

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

FILED
03 AUG 26 AM 10:26
CLERK OF THE CIRCUIT
JPM/Kay
18th JUDICIAL CIRCUIT ILLINOIS

E. VAN CULLENS)

Plaintiff,)

v.)

JOHN DOE,)

Defendant.)

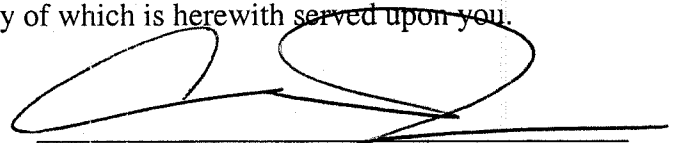
Case No. 2003 L 000111

Judge John T. Elsner

NOTICE OF FILING

**To: ATTORNEYS FOR PLAINTIFF
PLAINTIFF E. VAN CULLENS**
Mr. Edward K. Runyan
Mr. Joshua Rich
McDonnell Boehnen Hulbert & Berghoff
300 South Wacker Drive
Chicago, Illinois 60606-6709
312-913-0001 Telephone
312-913-0002 Facsimile

Please take notice that I have this 25th day of August 2003 sent via overnight delivery for filing with the Clerk of the 18th Judicial Circuit, DuPage County, Illinois, **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AT LAW**, a copy of which is herewith served upon you.



Charles Lee Mudd Jr.

CERTIFICATE OF SERVICE

I do hereby certify that a copy of this **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AT LAW** was sent by facsimile and First Class Mail, postage pre-paid, to the above-referenced persons at the above-referenced facsimile number and address, on this 25th day of July 2003.

Charles Lee Mudd Jr.
Law Offices of Charles Lee Mudd Jr.
4710 North Virginia Avenue
Chicago, Illinois 60625
Phone: 773-271-7600
Fax: 773-989-4441



Charles Lee Mudd Jr.

**IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

03 AUG 26 AM 10:26
FILED

CLERK OF THE CIRCUIT
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

E. VAN CULLENS)

Plaintiff,)

v.)

JOHN DOE,)

Defendant.)

Case No. 2003 L 000114

Judge John T. Elsner

MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT AT LAW

NOW COMES defendant, JOHN DOE, ("Defendant") pursuant to Sections 2-615 and 2-619 of the Illinois Code of Civil Procedure and moves this Court to dismiss Count One (False Light) and Count Two (Defamation *Per Se*) of Plaintiff's Amended Complaint, thereby dismissing the Amended Complaint in its entirety. In support of his motion, Defendant incorporates the arguments contained in his accompanying memorandum and generally states as follows:

Pursuant to Section 2-615, the Court should dismiss the Plaintiff's claims because they are facially legally insufficient. Particularly, the Statements made by Defendant do not refer to the Plaintiff, and Plaintiff's claims rely upon extrinsic evidence to "construct" a defamatory context, which the Defendant contends does not exist regardless. Thus, the Court should dismiss Plaintiff's legally insufficient claims. See Lykowski v. Bergman, 299 Ill.App.3d 157, 162, 700 N.E.2d 1064 (Ill. App. 1998).

Pursuant to Section 2-619, the Court should dismiss the Plaintiff's claims and his Amended Complaint because affirmative defenses exist that defeat the Plaintiff's claims. Particularly, the Statements of which the Plaintiff complains are substantially true. Also, the

Statements have no actionable content, particularly with respect to the Plaintiff, when considered in the context of the innocent construction rule. Finally, the Statements contain Defendant's subjective opinions that cannot be actionable. Therefore, the Court should dismiss the Plaintiff's claims for defamation *per se* and false light, thereby dismissing Plaintiff's Amended Complaint in its entirety. See 735 ILCS 5/2-619(a)(9).

CONCLUSION

For the foregoing reasons and those in the accompanying memorandum, Defendant John Doe respectfully moves this Court to dismiss Plaintiff's claims for defamation *per se* and false light invasion of privacy, thereby granting Defendant John Doe's Motion to Dismiss Plaintiff's Amended Complaint in its entirety. Should the Court dismiss Plaintiff's First Amended Complaint in its entirety, Defendant John Doe respectfully requests that the Court issue sanctions against Plaintiff for reasons that are more fully articulated in the accompanying memorandum.

Dated: Chicago, Illinois
August 25, 2003

Respectfully submitted,

THE DEFENDANT,
JOHN DOE

By 

His Attorney
Charles Lee Mudd Jr.
Law Offices of Charles Lee Mudd Jr.
4710 North Virginia Avenue
Chicago, Illinois 60625
(773) 271-7600
(773) 989-4441 (fax)
cmudd@muddlawoffices.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **DEFENDANT'S MOTION TO DISMISS** has been sent by facsimile and mailed, postage prepaid, by U.S. mail this 25th day of August 2003, to all counsel of record for Plaintiff, to wit:

ATTORNEYS FOR PLAINTIFF

E. VAN CULLENS

Mr. Edward K. Runyan

Mr. Joshua Rich

McDonnell Boehnen Hulbert & Berghoff

300 South Wacker Drive

Chicago, Illinois 60606-6709

312-913-0001 Telephone

312-913-0002 Facsimile



CHARLES LEE MUDD, JR.

Attorney for Defendant

Charles Lee Mudd, Jr.
LAW OFFICES OF CHARLES LEE MUDD, JR.
Attorney for Defendant
4710 North Virginia
Chicago, Illinois 60625
(773) 271-7600
DuPage County Attorney # 29382
ARDC: 6257957