STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

SABRINA PRITCHETT-EVANS and
KIMBERLY HARRIS

Plaintiffs

v.

REPUBLICAN PARTY OF KALAMAZOO COUNTY, STATE OF MICHIGAN (KGOP); KALAMAZOO GRAND OLD PARTY EXECUTIVE COMMITTEE (KGOPEC); and (AKA) KALAMAZOO COUNTY REPUBLICAN COMMITTEE (KGOPEC), and KELLY SACKETT

Defendants.

Case No. 2023-0169-CZ

HON. CURTIS J. BELL

James A. Thomas (P80931)
JAMES A. THOMAS LAW OFFICES
Attorney for Plaintiffs
1925 Breton Rd., Suite 250
Grand Rapids, MI 49506
(616) 747-1188

Matthew S. DePerno (P52622)
DEPERNO LAW OFFICE, PLLC
Attorney for Defendants
951 W. Milham Avenue, PO Box 1595
Portage, MI 49081
(269) 321-5064

_____/

DEFENDANTS' REPLY BRIEF TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY DISPOSITION

And

DEMAND FOR SANCTIONS PURSUANT TO MCR 1.109(E)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases Page

NONE

Michigan Supreme Court Cases

NONE

Michigan Court of Appeal Cases

Unpublished Michigan Cases

NONE

Michigan Statutes

Michigan Court Rules

Other Citations

DEFENDANTS' REPLY BRIEF TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY DISPOSITION

And

DEMAND FOR SANCTIONS PURSUANT TO MCR 1.109(E)

Defendants REPUBLICAN PARTY OF KALAMAZOO COUNTY, STATE OF MICHIGAN, KALAMAZOO GRAND OLD PARTY EXECUTIVE COMMITTEE ("KGOPEC"), and (AKA) KALAMAZOO COUNTY REPUBLICAN COMMITTEE (KGOPEC), and KELLY SACKETT ("Sackett"), by and through their attorneys, DePERNO LAW OFFICE, PLLC, submit the following for their Reply Brief in response to Plaintiffs' response to motion for summary disposition.

1. Defamation per se standard

Plaintiffs clearly recognize that they did not present evidence of damages, did not testify regarding damages, and have not proved any damages. Thus, they have now retreated to the newly raised argument that their defamation claim is a "defamation per se" claim. This is the first time we have heard this new argument. Of course, the first glaring problem is they did not plead "defamation per se" in their complaint. Indeed, a quick word search of the entire "Amended Verified Complaint" (dated May 19, 2023) reveals the term "defamation per se" does not exist. Rather, Count IV of the "Amended Verified Complaint" alleges only that defamation occurred through a press release, a text message, and a censure, which Plaintiffs talk about generally, but not specifically.

A claim for "defamation per se" only exists if (1) it is properly pleaded and (2) the alleged defamatory statement includes statement regarding chastity or criminal conduct. Indeed, MCR 2.111(A)(1) states that "[e]ach allegation of a pleading must be clear, concise, and direct." MCR 2.111(B)(1) states that a complaint "must contain the following (1) A statement of facts,

without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claim the adverse party is called on to defend."

Under Michigan law, "a plaintiff must be specific when alleging defamation" and the "pleading cannot rely on general and conclusory statements, but must instead specifically identify the statements alleged to be defamatory." *Royal Palace Homes, Inc. v. Channel 7 of Detroit, Inc.*, 197 Mich App 48, 54; 495 NW2d 392 (1992). "To properly state a claim for defamation, the plaintiff must "plead precisely the statements about which [he] complain[s]." *Id.* at 57. Plaintiffs have failed to specifically make a claim of "defamation per se." They did not even try, presumably because it never crossed their mind until they read Defendants' motion for summary disposition and realized, "oops, we messed up." It should be noted that this is Plaintiff's amended complaint, which they filed after Defendants filed their first motion for summary disposition. Therefore, if Plaintiffs truly believed they were bringing a "defamation per se" claim, they would have fixed it back when they filed their amended complaint, on May 19, 2023; not now, on January 15, 2024.

Notwithstanding these glaring and obvious pleading errors, which nullifies their argument entirely, Plaintiffs now retreat further into a hollow argument that the term "coup d'etat" somehow refers to "criminal conduct." That, they now claim, is their "defamation per se" argument and somehow inferred from the complaint (because they do not state it directly). Such an argument is without merit and frivolous. "A mere statement of conclusions unsupported by allegations of fact will not suffice to state a cause of action." *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003).

DePerno Law Office, PLLC • 951 W. Milham Ave. • PO Box 1595 • Portage, MI 49081
(269) 321-5064 (phone) • (269) 321-5164 (Fax)

To further create the illusion of an argument, Plaintiffs rely on "Dictionary.com" to falsely state that "coup d'etat" means "illegal." Interestingly, Merriam-Webster Dictionary applies a different definition: "a sudden decisive exercise of force in politics." American Heritage Dictionary defines "coup d'etat" as "the sudden overthrow of a government by a usually small group of persons in or previously in positions of authority." Then, Plaintiffs jump to MCL 750.157a dealing with "conspiracy to commit offense or legal act in illegal manner." Of course, this all comes full circle to the fact that they never pleaded "defamation per se" or "conspiracy" (for that matter) in their Amended Complaint.

2. <u>Plaintiffs produced no evidence of damages, "defamation per se," or conspiracy</u>

Plaintiffs' argument is further wrought with error in that they produced no evidence of damages, defamation per se, or conspiracy and they engaged in zero discovery of their own. Plaintiffs admit this in their response brief, but instead of taking responsibility for this fatal error, they blame Defendants' attorney. On page 4 of their brief they state, "Defense counsel lacked asking the right questions in regard to count 4 and Plaintiffs will rely on defamation per se." Apparently asking the question, "Can you explain then how you've been damaged within the community" (twice) is insufficient. The reality is Plaintiffs *(a)* did not plead "defamation per se," *(b)* they did not engage in any discovery of their own, *(c)* they did not testify that they had any damages, *(d)* they turned over no evidence of any damages, and *(e)* they never used the term "criminal" or "defamation per se" until their responsive brief on January 15, 2024. The claim was never on their radar until their got around to writing their response brief. Now they are trying to shoehorn an argument into their failing complaint. This is frivolous gamesmanship.

DePerno Law Office, PLLC • 951 W. Milham Ave. • PO Box 1595 • Portage, MI 49081
(269) 321-5064 (phone) • (269) 321-5164 (Fax)

3. Timing of discovery and depositions

Plaintiffs then fall back on the refutable claim that Defendants' motion for summary disposition should be denied because following this Court's August opinion "Defendants did not do any further discovery since that decision" and Defendants "bring[] nothing new to the table." This is a disingenuous and false argument. "That decision" Plaintiffs refer to is this Court's "Opinion and Order" dated August 10, 2023. The actual time line refutes Plaintiffs' argument:

- 04/28/2023: Defendants' first motion for summary disposition
- 05/19/2023: Plaintiffs' amended complaint (which nullified Defendants' motion)
- 06/09/2023: Defendants' second motion for summary disposition
- 06/16/2023: Discovery responses received from Sabrina Pritchett-Evans
- Discovery responses received from Kim Harris
- 06/23/2023: Kim Harris deposition
- 06/29/2023: Plaintiffs' response to motion
- Plaintiffs' initial disclosures
- William Bennett deposition
- Discovery responses received from William Bennett
- 06/30/2023: Sabrina Pritchett-Evans deposition
- 07/05/2023: Defendants' initial disclosures
- 07/06/2023: David Dishaw deposition
- 07/17/2023: Ken Beyer deposition
- 07/19/2023: Joe Studebaker deposition
- 10/20/2023: Discovery ends

It is obvious that literally all the discovery occurred after Defendants filed their second motion for summary disposition.

DePerno Law Office, PLLC • 951 W. Milham Ave. • PO Box 1595 • Portage, MI 49081
(269) 321-5064 (phone) • (269) 321-5164 (Fax)

4. Sanctions

Plaintiffs argue that sanctions should not be awarded because if the case was frivolous, then "no lawyer would have gone through the vast lengths and money spent that defense counsel has taken to bring this complaint to finality." Plaintiffs then make the statement that "[t]aking a five-hour deposition of the Plaintiff and ordering a transcript on an alleged frivolous case does not sound reasonable or honest." First, that is not the legal standard for whether a claim is frivolous. Second, that is not the ethical standard. Lawyers do not have the luxury or discretion to advise their client that we think the case is frivolous, therefore we will put up no defense, conduct no discovery, file no motions, and "hope" the court sees it our way. Adopting Plaintiffs' view would be begging for a malpractice claim, not good lawyering. Plaintiffs made allegations of constitutional violations and slander. Those claims must be taken seriously and vigorously defended, not ignored, even if they are frivolous. Plaintiffs' attempt to justify their frivolous compliant by arguing that defending such claim absolves them of liability or responsibility is, in a word, frivolous.

WHEREFORE, Defendants respectfully requests this Honorable Court dismiss Plaintiffs' complaint with prejudice and award Defendants their costs and attorneys' fees and grant such other relief the Court deems just and appropriate.

Respectfully submitted

DePERNO LAW OFFICE, PLLC

/s/ Matthew S. DePerno

Dated: January 19, 2024

Matthew S. DePerno (P52622)
Attorney for Defendants

DePerno Law Office, PLLC • 951 W. Milham Ave. • PO Box 1595 • Portage, MI 49081
(269) 321-5064 (phone) • (269) 321-5164 (Fax)