

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

IMRAN AWAN, *et al.*,

Plaintiffs,

v.

THE DAILY CALLER, INC., *et al.*,

Defendants.

Civil Action Number: 2020 CA 652 B

Judge Fern Flanagan Saddler

ORDER GRANTING IN PART DEFENDANTS' MOTIONS TO DISMISS

This matter is before the Court on Defendants The Daily Caller, Inc. and The Daily Caller News Foundation's Motion to Partially Dismiss Plaintiffs' Amended Complaint, filed on March 16, 2020. In the motion, Defendants request that the Court dismiss Plaintiffs Imran Awan, Jamal Awan, Abid Awan, Tina Alvi, and Rao Abbas' First Amended Complaint, pursuant to District of Columbia Superior Court Rule of Civil Procedure 12(b)(6). Further, this Court notes that the following Motions were subsequently filed in this matter:

1. Defendant Luke Rosiak's Motion to Dismiss Plaintiffs' Amended Complaint, filed on June 15, 2020;
2. Defendant Luke Rosiak's Special Motion to Dismiss Pursuant to the District of Columbia Anti-Strategic Lawsuits Against Public Participation Act (hereinafter "Anti-SLAPP Act"), filed on June 15, 2020; and

3. Defendant Salem Media Group, Inc.'s Special Motion to Dismiss Plaintiffs' Amended Complaint Under the District of Columbia Anti-SLAPP Act of 2010, and Superior Court Civil Rule 12(b)(6), filed on June 15, 2020.

Upon consideration of the motions, the entire record herein, and for good cause shown, this Court finds that because all of Plaintiffs' defamation claims against Defendants The Daily Caller and The Daily Caller News Foundation arise out of articles and reports published between February 2017 and January 27, 2019, Defendant The Daily Caller and The Daily Caller News Foundation's Motion to Dismiss is granted, and Plaintiffs' Complaint is dismissed as to The Daily Caller and The Daily Caller News Foundation as time-barred under D.C. Code §12-301(4). Additionally, this Court finds that there are remaining timely claims against Defendant Luke Rosiak and Defendant Salem Media Group, Inc. Thus, Defendants' Motions to Dismiss are granted in part, as to the untimely claims.

BACKGROUND AND PENDING MOTIONS

On January 28, 2020, Plaintiffs Imran Awan, Jamal Awan, Abid Awan, Tina Alvi, and Rao Abbas filed a Complaint against Defendants The Daily Caller, Inc.; The Daily Caller News Foundation; Luke Rosiak; Salem Media Group, Inc.; and Regnery Publishing Inc. for Defamation, Intentional Infliction of Emotional Distress, and Unjust Enrichment. On February 11, 2020, Plaintiffs filed an Amended Complaint alleging the same counts listed above. Plaintiffs alleged that they were employed at the United States House of Representatives as Information Technology

(hereinafter “IT”) Specialists, working on the technology needs of dozens of members of the United States Congress and their staffs. In February of 2017, Plaintiffs allege that Luke Rosiak, an investigative reporter for The Daily Caller, began publishing claims that Plaintiffs were guilty of hacking, espionage, extortion, bribery, theft, blackmail, money laundering, and torture, among other crimes. Plaintiffs allege that additional news outlets began reporting on this “national security scandal,” which Plaintiffs allege led to their jobs being terminated. Plaintiffs additionally allege that this led to them becoming targets of a federal criminal inquiry. Plaintiffs allege that an investigation by the Federal Bureau of Investigation (hereinafter “FBI”) found The Daily Caller’s allegations to be baseless. Further, Plaintiffs allege that in August 2018, Judge Tanya S. Chutkan of the United States District Court for the District of Columbia stated that the accusations were “unfounded” and were “investigated and found to be untrue” by federal authorities. Plaintiffs allege that even after the accusations were found to be baseless, Defendants Luke Rosiak and the Daily Caller continued making accusations. On January 29, 2019, Defendant Salem Media Group, Inc. published a book by Defendant Luke Rosiak entitled *Obstruction of Justice: How the Deep State Risked National Security to Protect the Democrats*. Plaintiffs allege that the book “doubles down” on Defendant Luke Rosiak’s alleged defamatory claims about Plaintiffs.

Plaintiffs contend that the alleged defamatory media campaign against them has led to financial hardship, emotional distress, fear, and harassment.

I. Defendants The Daily Caller, Inc. and The Daily Caller News Foundation's Motion to Partially Dismiss Plaintiffs' Amended Complaint

Defendants The Daily Caller, Inc. and The Daily Caller News Foundation's Motion to Partially Dismiss Plaintiffs' Amended Complaint argues that Plaintiffs' defamation claim in Plaintiffs' First Amended Complaint is time-barred under District of Columbia Code §12-301(4). Defendants argue that since the original Complaint was filed on January 28, 2020, any defamation claims based on actions that occurred before January 28, 2019 are time-barred under the statute. Additionally, Defendants contend that the other counts claimed in Plaintiffs' First Amended Complaint of Intentional Infliction of Emotional Distress and Unjust Enrichment are intertwined with the defamation claim, making those claims time-barred under the same limitations period. Defendants further contend that the Intentional Infliction of Emotional Distress claim should be dismissed as it allegedly arises from constitutionally protected statements on matters of public concern. Defendants argue that Plaintiffs failed to allege the outrageous conduct and severe emotional distress necessary to support a claim of Intentional Infliction of Emotional Distress. Lastly, Defendants assert that Plaintiffs have not provided sufficient facts

to establish that they have a right to recover under the equitable theory of unjust enrichment.

II. Defendant Luke Rosiak's Motion to Dismiss Plaintiffs' Amended Complaint

Defendant Luke Rosiak's Motion to Dismiss Plaintiff's First Amended Complaint includes similar arguments regarding the claims being time-barred under the statute of limitations. Additionally, Defendant Rosiak asserts that Plaintiffs have failed to state a claim for Defamation, Intentional Infliction of Emotional Distress, and Unjust Enrichment under District of Columbia Superior Court Rule of Civil Procedure 12(b)(6). Defendant further asserts that the Plaintiffs have failed to plead falsity, or allege that Defendant's statements are materially false, and that Plaintiffs therefore cannot demonstrate the requisite standard of fault necessary in defamation claims. Further, Defendant contends that his statements are not actionable under the First Amendment of the United States Constitution.

III. Defendant Luke Rosiak's Special Motion to Dismiss Pursuant to the District of Columbia Anti-Strategic Lawsuits Against Public Participation Act (hereinafter "Anti-SLAPP Act")

Defendant Luke Rosiak additionally filed a Special Motion to Dismiss Pursuant to the District of Columbia Anti-SLAPP Act arguing that the claims at issue arise from advocacy on issues of public interest. Defendant further contends that Plaintiffs cannot show that their claims are likely to succeed on the merits, as is required under the Anti-SLAPP Act. Defendant reiterates his arguments in this

Special Motion that the claims are barred by the statute of limitations and that Plaintiffs have failed to state a claim for defamation, Intentional Infliction of Emotional Distress, and Unjust Enrichment. Further, Defendant reiterates his arguments that Plaintiffs have failed to plead the falsity of Defendant's statements, and that Plaintiffs cannot demonstrate the requisite standard of fault.

IV. Defendant Salem Media Group, Inc.'s Special Motion to Dismiss Plaintiffs' Amended Complaint Under the District of Columbia Anti-SLAPP Act of 2010 and Superior Court Civil Rule 12(b)(6)

Defendant Salem Media Group, Inc.'s Special Motion to Dismiss similarly asserts that Plaintiffs' claims should be dismissed pursuant to the District of Columbia Anti-SLAPP Act. Defendant alleges that Plaintiffs cannot show that their defamation claims are likely to succeed on the merits. Additionally, Defendant argues that Plaintiffs cannot state a claim for Intentional Infliction of Emotional Distress and that Plaintiffs have failed to plead the essential elements of such a claim. Defendant further argues that Plaintiffs' Unjust Enrichment claim should be dismissed alleging that it is not a viable legal theory for liability or damages in a defamation action.

LEGAL STANDARD

Under District of Columbia Superior Court Rule of Civil Procedure 12(b)(6), a complaint may be dismissed if it fails to satisfy the pleading standard outlined in Rule 8(a). Specifically, a complaint should be dismissed if it fails to contain a "short

and plain statement of the claim showing that the pleader is entitled to relief.” See *Potomac Development Corporation v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011).

While Rule 8(a) does not require “detailed factual allegations,” it does require more than a mere “unadorned the-defendant-unlawfully-harmed-me accusation.” See *id.* (citations omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Essentially, “a complaint must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist.” *Williams v. District of Columbia*, 9 A.3d 484, 488 (D.C. 2010). When evaluating a motion to dismiss, the Court must construe the pleadings in the light most favorable to the party not seeking dismissal. *Atraqchi v. GUMC Unified Billing Services*, 788 A.2d 559, 562 (D.C. 2002).

District of Columbia Code §12-301(4) provides a one-year limitation period in which a plaintiff may bring a claim of defamation. Where a plaintiff asserts other claims “intertwined with a defamation claim,” those claims share the same statute of limitations period. *Mullin v. Washington Free Weekly, Inc.*, 785 A.2d 296, 298 (D.C. 2001) (citing *Saunders v. Nemati*, 580 A.2d 660, 662 (D.C. 1990)). When torts are so intertwined with other tort claims, the claims are subject to the same statute of limitations period. *Saunders v. Nemati*, 580 A.2d 660, 662 (D.C. 1990)(citing *Thomas v. News World Communications*, 681 F.Supp. 55 (D.C.C.

1988) (stating that “the one-year period has also been imposed to govern actions for torts, like the intentional infliction of emotional distress, that are dependent on ‘the same personal interests infringed by the intentional torts’ expressly subject to §12-301(4).”). As is the case in the instant matter, the tort in question in *Thomas* was that of defamation.

THE COURT’S RULING

I. Statute of Limitations

This Court finds that Plaintiffs’ claims of defamation against Defendants based on articles and reports published beginning February 2017 until January 27, 2019 are time-barred.

Under D.C. Code §12-301(4) the statute of limitations for defamation claims in the District of Columbia is a one-year limitations period. Because the initial Complaint in this matter was filed on January 28, 2020, any defamation claims arising out of events that occurred before January 28, 2019 are time-barred. Thus, Plaintiffs’ defamation claims arising out of articles and reports published between February 2017 and January 27, 2019. are time-barred.

Further this Court finds that the Intentional Infliction of Emotional Distress and Unjust Enrichment claims arising out of the time-barred defamation claims are intertwined. Specifically, Plaintiffs claim that they have suffered severe emotional distress and that Defendants have been unjustly enriched by receiving advertising

revenue and profits attributable to the articles released about Plaintiffs. These claims arise out of the February 2017 to January 27, 2019 defamatory claims alleged by Plaintiffs. Thus, the Intentional Infliction of Emotional Distress and Unjust Enrichment claims alleged to have occurred between February 2017 and January 27, 2019 are subject to the same one-year statute of limitations period. Because those claims arise out of events occurring in between those dates, they are time-barred.

However, Plaintiffs' claims of defamation which arise out of actions occurring between January 28, 2019 and January 28, 2020 are not time-barred, and this Court will analyze them further. The claims in question include:

- Defendant Luke Rosiak's radio interview appearance on *The Sean Hannity Show*, which occurred on January 28, 2019.
- Defendant Luke Rosiak's book *Obstruction of Justice: How the Deep State Risked National Security to Protect the Democrats* (published by Defendant Salem Media Group, Inc.) was released on January 29, 2019.
- Defendant Luke Rosiak's appearance on Fox Business Networks "*Lou Dobbs Tonight*" to discuss his book, which occurred on or about January 31, 2019.
- Defendant Luke Rosiak's video interview on The Daily Caller's Podcast and YouTube channel discussing the book, which occurred on or about February 1, 2019.
- Audiobook edition of Defendant Luke Rosiak's book *Obstruction of Justice: How the Deep State Risked National Security to Protect the Democrats*, which was released on the app Audible, released in March 2019.
- Defendant Luke Rosiak's interview in *The Epoch Times*, which was released on or about July 17, 2019.
- Defendant Luke Rosiak's appearance on Fox New's "*Fox and Friends First*," which occurred on or about December 13, 2019.

Because all of Plaintiffs' defamation claims against Defendants The Daily Caller and The Daily Caller News Foundation arise out of articles and reports published between February 2017 and January 27, 2019, Defendant The Daily Caller and The Daily Caller News Foundation's Motion to Dismiss is granted, and Plaintiffs' Complaint is dismissed as to The Daily Caller and The Daily Caller News Foundation.

However, this Court finds that there are remaining timely claims against Defendant Luke Rosiak and Defendant Salem Media Group, Inc. Thus, Defendants' Motions to Dismiss are granted in part only as to the untimely claims.

II. Motion to Dismiss for Failure to State a Claim under Rule 12(b)(6)

In the instant matter, the Court finds that the allegations contained in Plaintiffs Imran Awan, Jamal Awan, Abid Awan, Tina Alvi, and Rao Abbas' First Amended Complaint, those of which are not time-barred under the statute of limitations, are sufficient to satisfy the pleading standard of District of Columbia Superior Court Rule of Civil Procedure 12(b)(6) and 8(a). Specifically, the Court finds that Plaintiffs' First Amended Complaint sets forth sufficient factual allegations that, if found to be true, would entitle Plaintiffs to relief. Plaintiffs have set forth sufficient information to outline the elements of Defamation, Intentional Infliction of Emotional Distress, and Unjust Enrichment, as well as inferences that indicate that these elements exist. At this stage, the Court finds that this matter

should proceed, and that Defendants will have an opportunity to challenge the sufficiency of Plaintiff's claims through an appropriate motion once discovery is completed.

However, this Court has decided to schedule an Oral Argument as to Defendants Luke Rosiak and Defendant Salem Media Group, Inc.'s Special Motions to Dismiss under the District of Columbia Anti-SLAPP Act, as to the remaining timely claims.

Accordingly, upon consideration of and the entire record herein, it is this 2nd day of July 2021, hereby

ORDERED that The Daily Caller, Inc. and The Daily Caller News Foundation's Motion to Partially Dismiss Plaintiffs' Amended Complaint is **GRANTED**. It is

FURTHER ORDERED that Plaintiffs' claims against Defendants The Daily Caller, Inc. and The Daily Caller News Foundation arising out of events that occurred between February 2017 and January 27, 2019 are **DISMISSED** as time-barred under D.C. Code §12-301(4). It is

FURTHER ORDERED that Defendant Luke Rosiak's Motion to Dismiss Plaintiffs' Amended Complaint is **GRANTED in part**. It is

FURTHER ORDERED that Plaintiffs' claims as to Defendant Luke Rosiak arising out of events that occurred between February 2017 and January 27, 2019 are **DISMISSED** as time-barred under D.C. Code §12-301(4). It is

FURTHER ORDERED that Plaintiffs Imran Awan, Jamal Awan, Abid Awan, Tina Alvi, and Rao Abbas' First Amended Complaint be **DISMISSED** for failure to state a claim upon which relief can be granted only as to the untimely claims. It is

FURTHER ORDERED that all parties must appear for a remote Motion Hearing on Tuesday, September 7, 2021 at 2:30 p.m. on the WebEx Platform, pursuant to the instructions attached to this Order.



FERN FLANAGAN SADDLER
ASSOCIATE JUDGE

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Instructions for Hearings by Telephone

Before Judge Fern Flanagan Saddler in Courtroom 100

Audio and video conferences will be held through the WebEx platform. The Order setting the hearing provided the date and time that the matter will be heard. For initial hearings and the discovery motions calendar, the Court is setting aside **half an hour per case**. If the parties believe that their matter requires additional time, then the parties must notify Chambers immediately to ensure that the parties' request can be accommodated. For all other matters, namely, motion hearings, the Court will set aside sufficient time to allow the parties to fully present their arguments. The parties will be allowed a **fifteen (15) minute grace period** to appear telephonically from the scheduled time of the hearing. If a party fails to appear after this period has elapsed, then the Court will note on the record that the party failed to appear.

All hearings will be in a virtual courtroom, which the parties and the public may access by: (1) calling **1 (844) 992-4726** or **(202) 860-2110**, entering Meeting ID: **129 846 4145#**, and pressing # again to enter session; (2) going to the WebEx website at <https://dccourts.webex.com> and entering Meeting ID: **129 846 4145**; or (3) opening the WebEx Application, selecting Join Meeting, and entering <https://dccourts.webex.com/meet/ctb100>.

If you have trouble gaining access to the virtual courtroom on the day of your hearing, please call Judge Saddler's Chambers at (202) 879-4854 and email Chambers at JudgeSaddlerChambers@dcsc.gov. Any party or counsel who is unable to participate in a virtual hearing due to technological constraints or other issues should inform the Court promptly, and the hearing will be rescheduled to a time when an in-person hearing is possible.

Please note the following guidelines for appearing in the virtual courtroom:

- (1) When you enter the virtual courtroom (by dialing in on a telephone, or signing in through the website or application), parties should not attempt to speak because another hearing may be underway. All parties must wait until the Courtroom Clerk requests for the parties to state their name on the record.
- (2) If a party or counsel does not respond when the case is called, Judge Saddler's staff will attempt to call and/or email the missing party or counsel, and will instruct the party or counsel to dial in or sign in to the courtroom.
- (3) Parties and counsel have received notice of their hearings by court order or by other communications from the Court. Therefore, if a party or counsel fails to appear in the virtual courtroom at the time of the hearing, then the Court may dismiss the case or enter a default, as appropriate.
- (4) Proceedings in the virtual courtroom will be recorded and will be on the record. The Court will hear from all parties, and will let each party know when it is that party's turn to speak. Each person speaking should identify himself or herself before speaking. **When you are not speaking, please keep your microphone muted.** If and when you begin to speak, then unmute your telephone. **Parties may not speak at the same time or interrupt one another, because that will make transcription of the proceedings difficult or impossible.**



District of Columbia Courts

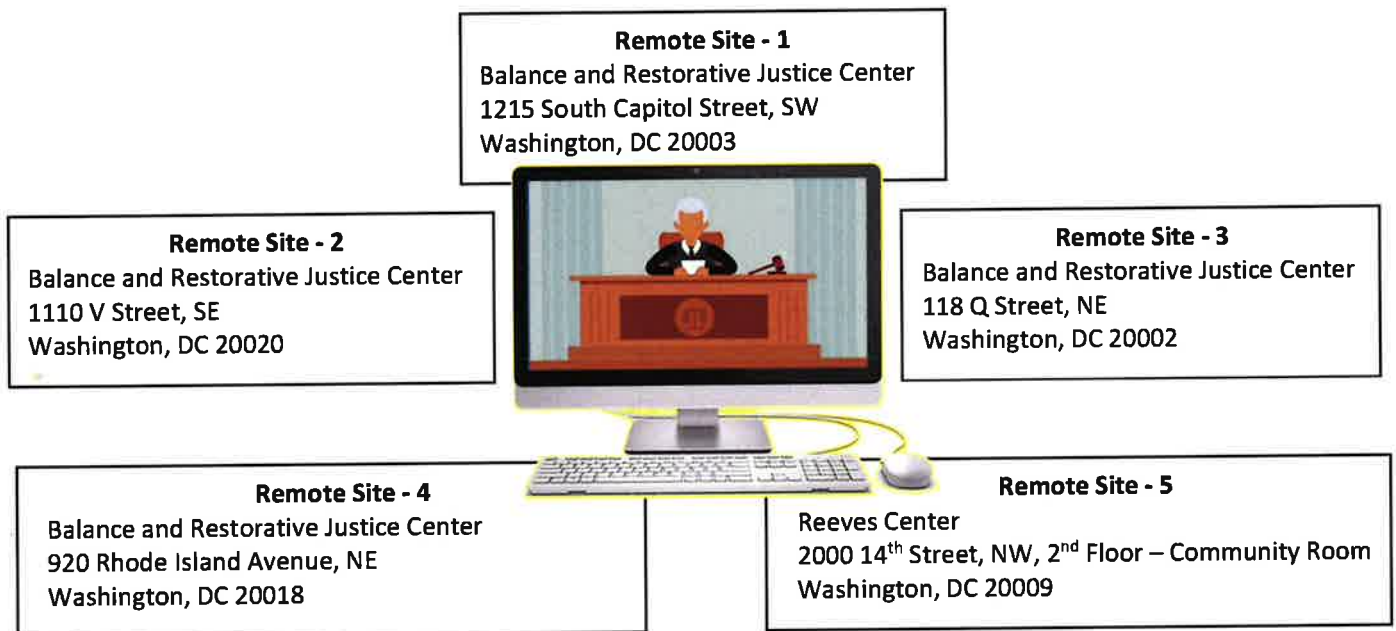


Tips for Using DC Courts Remote Hearing Sites

The DC Courts have **remote hearing sites** available in various locations in the community to help persons who may not have computer devices or internet service at home to participate in scheduled remote hearings. The Courts are committed to enhancing access to justice for all.

There are five remote access sites throughout the community which will operate: **Monday – Friday, 8:30 am – 4:00 pm.**

The remote site locations are:



If you want to use a remote site location for your hearing, call **202-879-1900** or email DCCourtsRemoteSites@dcsc.gov at least **24 hours before your hearing to reserve a remote access computer station**. If you require special accommodations such as an interpreter for your hearing, please call **202-879-1900** at least **24 hours in advance of your hearing so the Courts can make arrangements**.

You should bring the following items when you come to your scheduled site location

1. Your **case number** and any **hyperlinks** provided by the Courts for your scheduled hearing.
2. Any documents you need for the hearing (evidence), including exhibits, receipts, photos, contracts, etc.
3. Materials for notetaking, including pen and paper.
4. A facial covering will be required for entry into the remote hearing location; if you do not have a facial covering one will be provided.

***Safety and security measures are in place at the remote sites.**

Contact information to schedule your remote access computer station:

Call: **202-879-1900**

Email: DCCourtsRemoteSites@dcsc.gov