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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GERALD PETERS GALLERY, INC., A  
New Mexico corporation, and GERALD  
PETERS,

Plaintiffs,

v.

PETER STREMMEL, STREMMEL  
GALLERIES, LTD., a Nevada corporation,  
MIKE OVERBY, and COEUR D'ALENE  
ART AUCTION OF NEVADA, L.L.C., a  
Nevada corporation,

Defendants.

Case No. 3:17-cv-00273-MMD-VPC

ORDER

**I. SUMMARY**

This is a defamation action involving an oil painting titled *The Sun and the Rain*. Before the Court are two motions: (1) Defendants Peter Stremmel, Stremmel Galleries, Ltd. ("Stremmel Galleries"), Mike Overby, and Coeur d'Alene Art Auction of Nevada, LLC's ("Coeur d'Alene Art Auction") (collectively, "Defendants") motion to dismiss (ECF No. 42) and (2) Defendants' motion for summary judgment (ECF No. 52). The Court has reviewed Plaintiffs Gerald Peters Gallery, Inc. ("Gerald Peters Gallery") and Gerald Peters's (collectively, "Plaintiffs") responses (ECF Nos. 46, 55) as well as Defendants' replies (ECF Nos. 49, 56). For the following reasons, the Court grants Defendants' motion for summary judgment and denies Defendants' motion to dismiss as moot.

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1 **II. RELEVANT BACKGROUND<sup>1</sup>**

2 *The Sun and the Rain* is an oil painting a little over thirty-six inches in height and  
3 forty-four inches in width and depicts an outfitter or cowboy in dark clothes and a wide-  
4 brimmed hat riding a gray horse through mountainous terrain. (ECF No. 52-3 at 3; ECF  
5 No. 52-4 at 2.) By the man's side is a bay pack horse with a white blaze and a white sock  
6 visible on its rear right leg—the left rear leg is hidden behind an overturned log over which  
7 the horse is stepping. (ECF No. 52-3 at 3.) The sky is mottled with gray, blue, and white  
8 clouds suggestive of a day that is both sunny and rainy. (*Id.*) The painting is signed and  
9 dated on the lower left: F. Tenney Johnson N.A./1937.<sup>2</sup> (ECF No. 52-4 at 2; *see generally*  
10 ECF No. 52-13.<sup>3</sup>)

11 Plaintiff Gerald Peters Gallery purchased *The Sun and the Rain* from the Kodner  
12 Gallery in St. Louis, Missouri, for \$265,000 on September 12, 2012. (ECF No. 52 at 2;  
13 ECF No. 52-2 at 8.) The Gerald Peters Gallery then offered to sell *The Sun and the Rain*  
14 to R.D. Hubbard—the principal of a museum in New Mexico called the Hubbard  
15 Museum—for \$900,000. (ECF No. 52 at 2 (citing ECF No. 52-3 at 2).) Mr. Hubbard  
16 purchased *The Sun and the Rain* on behalf of the Hubbard Museum for \$750,000. (ECF  
17 No. 52-4 at 2-4.) In the art trade agreement governing the purchase, the Gerald Peters  
18 Gallery warranted that *The Sun and the Rain* “is an authentic artwork by Frank Tenney  
19 Johnson.” (ECF No. 52 at 3 (quoting ECF No. 52-4 at 3).) The Gerald Peters Gallery and  
20 Mr. Hubbard agreed that Mr. Hubbard could return *The Sun and the Rain* to the gallery for  
21 a refund if the warranty failed. (*Id.* (citing ECF No. 52-4 at 4).) Mr. Hubbard hung *The Sun*  
22 *and the Rain* in his personal home at the Bighorn Golf Club in Palm Desert, California.  
23 (*Id.*)

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25 \_\_\_\_\_  
26 <sup>1</sup>The following facts are undisputed unless otherwise noted.

27 <sup>2</sup>“N.A.” signifies Frank Tenney Johnson’s membership in the National Academy of  
28 Design. (ECF No. 52-13 at 14.)

<sup>3</sup>The exhibits to Defendants’ motion for summary judgment are authenticated by  
the declaration of Austin K. Sweet, Esq. (ECF No. 52-1 at 2.)

1 Mr. Hubbard is the principal of the Bighorn Golf Club, whose clubhouse he decided  
2 to replace in 2015. (*Id.*) The clubhouse was decorated with a number of artworks that the  
3 Bighorn Golf Club decided to sell through the Coeur d'Alene Art Auction. (*Id.*) Mr.  
4 Hubbard's executive assistant, Tamara Groat, contacted Defendant Peter Stremmel about  
5 selling the clubhouse art and began coordinating the sale of several pieces that Mr.  
6 Stremmel perceived to be appropriate for the auction.<sup>4</sup> (*Id.*)

7 While Mr. Hubbard and his associates were working with Mr. Stremmel to sell the  
8 clubhouse art, an art dealer named David DeFrancisca visited Mr. Hubbard's home and  
9 happened to see *The Sun and the Rain*. (*Id.*) Mr. DeFrancisca suggested that Mr. Hubbard  
10 have the painting evaluated because Mr. DeFrancisca was "not sure that's a Frank Tenney  
11 Johnson painting."<sup>5</sup> (*Id.*) Based on DeFrancisca's assessment, Mr. Hubbard decided to  
12 "see about putting it in the art auction," choosing the Coeur d'Alene Art Auction because  
13 "that's the only place that I think has a decent market for higher-end Western art." (*Id.*)

14 Thereafter, Ms. Groat told Mr. Stremmel "there is a Frank T. Johnson that [Mr.  
15 Hubbard] owns, that he would like your opinion on" in email correspondence dated  
16 November 12, 2015, that otherwise related to the clubhouse art. (*Id.*; see also ECF No.  
17 52-7 at 4.) Mr. Stremmel expressed interest and asked Ms. Groat to have someone "just  
18 shoot it with their iPhone and send the image to" him. Ms. Groat responded with a photo  
19 of *The Sun and the Rain*. (ECF No. 52 at 3; ECF No. 52-7 at 3.)

20 The next day, Mr. Stremmel responded to Ms. Groat in relevant part:

21 Mike Overby [principal of the Coeur d'Alene Art Auction] and I have blown  
22 up this painting and examined it carefully, and have concluded that it is not  
23 in fact by Frank Tenney Johnson. We have sold over fifty of his paintings  
over the years, and hold every sales record for his works at auction, and are

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24 <sup>4</sup>Plaintiffs object to Defendants' assertion that "Tamara Groat contacted Peter  
25 Stremmel regarding selling this art" based on their reading of the words "this art" as  
including *The Sun and the Rain*. (See ECF No. 55 at 5.) However, the context of  
26 Defendants' assertion makes clear that the words "this art" refer solely to the clubhouse  
art, not to *The Sun and the Rain*. (See ECF No. 52 at 3.)

27 <sup>5</sup>Plaintiffs argue that the Court cannot consider Mr. DeFrancisca's statement  
28 because it is hearsay. (ECF No. 55 at 5.) Mr. DeFrancisca's statement is not hearsay  
because it is offered for its effect on the listener (Mr. Hubbard), not for the truth of the  
matter asserted therein (the inauthenticity of *The Sun and the Rain*).

1 absolutely certain about this determination. I am sorry to give [Mr. Hubbard]  
2 this news, but at least now he knows.

3 (ECF No. 38 at 2-3.) The remainder of the email related to the sale of the clubhouse art.  
4 (ECF No. 52 at 4.) Neither Mr. Stremmel nor Mr. Overby knew that the Gerald Peters  
5 Gallery had sold *The Sun and the Rain* to Mr. Hubbard. (ECF No. 55 at 5; ECF No. 56 at  
6 9.)

7 Ms. Groat emailed Mr. Stremmel again on November 16, 2015, with a higher quality  
8 image. (ECF No. 38 at 3-4; ECF No. 52 at 4.) Mr. Stremmel responded the next day:

9 I sent the image to Mike Overby, and we both agreed—we wouldn't touch it  
10 for our auction [referring to the Coeur d'Alene Art Auction]. Nothing about it  
11 says Frank Tenney Johnson, even the signature looks labored. In fact,  
12 minus the signature, if you asked us to identify the artist we honestly wouldn't  
13 have a clue. I hope it wasn't represented to Dee as an FTJ—and I really  
14 hope he didn't pay a lot for it. Let us know if we can help.

15 (ECF No. 38 at 4; ECF No. 52 at 4.)

16 Ms. Groat asked Mr. Stremmel to speak with Ed Burger—the president of R.D.  
17 Hubbard Enterprises, Inc.—about *The Sun and the Rain*. (ECF No. 52 at 4.) Mr. Stremmel  
18 agreed and spoke to Mr. Burger by phone. (*See id.* at 4-5.) During their phone call, Mr.  
19 Stremmel inquired about the circumstances surrounding *The Sun and the Rain*, and Mr.  
20 Burger informed Mr. Stremmel that Mr. Hubbard had purchased the painting from the  
21 Gerald Peters Gallery. (*Id.* at 5.) The men did not discuss the authenticity of *The Sun and*  
22 *the Rain*, and this was the first time that Mr. Stremmel was informed *The Sun and the Rain*  
23 involved Plaintiffs. (*Id.*) Mr. Stremmel followed up the phone call with an email dated  
24 November 21, 2015:

25 Since I have not seen this painting firsthand, I would like to modify my recent  
26 comments to Tami somewhat. Our position is that this painting would not be  
27 acceptable for the Coeur d'Alene Art Auction. Let's leave it at that.

28 (ECF No. 38 at 5; ECF No. 52 at 5.)

After receiving this email, Mr. Hubbard directed Mr. Burger to contact their attorney.  
(ECF No. 52 at 5.) Mr. Hubbard's attorney wrote a letter to the Gerald Peters Gallery dated  
December 3, 2015, explaining that the Hubbard Museum "has recently received

1 information from two credible appraisers that [*The Sun and the Rain*] is *not* an authentic  
2 artwork by Frank Tenney Johnson” and requesting a refund of the purchase price.<sup>6</sup> (ECF  
3 No. 52-10 at 2.) Eventually, the Gerald Peters Gallery and the Hubbard Museum reached  
4 the following agreement: the Gerald Peters Gallery would trade a painting titled *Navajos*  
5 by Edgar Alwin Payne for *The Sun and the Rain*. (ECF No. 52 at 6.) At the time, the Gerald  
6 Peters Gallery considered *The Sun and the Rain* to be worth \$150,000 more than *Navajos*.  
7 (*Id.*; *see also* ECF No. 52-2 at 21.)

8 Gerald Peters and the Gerald Peters Gallery then filed this lawsuit, pleading three  
9 claims against Defendants in their First Amended Complaint (“FAC”): (1) defamation; (2)  
10 business disparagement; and (3) deceptive trade practices. (ECF No. 38.) Defendants  
11 have filed a motion to dismiss all of Plaintiffs’ claims in addition to a motion for summary  
12 judgment on all of Plaintiffs’ claims. (ECF Nos. 42, 52.)

### 13 **III. LEGAL STANDARD**

14 Summary judgment is appropriate when the pleadings, the discovery and  
15 disclosure materials on file, and any affidavits “show that there is no genuine issue as to  
16 any material fact and that the moving party is entitled to a judgment as a matter of law.”  
17 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is genuine “if the evidence is  
18 such that a reasonable jury could return a verdict for the nonmoving party,” and a dispute  
19 is material if it could affect the outcome of the suit under the governing law. *Anderson v.*  
20 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

21 Summary judgment is not appropriate when “reasonable minds could differ as to  
22 the import of the evidence.” *See id.* at 250-51. “The amount of evidence necessary to raise  
23 a genuine issue of material fact is [that which is] enough ‘to require a jury or judge to  
24 resolve the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*, 718  
25 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S.  
26 253, 288-89 (1968)). Decisions granting or denying summary judgment are made in light  
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28 <sup>6</sup>The parties do not agree regarding the identities of the “two credible appraisers”  
Mr. Hubbard’s attorney referenced, but this dispute is immaterial. (ECF No. 55 at 6.)

1 of the purpose of summary judgment: “to avoid unnecessary trials when there is no dispute  
2 as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d  
3 1468, 1471 (9th Cir. 1994).

4 The moving party bears the burden of showing that there are no genuine issues of  
5 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the  
6 moving party satisfies the requirements of Rule 56, the burden shifts to the party resisting  
7 the motion to “set forth specific facts showing that there is a genuine issue for trial.”  
8 *Anderson*, 477 U.S. at 256. In evaluating a summary judgment motion, a court views all  
9 facts and draws all inferences in the light most favorable to the nonmoving party. *In re*  
10 *Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008). If a party relies on an affidavit or declaration to  
11 support or oppose a motion, it “must be made on personal knowledge, set out facts that  
12 would be admissible in evidence, and show that the affiant or declarant is competent to  
13 testify on the matters stated.” Fed. R. Civ. P. 56(c)(4). The nonmoving party “may not rely  
14 on denials in the pleadings but must produce specific evidence, through affidavits or  
15 admissible discovery material, to show that the dispute exists,” *Bhan v. NME Hosps., Inc.*,  
16 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show that there is  
17 some metaphysical doubt as to the material facts.” *Orr v. Bank of Am.*, 285 F.3d 764, 783  
18 (9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
19 586 (1986)). “The mere existence of a scintilla of evidence in support of the plaintiff’s  
20 position will be insufficient; there must be evidence on which the jury could reasonably  
21 find for the plaintiff.” *Anderson*, 477 U.S. at 252.

#### 22 **IV. DISCUSSION**

23 Defendants move for summary judgment on all three claims in Plaintiffs’ first  
24 amended complaint (“FAC”): defamation, business disparagement, and deceptive trade  
25 practices. (See ECF Nos. 38, 52.) The Court will grant summary judgment in favor of  
26 Defendants on all three claims.

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1           **A.     Defamation (Count One)**

2           “An action for defamation requires the plaintiff to prove four elements: ‘(1) a false  
3 and defamatory statement; (2) an unprivileged publication to a third person; (3) fault,  
4 amounting to at least negligence; and (4) actual or presumed damages.’” *Clark Cty. Sch.*  
5 *Dist. v. Virtual Educ. Software, Inc.*, 213 P.3d 496, 503 (Nev. 2009) (quoting *Pope v. Motel*  
6 *6*, 114 P.3d 277, 282 (Nev. 2005)). Defendants argue that Plaintiffs cannot prove the first,  
7 second, and fourth elements. (ECF No. 52 at 7.) The Court will consider only the first  
8 element as it is dispositive.

9           Plaintiffs’ FAC identifies three allegedly defamatory statements made by Stremmel:

10          Statement #1: “Mike Overby and I have blown up this painting and examined  
11 it carefully, and have concluded that it is not in fact by Frank Tenney  
12 Johnson. We have sold over fifty of his paintings over the years, and hold  
13 every sales record for his works at auction, and are absolutely certain about  
14 this determination. I am sorry to give Dee [referring to Mr. Hubbard] this  
15 news, but at least now he knows.”

16          Statement #2: “I sent the image to Mike Overby, and we both agreed—we  
17 wouldn’t touch it for our auction [referring to the Coeur d’Alene Auction].  
18 Nothing about it says Frank Tenney Johnson, even the signature looks  
19 labored. In fact, minus the signature, if you asked us to identify the artist we  
20 honestly wouldn’t have a clue. I hope it wasn’t represented to Dee as an  
21 FTJ—and I really hope he didn’t pay a lot for it. Let us know if we can help.”

22          Statement #3: “Since I have not seen this painting firsthand, I would like to  
23 modify my recent comments to Tami somewhat. Our position is that this  
24 painting would not be acceptable for the Coeur d’Alene Art Auction. Let’s  
25 leave it at that.”

26           (ECF No. 38 at 3-5 (alterations in original).) In Plaintiffs’ view, these statements are  
27 defamatory in two ways. First, the statements amount to a factual assertion that *The Sun*  
28 *and the Rain* is a fake, implying that Plaintiffs misrepresented the painting’s authenticity.  
(ECF No. 55 at 3, 16.) Second, Mr. Stremmel’s statement that he hoped *The Sun and the*  
*Rain* was not represented to Mr. Hubbard as a Frank Tenney Johnson painting and that  
Mr. Hubbard “didn’t pay a lot” for it “cast aspersions on the seller.” (*Id.* at 16.)

          Defendants argue, *inter alia*, that none of these statements are actionable because  
Plaintiffs were not the subjects of the statements. (ECF No. 52 at 8.) Plaintiffs argue that  
it is irrelevant whether Gerald Peters and his gallery were the express subjects of the

1 statements because the recipients of the communications—Mr. Hubbard and his two  
2 associates—understood Mr. Stremmel’s statements as referring to Plaintiffs. (ECF No. 55  
3 at 16-18.)

4 The Court thus considers whether Mr. Stremmel’s statements were made  
5 concerning Plaintiffs. First, Plaintiffs are correct that it is immaterial whether the  
6 communication expressly identifies Plaintiffs. See Restatement (Second) of Torts § 564  
7 cmt. b (“It is not necessary that the plaintiff be designated by name [if] there is such a  
8 description of or reference to him that those who hear or read reasonably understand the  
9 plaintiff to be the person intended.”). It is enough that Mr. Hubbard or his associates  
10 understood Mr. Stremmel to have intended to refer to Plaintiffs, *id.* cmt. a, as long as such  
11 an understanding actually took place and was “reasonable in the light of all the  
12 circumstances.” *Id.* cmt. b; see also *SDV/ACCI, Inc. v. AT & T Corp.*, 522 F.3d 955, 960  
13 (9th Cir. 2008) (“[A] defamatory statement that is ambiguous as to its target not only must  
14 be capable of being understood to refer to the plaintiff, but also must be shown actually to  
15 have been so understood by a third party.”).

16 Even viewing the facts in the light most favorable to Plaintiffs, it would not have  
17 been reasonable for Mr. Hubbard or his associates to understand Mr. Stremmel as  
18 intending to refer to Plaintiffs in any of these statements. When Mr. Stremmel made the  
19 first two statements, he had no knowledge that Plaintiffs were connected to the painting.<sup>7</sup>  
20 Moreover, Mr. Hubbard and his associates knew that Mr. Stremmel lacked any knowledge  
21 of Plaintiffs’ involvement because Mr. Hubbard and his associates had kept that  
22 information from Mr. Stremmel. It would have been unreasonable as a matter of law for  
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24 <sup>7</sup>Mr. Hubbard and his associates all testified in their depositions that they had not  
25 told Mr. Stremmel that Plaintiffs were involved with *The Sun and the Rain*. (ECF No. 52-5  
26 at 27, 52 (Mr. Hubbard’s deposition testimony that he and his associates had not disclosed  
27 to Mr. Stremmel that the painting involved Mr. Peters and that Mr. Stremmel did not know  
28 who sold the painting to Mr. Hubbard); ECF No. 52-6 at 51-52 (Mr. Burger’s deposition  
testimony that Mr. Stremmel “wasn’t clear whether [the painting] was one Mr. Hubbard  
was thinking of buying or thinking of selling. And we didn’t—I don’t believe we had ever  
told him either way.”); ECF No. 52-12 at 28 (Ms. Groat’s deposition testimony that she had  
not disclosed to Mr. Stremmel that the painting was acquired from Plaintiffs).)



1 Mr. Hubbard or his associates to infer that Mr. Stremmel intended to disparage Plaintiffs  
2 when Mr. Hubbard and his associates controlled all the information regarding Plaintiffs'  
3 involvement with the painting and had not disclosed any of it to Mr. Stremmel. While Mr.  
4 Stremmel was aware of Plaintiffs' involvement when he made the third statement, that  
5 statement is not reasonably understood to refer to Plaintiffs either on its face or in the light  
6 of all the circumstances. The statement does not contain any obviously defamatory  
7 statement; and, given that Mr. Stremmel was completely ignorant of Plaintiffs' involvement  
8 and scaled back his statements once he learned of it, any understanding of Mr. Stremmel's  
9 third statement as intended to refer to Plaintiffs would be unreasonable as a matter of law,  
10 even viewing the facts in the light most favorable to Plaintiffs.

11 Plaintiffs have focused particularly on the following portion of Mr. Stremmel's  
12 second statement: "I hope it wasn't represented to Dee as an FTJ—and I really hope he  
13 didn't pay a lot for it." (See ECF No. 55 at 16, 21-22.) As discussed *supra*, this statement  
14 cannot be reasonably understood to refer to Plaintiffs under the circumstances. Moreover,  
15 even if this statement were reasonably understood as intended to refer to Plaintiffs, it does  
16 not imply an assertion of objective fact. See *Partington v. Bugliosi*, 56 F.3d 1147, 1153  
17 (9th Cir. 1995) ("[W]e examine the work as a whole, the specific context in which the  
18 statements were made, and the statements themselves to determine whether a  
19 reasonable factfinder could conclude that the statements imply a false assertion of  
20 objective fact and therefore fall outside of the protection of the First Amendment.") Even  
21 construing the statement in the light most favorable to Plaintiffs, Mr. Stremmel's  
22 statement—when evaluated in context—constitutes a social nicety and an expression of  
23 hope regarding the circumstances that led to Mr. Hubbard's inquiry to Mr. Stremmel.  
24 Particularly given Mr. Stremmel's understandable ignorance about the circumstances  
25 surrounding the painting—he had not been told that the Gerald Peters Gallery had sold  
26 *The Sun and the Rain* to Mr. Hubbard or was connected to the painting in any manner—  
27 no reasonable jury could conclude that Mr. Stremmel's statement implied any objective  
28 fact, particularly about Plaintiffs.

1 Plaintiffs' citation to non-binding precedent, *Taj Mahal Travel, Inc. v. Delta Airlines,*  
2 *Inc.*, 164 F.3d 186 (3d Cir. 1998), is unpersuasive because the facts are readily  
3 distinguishable. In *Taj Mahal*, an airline provided letters to some clients of a travel  
4 agency—Taj Mahal Travel—stating “that ‘the ticket presented has been reported as  
5 stolen,’ ‘it is unfortunate that you have purchased one of these tickets,’ and ‘Delta has not  
6 yet received the money you paid.’” *Id.* at 189. Taj Mahal Travel sued Delta for defamation.  
7 *Id.* at 188. The court found that a reasonable reader could conclude that the letter was  
8 intended to refer to Taj Mahal Travel because the reader’s only contact with a travel  
9 agency to purchase the ticket would have been with Taj Mahal Travel. *Id.* at 190. However,  
10 the airline in *Taj Mahal* knew the identity of the travel agency that had stolen its tickets.  
11 Here, Mr. Stremmel did not know that Plaintiffs were involved with *The Sun and the Rain*,  
12 at least when he made the first two statements. This factual difference is critical because,  
13 under the circumstances, it would have been unreasonable for Mr. Hubbard or his  
14 associates to understand Mr. Stremmel to have intended to refer to Plaintiffs, as explained  
15 *supra*. Even viewing the facts in the light most favorable to Plaintiffs, it would not have  
16 been reasonable for Mr. Hubbard and his associates to understand Mr. Stremmel as  
17 intending to refer to Gerald Peters or his gallery when Mr. Hubbard and his associates had  
18 kept Mr. Stremmel entirely in the dark about the circumstances surrounding the painting.

19 Accordingly, the Court will grant summary judgment in favor of Defendants on  
20 Plaintiffs’ claim for defamation because Mr. Stremmel’s statements could not reasonably  
21 have been understood as intended to refer to Plaintiffs. Moreover, Mr. Stremmel’s  
22 expression of hope regarding the circumstances of the painting and Mr. Hubbard’s inquiry  
23 does not imply an assertion of objective fact under the circumstances and is not actionable  
24 for that reason.

25 **B. Business Disparagement (Count Two)**

26 The business disparagement claim shares some common elements with the  
27 defamation claim. “To succeed in a claim for business disparagement, the plaintiff must  
28 prove: (1) a false and disparaging statement, (2) the unprivileged publication by the

1 defendant, (3) malice, and (4) special damages.” *Clark Cty. Sch. Dist.*, 213 P.3d at 504  
2 (citation omitted). The parties rest upon the arguments they made with regard to the claim  
3 of defamation. (See ECF No. 52 at 14-15; ECF No. 55 at 25.) Defendants are similarly  
4 entitled to summary judgment on Plaintiffs’ claim for business disparagement because Mr.  
5 Stremmel’s statements could not reasonably have been understood as intended to refer  
6 to Plaintiffs.

7 **C. Deceptive Trade Practices (Count Three)**

8 Plaintiffs claim that Defendants disparaged Plaintiffs’ goods (specifically, *The Sun*  
9 *and the Rain*) and Plaintiffs’ business by representing that *The Sun and the Rain* was a  
10 fake, thereby violating the Nevada Deceptive Trade Practices Act (“DTPA”), NRS §  
11 598.0915(8). (ECF No. 38 at 10.) The parties rest upon the arguments they made with  
12 regard to the claim of defamation. (See ECF No. 52 at 15; ECF No. 55 at 25-26.)

13 “To state a claim under Nevada’s [DTPA], a plaintiff must allege (1) a deceptive  
14 trade practice or other unlawful or prohibited conduct as defined by statute and (2)  
15 damages resulting from the alleged deceptive trade practice. Under NRS § 598.0915(8),  
16 a person or entity engages in a ‘deceptive trade practice’ if, in the course of his or her  
17 occupation, he or she disparages the goods, services or business of another person by  
18 making false or misleading representations of fact.” *Rimini St., Inc. v. Oracle Int’l Corp.*,  
19 No. 2:14-CV-1699-LRH-CWH, 2017 WL 5158658, at \*9 (D. Nev. Nov. 7, 2017) (citing  
20 *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 658 (D. Nev. 2009)).

21 The violation of NRS § 598.0915(8) is premised on Defendants having committed  
22 defamation or business disparagement. Because the Court will grant summary judgment  
23 in favor of Defendants on those tort claims, this alleged violation is unsupported. See  
24 *Allstate Ins. Co. v. Shah*, No. 2:15-CV-01786-APG-CWH, 2017 WL 1228406, at \*7 (D.  
25 Nev. Mar. 31, 2017). Moreover, under the circumstances here, where Mr. Hubbard and  
26 his associates solicited Mr. Stremmel’s opinion about the painting and kept him in the dark  
27 about Plaintiffs’ involvement, a finding that Mr. Stremmel engaged in deceptive trade  
28 practices would border on absurdity.

1 **V. CONCLUSION**


2 The Court notes that the parties made several arguments and cited to several cases  
3 not discussed above. The Court has reviewed these arguments and cases and determines  
4 that they do not warrant discussion as they do not affect the outcome of the motions before  
5 the Court.

6 It is therefore ordered that Defendants' motion for summary judgment (ECF No. 52)  
7 is granted.

8 It is further ordered that Defendants' motion to dismiss (ECF No. 42) is denied as  
9 moot.

10 The Clerk of the Court is instructed to enter judgment accordingly and close this  
11 case.

12 DATED THIS 9<sup>th</sup> day of August 2018.

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15 MIRANDA M. DU  
16 UNITED STATES DISTRICT JUDGE  
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