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May 22, 2023

VIA eCourts and FIRST CLASS MAIL

Hon. Robert M. Vinci, J.S.C.
Superior Court of New Jersey, Bergen County
Hackensack, NJ 07601

Re: *NJ Puppy Store t/a Wayne Puppies v. Township of Teaneck et al.*
Docket No. BER-L-1240-23

Dear Judge Vinci,

We represent Defendant Hillary Goldberg in the above-captioned matter. Please accept this letter *in lieu* of a more formal reply brief in further support of Ms. Goldberg's Motion to Dismiss. Our Motion to Dismiss was based on a simple premise. The Complaint alleges that Ms. Goldberg made various defamatory statements about Wayne Puppies, and she did not make the supposed statements about Wayne Puppies.

Wayne Puppies' opposition **confirmed** that Ms. Goldberg never made the statements it alleged she made:.

“Goldberg’s argument reminds me of my childhood teachers accusing someone of wrongdoing, staring right at them, and stating I am not naming names, but you know who you are.”

Opp. Br. 8. Folksy wisdom aside, this is what is required for a defamation claim as a matter of law, and thus, Ms. Goldberg's Motion to Dismiss must be granted.

A prima facie case of defamation requires plaintiff to show that Ms. Goldberg communicated to a third person a false statement **about the plaintiff** that tended to harm plaintiff's reputation in the eyes of the community or cause others to avoid plaintiff. *Mclaughlin v. Rosanio, Bailets & Talamo*, 331, 312 (App. Div. 2000). According to the Complaint, in July 2022, Ms.

Hon. Robert M. Vinci, J.S.C.
May 22, 2023
Page 2

Goldberg published a Change.org petition that included numerous false and defamatory statements about Wayne Puppies and the operations of its business, including false statements about the manner in which Wayne Puppies secures puppies and cares for its puppies. Compl. ¶ 75.

However, despite the allegations in the Complaint, Plaintiff's childhood anecdote confirms that Ms. Goldberg did not make the statements alleged. Plaintiff confirms this again by admitting that the aforementioned change.org petition is generally about puppy mills, not Wayne Puppies, "the first half of the petition describes puppy mills and the horrendous conditions under which puppies are housed and the various ways in which puppies are mistreated." Opp. Mtn. p. 8.

While this is a motion to dismiss, the moving papers properly included the petition that was explicitly referenced by Plaintiff in the complaint. As attached to Defendant's motion the Change.org petition never once refers to Wayne Puppies as a puppy mill. It is clear from the petition that Ms. Goldberg had two main goals: first was to encourage Teaneck citizens to petition the local government to uphold the local ordinance prohibiting the sale of dogs in the town; and second was to encourage people to adopt rather than shop for dogs.

To defeat a motion to dismiss, a defamation claim "must plead facts sufficient to identify the defamatory words, their utterer, and the fact of their publication." *Dendrite Intern., Inc v. Doe No. 3*, 342 N.J. Super. 134, 155 (App. Div. 2001). There is no dispute that Ms. Goldberg drafted and published the change.org petition. However, as Plaintiff now confirms, Ms. Goldberg did not call Wayne Puppies a puppy mill in the petition or uttered any defamatory words about Wayne Puppies. Even looking at the Complaint in the light most favorable to the Plaintiff, there is no actionable defamation claim. The Court must find that there is no claim upon which relief may be granted and dismiss the claim of defamation.

Hon. Robert M. Vinci, J.S.C.
May 22, 2023
Page 3

Plaintiff's argument that the Noerr-Pennington doctrine (the "doctrine") does not apply is not only misplaced but contradictory to its own argument. First Plaintiff states that the doctrine does not apply to defamation claims, but then goes on to specifically cite cases where the courts have applied the doctrine to defamation cases. Opp. Br. p. 6. Additionally, the exception to the doctrine cited by Plaintiff is inapplicable because as admitted by Plaintiff, Ms. Goldberg was not a competitor to Wayne Puppies. *Id.* at 5.

As explained in the Motion to Dismiss, petitioning activity is protected by the doctrine and therefore should be applied here. Ms. Goldberg made a change.org petition to inform her fellow Teaneck residents that there is an ordinance that prohibits the sale of dogs in town, yet the town was working with Wayne Puppies to bypass the ordinance by using the store as a "showroom" for the dogs that were available for purchase. A change.org petitioning the government for redress is petitioning activity that is protected under the doctrine. Further, Plaintiff misread, Defendant's motion and assumed that the doctrine was applicable only to the defamation claim. However, the doctrine has been explicitly expanded to afford immunity to those who petition the government for redress, which is exactly what Ms. Goldberg was doing when she made the change.org petition.

Notably, Plaintiff's argument as to tortious interference is misplaced because there simply is no claim against Ms. Goldberg for tortious interference. Not only is Ms. Goldberg entitled to petition the government, but there is also absolutely no indication that there was any expectation of economic advantage with respect to the sale of puppies at the Teaneck location. Plaintiff themselves acknowledged that they were only going to use the Teaneck location as a showroom for puppies that were available for purchase. The subsequent purchase of any dogs or puppies would take place at the Wayne location. Any money made with respect to the sale of dogs would

Hon. Robert M. Vinci, J.S.C.

May 22, 2023

Page 4

result from a sale in Wayne not Teaneck. While Plaintiff wants to time to prove their claim through discovery no amount of discovery will provide evidence to show that Plaintiff had a reasonable expectation of economic advantage due to the sale of puppies in Teaneck.

Wayne Puppies acknowledged that Teaneck has an ordinance that prohibits the sale of dogs. Therefore Plaintiff had to find a loophole so that they could come as close as possible to selling dogs in Teaneck without actually violating the ordinance. Due to Ms. Goldbergs love for dogs she was distraught to learn that her beloved town was going to allow Wayne Puppies to finesse the system and use Teaneck as a showroom for dogs that are for sale when there are plenty of dogs in need of homes and ready to be adopted.

Unfortunately for Plaintiff, this motion will be decided in a New Jersey Court, not in counsel's former elementary school. Here, where the Change.org petition does not actually make the alleged defamatory statements about Wayne Puppies, this motion to dismiss must be granted.

s/ John D. Coyle