

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DONALD L. HILTON JR §
VS. § NO: SA: 19-CV-00755-OLG
NICOLE PRAUSE and LIBEROS LLC §

MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

1. This is a defamation case filed by Dr. Donald Hilton against Dr. Nicole Prause and her company, LiberOS, LLC. The case has recently been removed to Federal Court. Dr. Hilton's live pleadings allege that Defendant Prause defamed him by falsely accusing him of sexual harassment in a written complaint Prause filed with the University of Texas Health Science Center at San Antonio, where Dr. Hilton serves as an adjunct professor and as the director of the spine fellowship at the Department of Neurosurgery at UT Health. Dr. Hilton alleges that the sexual harassment accusation is completely false, that he has never had any sexually inappropriate communications with Prause and that he and Prause have met exactly once – almost 10 years ago in a large, public conference room with Dr. Hilton's Plaintiff's wife standing right next to them. Dr. Hilton alleges that he and Prause both research and publish about the extent to which pornography can be harmful and addicting. (Hilton says that pornography can be addicting and Prause says that cannot). Dr. Hilton alleges that Prause made these false and malicious accusations against him because she disagrees with Dr. Hilton about whether compulsive sexual activity can be addicting and whether "sex addiction" should be classified as a disorder in the relevant medical literature.

2. Plaintiff's Original Petition, which was filed in state court, seeks a preliminary injunction and also alleges defamation causes of action, including defamation *per se*. Defendants

have answered the lawsuit and have removed the case to Federal Court. Because the parties are from different states, diversity jurisdiction exists.

3. After the state-court lawsuit was filed, information came to light demonstrating that, in addition to the false accusations made to UT Health, Defendant Prause also filed a similar complaint with the Texas Board of Medical Examiners, which complaint contained false and defamatory statements. Additionally, at approximately the same time, Defendant Prause made written accusations against Dr. Hilton with two different professional journals in which Dr. Hilton has published, incorrectly accusing Dr. Hilton of falsifying and exaggerating his credentials. While the journals did not identify the name of the person who made the false complaints, statements made by Prause herself reveal that she was the one who made the false accusations to the journals.

4. Because Plaintiff's Original Petition filed in state court did not allege these two new false complaints/accusations, Plaintiff wishes to file an Amended Complaint so that all the necessary allegations will be in his pleadings.

5. Additionally, Plaintiff's Original Petition filed in state court sought both a preliminary and a permanent injunction against Defendants to prevent the defamation from continuing. After consulting with defense counsel, Plaintiff takes the position that a permanent injunction is a proper request to the extent that it relates to past statements that the jury finds to be defamatory. However, it appears that Plaintiff's request for a preliminary injunction should be withdrawn because such would constitute a prior restraint on speech. Thus, Plaintiff's Proposed Amended Complaint cleans up the pleadings in this regard by removing the request for a preliminary injunction and by clarifying that the requested permanent injunction would only apply

to past statements that continue to be published in cyberspace or elsewhere and which the jury has determined to be defamatory.

6. In order to add the new allegations and to clarify/clean-up the pleadings relating to the requested injunction, Plaintiff files this Motion for Leave to Amend, and has attached the proposed Amended Complaint as Exhibit "A". This Motion is being filed before the Court's initial status conference and before any deadline to amend the Complaint has been set. Plaintiff submits that, in fairness, Defendants should know all of Plaintiff's allegations against them when they make their initial disclosures and when the parties conduct discovery, which is why Plaintiff is seeking to file an Amended Complaint at this time.

7. Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the Court should freely grant Plaintiff's Motion for Leave to Amend with a "bias in favor of granting leave to amend." *Smith v. EMC Corp.*, 393 F.3d 5690, 595 (5th Cir. 2004) (quoting *Lyn-Lea Travel Corp. v. Am. Airlines*, 283 F.3d 282, 286 (5th Cir. 2002) (quoting *Chitimacha Tribe of La. v. Harry L. Laws Co., Inc.*, 690 F.2d 1157, 1162 (5th Cir. 1982))). Thus, the Motion for Leave should be granted.

Respectfully submitted,

THE PACKARD LAW FIRM

By: _____


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Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE

On Friday, July 19, 2019, the undersigned called and left a detailed voicemail for Defense counsel (Claire Parsons) regarding the Motion for Leave to Amend and the reasons for such. When he did not hear back from her, he called again on Monday morning (July 22, 2019) and left another voicemail. He then followed up with an email summarizing the need to confer on the Motion for Leave to Amend and stated that if she did not respond, then the undersigned would mark that she was opposed to the Motion. Ms. Parsons responded later that day stating that she was in a mediation and that she could confer the following day, which would have been Tuesday, July 23, 2019. The undersigned then called at 9:00 am the next day and left another voicemail, which was not returned. The undersigned is not suggesting that Ms. Parsons was intentionally evasive or that she did anything improper. He is suggesting that a Motion for Leave to Amend this early in the case is a relatively simple matter and that he made a good faith effort to confer with defense counsel before filing this Motion.



Daniel W. Packard

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this instrument has been forwarded, in accordance with the Federal Rules of Civil Procedure on the 24th day of July, 2019 to:

Claire W. Parsons
Wilson Elser Moskowitz Edelman & Dicker LLP
909 Fannin Street, Suite 3300
Houston, Texas 77010

Via Email and CM/ECF



Daniel W. Packard