

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

Michael Hastings,	)	
	)	
Plaintiff,	)	No. 25 L 66021
	)	
vs.	)	
	)	
Timothy Pawula, Michael W. Glotz,	)	Judge Carrie E. Hamilton
and Big Tent Coalition, LLC,	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on plaintiff Michael Hastings' Motion to Amend Complaint, in response to defendants' Motion to Dismiss. For the reasons stated herein, the Motion to Amend is denied, in part, and granted, in part. The Motion to Dismiss the original complaint is granted. The court will hold an evidentiary hearing regarding the Motion for Sanctions.

I. BACKGROUND

In February 2025, Plaintiff Hastings filed a complaint alleging, among other things, defamation based on messages that were published in November 2022. The original complaint asserted claims against each defendant for defamation *per se* (Counts I–III), false light invasion of privacy (Counts IV–VI), nonconsensual dissemination of sexualized images (Counts VII–IX), as well as a civil conspiracy claim against all three defendants (Count X).

Defendants filed a motion to dismiss based upon the statute of limitations applicable to all of the claims. In response, plaintiff filed a motion to amend the complaint. The proposed amended complaint removed the counts for dissemination of sexualized images and added counts for intentional infliction of emotional distress (Counts VII–IX). In addition, details were included regarding defendants' efforts to hide the true identities of the senders of the defamatory messages. Defendants oppose this amended complaint, arguing that the proposed amendments do not address the fact that plaintiff

knew or should have known about the publications in November 2022, which is the relevant inquiry for the statute of limitations. In reply to defendants' opposition, plaintiff states in an affidavit that he was unaware the messages had been published to others until recently, and therefore did not know he had been injured.

In addition to seeking denial of the motion to amend, defendants also seek dismissal of all claims, as well as Rule 137 sanctions against plaintiff.

II. LEGAL STANDARD

A. Motion to Amend Complaint

In Illinois, trial courts have discretion in ruling on motions for leave to amend pleadings. Illinois law provides that leave to amend should generally be granted unless it is apparent that even after amendment no cause of action can be stated. When a plaintiff seeks to file an amended complaint before the entry of final judgment, leave should be liberally granted. *Dickens v. Fifth Third Mortg. Co.*, 2020 IL App (1st) 190943-U (1st Dist. 2020).

The court must consider four factors established by the Illinois Supreme Court: (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified. *Schultz v. Sinav Ltd.*, 2024 IL App (4th) 230366 (4th Dist. 2024). The party seeking leave to amend bears the burden of demonstrating that all four factors favor the relief requested. *Carlson v. Michael Best & Friedrich LLP*, 2021 IL App (1st) 191961 (1st Dist. 2021). However, if that party fails to establish the first factor, showing that the proposed amendment would cure the defective pleading, then the court need not proceed to consider the remaining three factors. *Id.*

B. Motion to Dismiss

Under section 2-619(a)(5), an action may be dismissed if it “was not commenced within the time limited by law.” 735 ILCS 5/2-619(a)(5). A defendant admits the legal sufficiency of the plaintiff's claim but raises defects, defenses, or other affirmative matters, including the timeliness of the claim, that appear on the face of the complaint or that are established by external submissions which act to defeat the claim. *Federated Industries, Inc. v. Reisin*,

402 Ill. App. 3d 23, 27, (1st Dist. 2010). All well-pleaded facts and reasonable inferences are accepted as true for the purpose of the motion to dismiss. *Id.* It is defendant's burden to prove an affirmative defense based on section 2-619, and a court should only grant a motion based on this section if the record establishes that there are no genuine issues of material fact. *Id.*

C. Rule 137 Sanctions

Illinois Supreme Court Rule 137 requires that,

Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Rule 137 is intended to prevent the filing of false and frivolous lawsuits. *Stiffle v Marz*, 2016 Il App (1st) 150180 (1st Dist. 2016). "The rule is designed to prohibit the abuse of the judicial process by claimants who make vexatious and harassing claims based upon unsupported allegations of fact or law but not to penalize attorneys or litigants who were zealous but unsuccessful." *Id.* at 32. The party seeking Rule 137 sanctions bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause. *Id.* Rule 137 is penal in nature and, accordingly, it must be strictly construed. *Id.*

III. APPLICABLE LAW

Defamation and false lights claims are subject to a one-year statute of limitations. 735 ILCS 5/13-201 (West 2010). Under Illinois law, the cause of action for defamation and false light accrues, and the statute of limitations begins to run, on the date of publication of the defamatory material. *See Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill. 2d 129, 131-32, 334 N.E.2d 160 (1975). Illinois courts apply the discovery rule only in situations where the defamatory material is published in a manner likely to be concealed from the plaintiff. Courts have found that the discovery rule should not be applied unless the alleged publication "was hidden, inherently

undiscoverable, or inherently unknowable.” *Peal v Lee*, 403 Ill. App.3d 197 (1st Dist. 2010). Courts have rejected a tolling of the statute of limitations when plaintiff is unaware of the identities of the individuals who published the defamatory material. *See Guebard v. Jabaay*, 65 Ill. App. 3d 255, 258 (2nd Dist. 1978) (rejecting plaintiff’s argument that discovery rule applies when injury was known but the identities of persons causing such injury were not known).

The statute of limitations for intentional infliction of emotional distress is two years.

Illinois law holds that where the underlying tort claims are beyond the statute of limitations, the civil conspiracy claim also fails. *See Indeck N. Am. Power Fund, L.P. v. Norweb PLC*, 316 Ill. App. 3d 416, 432 (1st Dist. 2000) (where plaintiff fails to state underlying cause of action, the claim for a conspiracy also fails); *see also Weber v. Cueto*, 253 Ill. App. 3d 509, 517–22 (5th Dist. 1993) (affirming dismissal of civil conspiracy claim where one-year statute of limitations had expired on underlying defamation claim); *Zielinski v. Schmalbeck*, 269 Ill. App. 3d 572, 581 (4th Dist. 1995) (applying one-year statute to both defamation and civil conspiracy counts).

IV. ANALYSIS

A. Would the Proposed Amendment Cure the Statute of Limitations

1. Defamation, False Light Invasion of Privacy and Civil Conspiracy Relate to Those Claims (Defamation Claims)

The proposed amended complaint alleges that, at least originally, the defamatory messages were sent via Signal, a service that sends messages between parties in an end-to-end encrypted fashion. While those original Signal messages would meet the law’s standard that the publication was hidden or inherently undiscoverable, the amended complaint details how the defamatory messages were then sent to “thousands” of people in a number of other more public ways in an attempt to impact voters for the November 2022 election. The amended complaint does not allege specifically when or how plaintiff became aware of the defamatory messages or his injury based upon the publication of the messages. Attached to plaintiff’s reply is an affidavit signed by plaintiff stating, in essence, that he was unaware that the messages had been widely published until 2024.

The amended complaint does detail the concealment of the true identity of the sender of the defamatory messages as well as the concealment of the full scope of the alleged conspiracy. These facts, however, are not part of the legal analysis the court must consider. No case law was provided to the court to support the position that the discovery rule applies to the identity of the individual who published the defamatory statement. That is because the argument that the limitations period should be tolled because the plaintiff did not know the identity of each person who made a defamatory statement about him has been squarely rejected. *See Peal*, at 207-08; *Tirio v Dalton*, 2019 IL App (2d) 181019 (2nd Dist. 2019); *Guebard v. Jabaay*, at 258. Rather, the discovery rule delays the commencement of the statute of limitations until the plaintiff knows or reasonably should know that he has been injured and that his injury was wrongfully caused.

As alleged in the amended complaint, the messages were sent on November 4, 6, 8 and 11, 2022. The original complaint was filed in February 2025, well past the one-year statute of limitations for the defamation claims. Assuming the court can consider the affidavit attached to plaintiff's reply, (which includes facts not contained in the amended complaint), and therefore taking those statements as true under the applicable standard, while plaintiff may not have had actual knowledge of the wide dissemination of the messages, under the law, he reasonably should have known of his injury. Curiously, in response to this argument, plaintiff states, "[d]efendants have not offered *any facts* regarding; (1) when the Offending Messages were published to someone other than Hastings, or (2) when Hastings became aware of such third-party publications." Response, p. 4. This is curious because plaintiff's amended complaint is replete with allegations of the vast number of voters in his legislative district, and beyond, who were sent the messages and that the messages were sent in relation to the November 2022 election.

In *Briggs v SMG Food & Bev., LLC*, 2020 IL App (1st) 191723-U (1st Dist. 2020), the court determined when a plaintiff in a defamation case reasonably should have known he had been injured by applying the analysis of this same standard in construction defect cases. Briggs brought a defamation case in 2018, based upon statements made in 2015 during a closed meeting to which plaintiff had not been invited. Plaintiff learned of the defamatory statements in 2017. Defendant filed a motion to dismiss based upon the statute of limitations, arguing that plaintiff should have known about the statements because, within days of the meeting in 2015, plaintiff's security ID was not working properly. The court noted, however, that plaintiff immediately

reached out about the ID issues and received assurances from management that his ID card should give him access. The court found that these assurances were “adequate to keep a reasonable person from investigating further.” *Id.* at 12 (internal citations omitted). Accordingly, the court found that it was reasonable that plaintiff did not further investigate the issue and therefore should not reasonably have known about the defamatory statements in 2015.

In applying this same standard in other cases, numerous courts have found that, under certain circumstances, a plaintiff’s failure to investigate a potential injury and cause of action does not toll the statute of limitations. *See Peal v. Lee*, at 208 (“[p]laintiff’s own negligence in failing to comprehensively investigate his [defamation] cause of action . . . was his own doing.”); *Hoffman v. Orthopedic Sys., Inc.*, 327 Ill. App. 3d 1004, 1010-11 (1st Dist. 2002 (“[p]laintiff’s failure to pursue a more thorough inquiry to find the cause of her injuries does not excuse her from failing to comply with the statute of limitations.”).

Here, plaintiff’s allegations in the amended complaint support a finding that plaintiff reasonably should have known about the publications to third parties at the time he received the messages. For example, Paragraph 32 states, “[l]eading up to the election and throughout the campaign cycle, these individuals (along with certain of their affiliates and affiliated entities) worked in concert to secure Sheehan’s victory in the senate race by any means necessary, including through deceitful and underhanded conduct.” In addition, numerous paragraphs state that the messages were sent to thousands of voters in plaintiff’s legislative district. Paragraph 44 states, “[u]pon information and belief, over 200,000 offensive text messages were sent by Defendants (or at their direction) over several months between 2022 and 2023 from spoofed phone numbers.” The entire tenor of the amended complaint is that defendants tried to undermine and discredit plaintiff with his voters, and the public at large, in relation to the November 2022 election. It is not reasonable that plaintiff, a seasoned incumbent political candidate, would receive False Images #1-4 and believe that such messages were being sent only to him in the days before and immediately after a highly contentious election. It is not reasonable that plaintiff told no one on his campaign staff or his legislative staff about these messages or asked anyone to investigate whether such messages had been disseminated to third parties. Based upon plaintiff’s allegations of just how widely the messages were disseminated, any investigation by plaintiff or his staff would have uncovered at least some of the thousands of people who received the text messages, particularly supporters of plaintiff. Based upon the circumstances of this case, plaintiff’s negligence in conducting any further

investigation into the defamatory messages he received in November 2022, does not toll the statute of limitations.

2. Intentional Infliction of Emotional Distress and Civil Conspiracy Related to Those Claims

The statute of limitations for intentional infliction of emotional distress is two years from the date of occurrence. *See Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278-279 (2003), *citing* 735 ILCS 5/13-202 (West 1998). The ultimate question, however, is when the statute of limitations began to run in the instant case. The briefs are very sparse regarding the limitations period for these counts. Defendants' arguments seem to mimic those made regarding the defamation counts. Defendants, however, fail to address the allegations regarding the threats to plaintiff in the Summer 2023, which do fall outside of the two-year statute of limitations. Plaintiff provides one sentence on his position that, "his newly pled claim of IIED based on the same conduct is also timely under the relation back doctrine, as well as the continuing tort theory." Response, p.4. Plaintiff provides no other explanation as to how that theory applies to the IIED counts. The "continuing tort" theory applies, "where a tort involves a continuing or repeated injury, the limitations period does not begin to run until the date of the last injury or the date the tortious acts cease." *Feltmeier*, at 279 (internal citations omitted).

Based upon the standard to be applied at this stage of the proceeding, the amended complaint does cure the defect of the statute of limitations regarding the IIED counts, including civil conspiracy related to the IIED. Plaintiff pled a continuing or repeated injury that lasted until at least the Summer of 2023, which is within the two-year statute of limitations.

B. Whether Other Parties Would Sustain Prejudice or Surprise

This factor does not need to be addressed regarding the defamation counts. *See Carlson v. Michael Best & Friedrich LLP*, 2021 IL App (1st) 191961 (1st Dist. 2021)(if plaintiff fails to establish the first factor, showing that the proposed amendment would cure the defective pleading, then the court need not proceed to consider the remaining three factors).

The most important factor is the prejudice to the opposing party, and substantial latitude to amend will be granted when there is no prejudice or surprise. *See Miller v. Pinnacle Door Co., Inc.*, 301 Ill. App. 3d 257, 261 (4th Dist. 1998). "Prejudice may be shown where delay before seeking

an amendment leaves a party unprepared to respond to a new theory at trial.” *Id.*

The IIED counts are based on exactly the same facts alleged in the original complaint, just under a different legal theory. There is nothing about this new legal theory that leaves defendants unprepared to respond to this theory at trial. *See Miller* at 261 (when parties know of the facts giving rise to the amended pleading, the court can reasonably allow the new theory).

C. Whether the Proposed Amendment is Timely

Again, because these counts do not allege new facts but simply pursue a different legal theory, the proposed amendment is timely.

D. Could Previous Opportunities to Amend Be Identified

Plaintiff did have previous opportunities to amend the complaint to include the IIED factors. However, this factor alone does not alter the balance of the other three factors favoring allowing the amended counts to proceed.

V. CONCLUSION

The Motion to Amend is granted as follows:

- (1) Plaintiff may amend Counts VII-IX (IIED Counts) as proposed;
and
- (2) Plaintiff may amend Count X (civil conspiracy) as it relates to the IIED allegations.

The Motion to Amend is denied as follows:

- (1) Plaintiff may not amend Counts I-VI (defamation *per se* and false light invasion of privacy) as the proposed amendments do not cure the applicable statute of limitations; and
- (2) Plaintiff may not amend Count X (civil conspiracy) as it relates to the defamation and false lights allegations.

The Motion to Dismiss is granted as to Counts I-VI and Count X as it relates to the defamation and false lights allegations. The motion to dismiss did not address the new IIED allegations as those were not in the original complaint.

The court will conduct an evidentiary hearing on the Motion for Sanctions.

Carrie E. Hamilton #2144

Judge Carrie E. Hamilton, No. 2144