

**IN THE U.S. DISTRICT FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MEANITH HUON,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO.: 1: 11-cv-3054
)	
ABOVETHELAW.COM, et. al.,)	
)	
Defendants)	

**MR. HUON’S SUMMARY OF ARGUMENTS OPPOSING THE JEZEBEL
DEFENDANTS’ MOTION TO DISMISS**

Plaintiff, Meanith Huon, summarizes his arguments as follows:

- I. The attorney litigation privilege does not cover the publication of defamatory matter that has no connection whatsoever with the litigation. Restatement (Second) of Torts § 586 comment. Kurczaba v. Pollock, 318 Ill.App.3d 686, (1st Dist. 2000).

- II. The Citizen Participation Act, 735 ILCS 110/1 *et seq.*, does not apply because Defendants are not procuring favorable government action. Chi v. Loyola University Medical Center, 787 F.Supp.2d 797, 809 (N.D.Ill.,2011).

- III. Section 805 ILCS 180/10-10(d) does not bar corporate veil piercing, such as *alter ego*, fraud or undercapitalization. Westmeyer v. Flynn,382 Ill.App.3d 952, 960 (1 Dist.,2008). Nick Denton is the *alter ego* of the Gawker Media. Fontana v. TLD Builders, Inc., 362 Ill.App.3d 491 (2nd Dist. 2005). Gabby Darbyshire participated in the act of re-publishing the defamatory content, after Mr. Huon advised Gawker Media of the offending content.

- IV. Gawker Media is an “information content provider” and, thus, is not immune from liability arising from publication of that content under Section 230 of the Communications Decency Act 47 U.S.C. § 230(c)(1) (the “CDA”). Roommates.com, 521 F.3d 1157, 1162 (9th Cir.2008); Ben Ezra, Weinstein, & Co., Inc. v. Am. Online Inc., 206 F.3d 980, 985 n. 4 (10th Cir.2000).

V. The Court can and should imply a private cause of action for cyberstalking. Sawyer Realty Group, Inc. v. Jarvis Corp., 89 Ill.2d 379, 1386 (Ill. 1982). More than a year after Mr. Huon was acquitted, Defendants published his outdated mugshot, called him a “Rapist”, and treated him as a sex offender who needed to be tracked and reported. Defendants and its Defendants’ attorneys confirmed that vigilantism was the motive of the Defendants by falsely stating that:

There is certainly a public interest in knowing about alleged sex crimes, and indeed, there has been a great deal of legislative effort and attention to tracking and reporting on sex offenders . . .

Huon has targeted for his harassing lawsuits are those who publish on the internet—precisely the place he has used as a stalking ground on at least two occasions, and the very tool he has used in the past for bullying . . . (Defendants’ Memorandum, pages 12, 16).

Defendants and its attorney falsely accused Mr. Huon of committing sex and stalking crimes against other women and published his Social Security Number, driver’s license number, address, date of birth online via Pacer. The problems of cyberstalking and cyberbullying by bloggers poses a serious threat to Americans for which there is no adequate remedy. Bloggers can cyberstalk victims online and continue the abuse under the guise of litigation—as the Jezebel Defendants have done in this case.

VI. Defendants disregard the Illinois Supreme Court’s holding that all of the defamatory statements must be viewed in their entire context. Tuite v. Corbitt, 224 Ill. 2d 490, 503 (Ill. 2007). Defendants violate the Illinois Supreme Court’s admonishment against straining to find an unnatural innocent meaning for a statement when an innocent construction is clearly more

reasonable. A chart lifts words and sentences out of their context.

VII. Reporting that plaintiff has been charged with a crime when there are no pending charges is defamatory *per se*. Gazette, Inc. v. Harris, 229 Va. 1, 325 S.E.2d 713 (Va.,1985); Cianci v. New Times Pub. Co., 639 F.2d 54 (C.A.N.Y., 1980). Defendants posted a picture of Mr. Huon's mugshot juxtaposed next to the headlines in large bold letters "**Acquitted Rapist Sues Blog For Calling Him Serial Rapist**" more than a year after Mr. Huon was acquitted and with no criminal charges pending against him. Defendants invented the fact that Mr. Huon, a rapist, was suing the ATL blog for implying that he was a "serial" rapist. This comment in conjunction with the headlines "**Acquitted Rapist Sues Blog For Calling Him Serial Rapist**" just reinforces the idea that Mr. Huon is a one-time sex offender. Defendants and its attorneys admit in its Memorandum that the import of Defendants' post was that Mr. Huon is a sex offender who needs to be tracked and reported to the world. In the body of the post, Defendants invented more facts, contending that Mr. Huon was acquitted because of the testimony of a bartender, when the strength of the evidence favoring Mr. Huon's case was overwhelming. Defendants omitted that complainant in the Madison County case told the witnesses on the scene a different story than she told the responding officers but that the witnesses on the scene were never interviewed by the investigating detectives. Defendants then promoted comments that defamed Mr. Huon and blocked his rebuttal. Defendants promoted comments that reinforced the defamatory statements, such as "So he is actually upset about the "Serial" rapist part, actually he is just a one time accused rapist".

VIII. The fair report privilege has two requirements: (1) the report must be of an official proceeding; and (2) the report must be complete and accurate or a fair abridgement of the official

proceeding. Solaia Technology, LLC v. Specialty Pub. Co., 221 Ill.2d 558, 588 (Ill. 2006).

Defendants are bloggers--not journalists--who posted a defamatory story about a blog, not about an official proceeding.

IX. The privilege does not apply to an inaccurate account of the proceedings; Myers v. The Telegraph, 332 Ill.App.3d 917, 922 (5th Dist. 2002); Lowe v. Rockford, 179 Ill.App.3d 592, 597 (2nd Dist. 1989). If the defamatory matter does not appear in the official record or proceedings, the privilege of fair and accurate reporting does not apply. Myers v. The Telegraph, 332 Ill.App.3d 917, 922 (5th Dist. 2002). The official proceeding does not call Mr. Huon a “Rapist” and has no reference to him being a “Rapist” who was upset for being called a “serial rapist”.

X. For the privilege to apply, a new media’s summary must be “fair”. A fair abridgment means that the report must convey to readers “a substantially correct account.” Restatement (Second) of Torts § 611, Comment f, at 300 (1977); Solaia Technology, LLC, 221 Ill.2d at 589-590. Defendants omitted that complainant in the Madison County case told the witnesses on the scene a different story than she told the responding officers but that the witnesses on the scene were never interviewed by the investigating detectives. Calling someone acquitted of sexual assault based on allegations of oral sex and digital penetration a “Rapist” is not a fair summary.

XI. The privilege does not permit the expansion of the official report by the addition of fabricated evidence designed to improve the credibility of the defamation. Snitowsky v. NBC Subsidiary (WMAQ-TV), Inc., 297 Ill.App.3d 314, 310 (1st Dist. 1988). Defendants invented that the strength of the bartender testimony was why Mr. Huon won the case. Defendants fabricated that Mr. Huon was a rapist or that that there were other victims. Mr. Huon never

conceded that he was a “rapist” or that he had been charged with “rape”.

XII. Both the Seventh Circuit and Illinois courts have held that it is question of fact for a jury as to whether the fair reporting privilege was abused. Brown & Williamson Tobacco Corp. v. Jacobson, 713 F.2d 262, 272 (7th Cir. 1983); Maple Lanes, Inc. v. News Media Corp., 322 Ill.App.3d 842 (2nd Dist. 2011).

XIII. Hyperlinking a defamatory content is a re-publication of the defamatory content. Pisani v. Staten Island University Hosp., 440 F.Supp.2d 168 (E.D.N.Y.,2006); In re Perry, 423 B.R. 215 (S.D.Tex.,2010). Defendants republished the ATL post by hyperlinking to it.

XIV. Accusations of criminal activity, even in the form of opinion, are not constitutionally protected. Cianci v. New Times Pub. Co., 639 F.2d 54, 63 (C.A.N.Y., 1980). No First Amendment protection enfolds false charges of criminal behavior. Gregory v. McDonnell Douglas Corp. (17 Cal.3d 596, 604, 131 Cal.Rptr. 641, 646, 552 P.2d 425 (1976)). Almost any charge of crime, unless made by an observer and sometimes even by him, is by necessity a statement of opinion. It would be destructive of the law of libel if a writer could escape liability for accusations of crime simply by using, explicitly or implicitly, the words “I think”. Cianci, 639 F.2d at 63-64.

XV. Defendants and its attorneys engaged in extreme and outrageous conduct: more than a year after a jury acquitted Mr. Huon, Defendants disseminates a story calling Mr. Huon a rapist. Defendants and its attorneys bully and treat Mr. Huon like he was a convicted sex offender who needed to be tracked and reported like he was a sex offender—going so far to disclose his Social Security Number, date of birth, Illinois driver’s license. Under the guise of litigation, Defendants continue the bullying by raising matters not connected with this litigation.

XVI. The Seventh Circuit reversed the trial court for applying the doctrine at the pleading stage and dismissing the defamation count. Desnick v. American Broadcasting Companies, Inc., 44 F.3d 1345, 1350 (7th Cir. 1995).

XVII. Mr. Huon alleges in his Second Amended Complaint that the John Does 1 to 100 conspired with the Defendants.

XVIII. Mr. Huon should be allowed to amend his complaint to plead special damages, including damages that Mr. Huon has sustained special damages by hiring a defense attorney to defend Stephanie. Mr. Huon should be allowed to amend his complaint to plead an additional cause of action and allege facts based on the defamatory statements made by Defendants and its attorneys regarding issues that are not connected to this lawsuit and the conduct of the Defendants and its attorneys.

Respectfully submitted,

/s/Mearith Huon

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CERTIFICATE OF SERVICE

Under penalties of law, I attest the following documents or items have been or are being electronically served on all counsel of record for all parties on January 30, 2011:

**MR. HUON'S SUMMARY OF ARGUMENTS OPPOSING THE JEZEBEL
DEFENDANTS' MOTION TO DISMISS**

/s/ Meanith Huon

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