018 WL 934829, at *4 (W.D.N.C. Feb. 16, 2018); *accord, e.g.*, *Allen v. Beirich*, 2019 WL 5962676, at *6 (D. Md. Nov. 13, 2019) ("[T]he characterization of the American Eagle Party as 'racist' is opinion 'that cannot

be proven as verifiably true or false' and is not actionable."), *aff'd in relevant part*, 2021 WL 2911736 (4th Cir. July 12, 2021); *Edelman v. Croonquist*, 2010 WL 1816180, at *6 (D.N.J. May 4, 2010) ("The defendant's characterizations of her in-laws as racists is a subjective assertion, not sufficiently susceptible to being proved true or false to constitution defamation.").[2]

This statement is also non-actionable "pure opinion" because it is "[c]ommentary or opinion based on facts that are set forth in the subject publication." *Skupin*, 314 So. 3d at 356. The statement is based on Ozyesilpinar's own messages in the WhatsApp exchange with Brown, which is embedded within the *Daily Mail* article itself. *See* Compl. ¶ 81 & Ex. J. And according to her own allegations, Ozyesilpinar admits that she racially insulted Brown. *See, e.g.*, *id.* ¶ 19 ("The two traded insults back and forth … , with Brown … playfully encouraging Ozyesilpinar to continue insulting her either with racial insults or other insults."); *id.* ¶ 83 (similar); *id.* ¶¶ 91–93. For these reasons, this statement constitutes fully protected "pure opinion"—as many courts have held. *See, e.g.*, *Cummings v. City of New York*, 2020 WL 882335, at *20 (S.D.N.Y. Feb. 24, 2020) ("Statements describing Plaintiff of Plaintiff's Lesson as 'racist' are dismissed because they are nonactionable statements of opinion."); *Tillett v. BJ's Wholesale Club, Inc.*, 2010 WL 11507322, at *6 (M.D. Fla. July 30, 2010) ("Like the media statement, Thomas's declaration that the Confederate Flag 'is a racist symbol and that those who display it are racists[,]' is a pure opinion that cannot support an action for defamation." (citation omitted)).[3]

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[2] *See also, e.g.*, *Ganske v. Mensch*, 480 F. Supp. 3d 542, 553 (S.D.N.Y. 2020) ("Although the term 'xenophobic' does have a fairly clear meaning … , it is not capable of being proven true or false. It is, rather, classic opinion that amounts to an epithet, fiery rhetoric, and hyperbole, which signals advocacy and a partisan viewpoint." (citation omitted) (internal quotation marks omitted) (alterations omitted)).

[3] To the extent that Ozyesilpinar bases her claim on the headline stating that she went on a "shocking racist tirade," that headline, too, is nonactionable. *See Cummings*, 2020 WL 882335, at * 21 ("To the extent Plaintiff's claims arise from the inclusion of 'racism' and 'racist' in the headlines over the articles, they are also dismissed."); *see also Byrd v. Hustler Mag., Inc.*, 433 So. 2d 593, 595 (Fla. 3d DCA 1983) ("[S]tories are to be read with their headlines.").

B. Ozyesilpinar's Complaint Otherwise Fails To State a Claim

For various other reasons, Ozyesilpinar otherwise fails to state any cause of action.

1. The defamation claims fail to state a cause of action.

Under Florida law, "[a] common law claim for defamation requires the unprivileged publication (to a third party) of a false and defamatory statement concerning another, with fault amounting to at least negligence on behalf of the publisher, with damage ensuing." *Don King Prods., Inc. v. Walt Disney Co.*, 40 So. 3d 40, 43 (Fla. 4th DCA 2010). Ozyesilpinar's defamation claims fail to meet various of these elements.

a. Many statements are not "of and concerning" Ozyesilpinar.

For starters, a statement must be "of and concerning"—that is, "about"—the plaintiff. *See Bass v. Rivera*, 826 So. 2d 534, 535 (Fla. 2d DCA 2002); *accord Hay*, 450 So. 2d at 294 ("To state a cause of action for libel, a private person must allege publication (1) of false and defamatory statements *of and concerning* that private person …." (emphasis added)). But many of the challenged statements or omissions are not about Ozyesilpinar at all; they are, rather, about Brown. For example, Ozyesilpinar challenges as false the statements that "Brown was an 'event planner,'" Compl. ¶ 84, that "Brown 'happily complied with' Ozyesilpinar's requests for driver's license information," *id.* ¶ 85, and the alleged omission that "Brown was a likely credit card thief and scam artist," *id.* ¶ 90. Because none of these statements or omissions are about Ozyesilpinar, none are actionable.

b. Many statements are not false.

"Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the 'gist' or 'sting' of the statement is true." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 707 (Fla. 3d DCA 1999) (per curiam). "A statement is not considered false unless it would have

a different effect on the mind of the reader from that which the pleaded truth would have produced." *Id.* (internal quotation marks omitted)).

Here, to the extent that any of the core challenged statements could be proved true or false, the "gist" or "sting" of them is undoubtedly true. Ozyesilpinar takes serious issue with the statement that she "engaged in a 'racist tirade.'" Compl. ¶¶ 81, 91. To her, a "tirade" consists of "protracted speech," whereas here there were "only occasional insults going back and forth between Brown and Ozyesilpinar," *id.* ¶¶ 82–83. But because the "gist" or "sting" of the statement is true, Ozyesilpinar's nitpicking with the articles' diction does not establish falsity for purposes of defamation. Rather, "falsity exists only if the publication is substantially and materially false, not just if it is technically false." *Smith*, 731 So. 2d at 707.

c. Many statements are not defamatory.

A statement is "'defamatory' if it tends to harm the reputation of another so as to lower him or her in estimation of [the] community or deter third persons from associating or dealing with the defamed party." *LRX, Inc. v. Horizon Assocs. J. Venture*, 842 So. 2d 881, 885 (Fla. 4th DCA 2003). It is for the courts to determine whether a statement is defamatory. *See McIver v. Tallahassee Democrat, Inc.*, 489 So. 2d 793, 794 (Fla. 1st DCA. 1986) ("If the publication can bear only one meaning, the question of defamation is for the judge."); *Byrd*, 433 So. 2d at 595 ("Where the court finds that a communication could not possibly have a defamatory or harmful effect, the court is justified in … dismissing the complaint for failure to state a cause of action ….''). Here, the same statements about Brown—that she "was an 'event planner,'" Compl. ¶ 84, and that she "'happily complied with' Ozyesilpinar's requests for driver's license information," *id.* ¶ 85—are also not defamatory (to the extent that they could even be regarded as being about Ozyesilpinar).

* * *

In short, Ozyesilpinar's defamation claims fail to meet various elements of a defamation claim.

2. The defamation-by-implication claim fails to state a cause of action.

Florida law also recognizes defamation by implication, which occurs "from what is implied when a defendant (1) juxtaposes a series of facts so as to imply a defamatory connection between them, or (2) creates a defamatory implication by omitting facts, such that he may be held responsible for the defamatory implication." *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008) (internal quotation marks omitted) (alteration omitted). "Whether the defendant's statements constitute defamation by implication is a question of law for the court to determine." *Skupin*, 314 So. 3d at 356 (alteration omitted) (internal quotation marks omitted).

Ozyesilpinar's defamation-by-implication claim fails. To begin with, nowhere does Ozyesilpinar allege which series of facts have been juxtaposed to imply a defamatory connection between them. Nor does Ozyesilpinar allege which defamatory implication has been created by omitting facts. Instead, the complaint simply recites the general statement that Associated Newspaper "juxtapose[d] a series of facts in their article[s] on the internet regarding Ozyesilpinar, so as to imply a defamatory connection between them, and also fail[ed] to include important facts, such that Defendants may be held responsible for defamatory implication." Compl. ¶ 89. These statements "do[] not properly allege" defamation by implication because they "lack factual allegations and merely state bare legal conclusions." *Ginsberg*, 645 So. 2d at 501. But even if Ozyesilpinar had done more than allege just the bare elements, "[a]ll of the protections of defamation law that are afforded to the media and private defendants are … extended to the tort of defamation by implication." *Jews for Jesus*, 997 So. 2d at 1108; *accord*

Turner v. Wells, 879 F.3d 1254, 1269 (11th Cir. 2018) ("[E]ven if the statements are defamatory by implication, a defendant is still protected from suit if his statements qualify as an opinion …."). For the same reasons that her defamation claim fails, Ozyesilpinar's defamation-by-implication claim fails, too.

At any rate, Ozyesilpinar's main complaint seems to be that the *Daily Mail* article treats her unfairly by not adequately presenting Brown's role in the dispute. *See, e.g.*, Compl. ¶ 90 ("Defendants failed to mention that Brown was a likely credit card thief and scam artist …."); *id.* ¶ 92 ("Defendants failed to mention that Brown had first insulted Ozyesilpinar …."); *id.* ¶ 94 ("Defendants described Ozyesilpinar's accusation that Brown was using a stolen credit card as a mere 'claim', and at the same time used words and phrases describing Brown's statements as if they were objective or almost objectively factual."). But "this argument fails in deference to [Associated Newspapers]' editorial discretion in what to publish in [the *Daily Mail* article]." *Turner*, 879 F.3d at 1270. Contrary to what Ozyesilpinar apparently believes, "[p]ublishers have no legal obligation to present a balanced view of what led up to the publicized event." *Id.* (alterations omitted) (quoting *Perk v. Readers Digest Ass'n*, 931 F.2d 408, 412 (6th Cir. 1991)). Ozyesilpinar may not like how she is portrayed in the *Daily Mail* article, but "the law of defamation is concerned with whether a publisher reports a story *truthfully*, not generously." *Id.* (alteration omitted). Indeed, "[t]he fact that plaintiffs may not like the way [an] article was written or what it says about them does not automatically provide the basis for a libel suit." *Kurtell & Co. v. Miami Tribune, Inc.*, 193 So. 2d 471, 471 (Fla. 3d DCA 1967) (per curiam). Such is the case here.

3. The tortious-interference claim fails to state a cause of action.

Ozyesilpinar's claim for tortious interference is barred by Florida's single-action rule.

> In Florida, a single publication gives rise to a single cause of action. The various injuries resulting from it are merely items of damage arising from the same wrong…. The rule is designed to prevent plaintiffs from circumventing a valid defense to defamation by recasting essentially the same facts into several causes of action all meant to compensate for the same harm.

Callaway Land & Cattle Co. v. Banyon Lakes C. Corp., 831 So. 2d 204, 208 (Fla. 4th DCA 2002) (citations omitted) (internal quotation marks omitted). As relevant here, courts have applied the single-action rule to bar tortious-interference claims that are based on the same allegations as defamation claims. *See Klayman v. Judicial Watch, Inc.*, 22 F. Supp. 3d 1240, 1255–57 (S.D. Fla. 2014) (applying single-action rule to bar claim for tortious interference with a business relationship); *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So. 2d 607, 609 (Fla. 4th DCA 1975) (affirming, on basis of single-action rule, the dismissal of tortious-interference claim where the "thrust" of the tortious-interference claim and the defamation claim "is that said news articles were injurious to appellants' reputation").

In her complaint, Ozyesilpinar has done what the single-action rule is designed to prevent: "recasting essentially the same facts into several causes of action all meant to compensate for the same harm." *Callaway Land & Cattle Co.*, 831 So. 2d at 208. Ozyesilpinar's tortious-interference claim is based on the same allegedly defamatory statements in each of the articles. For this reason, Ozyesilpinar's tortious-interference claim must be dismissed.[4]

[4] Ozyesilpinar would also have to plead that she had "'existing or prospective legal or contractual rights' in the use of [Booking.com and Airbnb]." *Illoominate Media, Inc. v. CAIR Fla., Inc.*, 841 F. App'x 132, 137 (11th Cir. 2020) (quoting *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812, 814 (Fla. 1994)). But Ozyesilpinar's complaint "is devoid of allegations suggesting that [she] had legal or contractual rights" in using either Booking.com or Airbnb. *See id.*

4. Ozyesilpinar is not entitled to a permanent injunction.

Finally, Ozyesilpinar is not entitled to an injunction for the "remov[al]" of the article and "enjoining [Defendants] from further publishing of the same." Compl. p. 18. To begin with—and for all the reasons stated—Ozyesilpinar's claims have no merit and so neither does the relief that she seeks. But even if they did, "injunctive relief is unavailable to redress a past harm, or to restrain an actual or threatened defamation." *Rodriguez v. Ram Sys., Inc.*, 466 So. 2d 412, 412 (Fla. 3d DCA 1985) (per curiam) (citation omitted). Rather, the "usual rule is that equity does not enjoin a libel or slander and that the only remedy for defamation is an action for damages." *Baker v. Joseph*, 938 F. Supp. 2d 1265, 1269 (S.D. Fla. 2013) (internal quotation marks omitted).

V. CONCLUSION

For all these reasons, the Court should dismiss Ozyesilpinar complaint with prejudice.

Dated: December 10, 2021

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CERTIFICATE OF SERVICE

I certify that on December 10, 2021, I electronically filed this document with the Florida Courts e-Filing Portal, which will serve it by e-mail on the *pro se* plaintiff and on all counsel on the Service List below.

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