

**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 DENYING ANTI-SLAPP MOTIONS TO DISMISS**

This matter is before the Court on Defendant Luke Rosiak’s Special Motion to Dismiss Pursuant to the D.C. Anti-Strategic Lawsuits Against Public Participation Act (“Anti-SLAPP Act”), and Defendant Salem Media Group, Inc.’s Special Motion to Dismiss Plaintiffs’ Amended Complaint Under the D.C. Anti-SLAPP Act of 2010 and Superior Court Rule 12(b)(6), both of which were filed on June 15, 2020. Plaintiff filed a consolidated opposition to the motions to dismiss in this matter on August 7, 2020. In the motions, Defendants request that the Court dismiss Plaintiffs Imran Awan, Jamal Awan, Abid Awan, Tina Alvi, and Rao Abbas’ First Amended Complaint, pursuant to the District of Columbia Anti-SLAPP Act.

**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 allege 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 to make 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.

### **Defendant Luke Rosiak’s Special Motion to Dismiss Pursuant to the D.C. Anti-SLAPP Act**

Defendant Luke Rosiak filed a Special Motion to Dismiss Pursuant to the District of Columbia Anti-SLAPP Act on June 15, 2020, arguing that Plaintiffs are public figures and 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 argues 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 argues that Plaintiffs have failed to plead the falsity of Defendant’s statements, and that Plaintiffs cannot demonstrate the requisite standard of fault, which is actual malice, because Defendant allegedly sincerely believes in the truth of his statements. Defendant Luke Rosiak further argues that the challenged statements are protected

by the First Amendment of the United States Constitution and therefore that his statements are not actionable under the First Amendment.

**Defendant Salem Media Group, Inc.'s Special Motion to Dismiss Plaintiffs' Amended Complaint Under the D.C. 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 alleges that Plaintiffs' Unjust Enrichment claim should be dismissed because it is not a viable legal theory for liability or damages in a defamation action. Defendant Salem Media Group argues that Plaintiffs are limited purpose public figures, and therefore must show that Defendant acted with actual malice. Defendant Salem Media Group further argues that the First Amendment prohibits Plaintiffs' defamation claims because Plaintiffs allegedly cannot demonstrate that Defendant acted with actual malice.

**Plaintiffs' Opposition**

In an opposition filed on August 7, 2020, Plaintiffs argue that they are likely to succeed on the merits of their claims, and that they have properly stated a claim

for Defamation, Intentional Infliction of Emotional Distress, and Unjust Enrichment. Plaintiffs also argue that they are private individuals and that Defendants' alleged defamatory attacks cannot transform them into public figures. Plaintiffs argue that even if it was assumed that the Plaintiffs are limited-purpose public figures, they have shown that the Defendants have acted with actual malice.

### 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.

Additionally, D.C. Code § 16-5502(b) provides a statutory remedy for defendants who believe that they have been sued in retaliation for their participation in public discourse concerning issues of public importance. The statute states, in pertinent part:

If a party filing a special motion to dismiss under this section makes a *prima facie* showing that the claim at issue

arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

Consequently, this Court is tasked with determining “whether a jury properly instructed on the law, including any applicable heightened fault and proof requirements, could reasonably find for the claimant on the evidence presented... that is, after allowing for the weighing of evidence and permissible inferences by the jury.” *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1236 (D.C. 2016). In order for a claimant to prevail on an Anti-SLAPP motion to dismiss, “the statute requires more than mere reliance on allegations in the complaint, and mandates the production or proffer of evidence that supports the claim.” *Id.* at 1233. Thus, the Court should only grant an Anti-SLAPP motion to dismiss where it “can conclude that the claimant could not prevail as a matter of law.” *Id.* at 1236.

## THE COURT’S RULING

### I. Statute of Limitations

This Court has previously ruled on the statute of limitations issue in its Amended Order Granting in Part Defendants’ Motion to Dismiss, which was issued on July 27, 2021. In that Order, the Court ruled that Plaintiffs’ claims of Defamation, Intentional Infliction Of Emotional Distress, and Unjust Enrichment against Defendants based on articles and reports published between February 2017 and

January 27, 2019 are time-barred under the statute of limitations. Plaintiffs' claims of defamation which arise out of actions occurring between January 28, 2019 and January 28, 2020 are not time-barred by the statute of limitations. As this Court has already ruled on the statute of limitation issue in this matter, it will not be addressed in this Order.

## **II. Applicability of the Anti-SLAPP Statute to the Instant Dispute**

District of Columbia Code § 16-5502(b) requires an Anti-SLAPP movant to make a *prima facie* showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest. D.C. Code § 16-5501 defines an “act in furtherance of the right of advocacy on issues of public interest” as: (1) “Any written or oral statement made ... [i]n connection with an issue” before any governmental body; (2) “Any written or oral statement made ... [i]n a place open to the public or a public forum in connection with an issue of public interest”; or (3) “Any other expression or expressive conduct that involves ... communicating views to members of the public in connection with an issue of public interest.” D.C. Code § 16-5501(3) broadly defines an “issue of public interest” as “an issue related to: health or safety; environmental, economic, or community well-being; D.C. government; a public figure; or a good, product, or service in the market place.”

Defendant Luke Rosiak's statements at issue in this case were made in his published book, on television, radio, and on an online platform intended to provide



news related content—all of which are public forums. Additionally, the statements were related, at least partially, to issues of public interest concerning a national security investigation in the United States House of Representatives, and constitute an “act in furtherance of the right of advocacy on issues of public interest,” as defined by D.C. Code § 16-5501(2) and (3). Plaintiffs’ claims against Salem Media Group, Inc. result from their publication of Defendant Luke Rosiak’s book, which is available in the public forum on an issue of public interest. As a result, this Court finds that the Anti-SLAPP statute is applicable to the instant case.

### **III. Plaintiffs’ Defamation Claims**

To prevail on a defamation claim, the plaintiff must establish:

- (1) that the defendant made a false and defamatory statement concerning the plaintiff;
- (2) that the defendant published the statement without privilege to a third party;
- (3) that the defendant’s fault in publishing the statement [met the requisite standard]; and
- (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm.

*Mann*, 150 A.3d at 1240 (alteration in original) (citing *Oparaugo v. Watts*, 884 A.2d 63, 76 (D.C. 2005)).

With respect to the first prong, this Court finds that a properly instructed jury could conclude that Defendants made allegedly false defamatory statements concerning Plaintiffs. Defamatory statements “[tend] to injure [the] plaintiff in his trade, profession or community standing, or lower him in the estimation of the

community.” *Mann*, 150 A.3d at 1241 (alteration in original) (quoting *Guilford Transportation Industries, Inc. v. Wilner*, 760 A.2d 580, 594 (D.C. 2000)). Defendant Luke Rosiak made numerous statements concerning Plaintiffs in his book published by Defendant Salem Media Group, Inc., during interviews while promoting his book, and in articles published online. These statements included allegations of criminal acts by Plaintiffs, including but not limited to hacking, espionage, extortion, bribery, theft, blackmail, money laundering, and torture; crimes for which Plaintiffs have neither been charged, nor found guilty. A properly instructed jury could find each of these statements damaging to each Plaintiffs standing in his trade, profession, and community.

The Court notes that the United States Federal Bureau of Investigation and the United States Department of Justice conducted an investigation into the allegations against Plaintiffs and that the investigation concluded that Plaintiffs had not violated any laws, nor had they committed any crimes in connection with their work in the United States House of Representatives (“House”). The Court further notes that through numerous affidavits and declarations from House members and staff, it is clear that Plaintiffs did not have access to classified or confidential national security matter. The Court notes that though Plaintiffs were essentially cleared of any wrongdoing through that investigation, Defendant Luke Rosiak made statements in his book alleging that Plaintiffs broke the law by claiming they hacked into

Congressional systems; that they committed fraud in the House of Representatives; that they were acting as spies within Congress, among other allegations. Further, Defendant Luke Rosiak conducted a national book tour which included a number of television, radio, and online interviews where he continued to speak on his allegations against Plaintiffs.

Accordingly, the Court finds that the statements made by Defendant Luke Rosiak, both in his book and on other platforms, could lead a properly instructed jury to find that there was no reasonable basis for Defendant's statements alleging that Plaintiffs had committed these crimes. Defendant was not merely reporting on the investigation; Defendant was making statements accusing Plaintiffs of committing crimes that they had been cleared of, as well as additional allegations. Defendant Luke Rosiak's statements in his book, on television, radio, and online were statements of fact that a reasonable juror could find to be false and defamatory, as the statements accused Plaintiffs of illegal conduct that would tend to affect, and has affected, their professional standing within the community. A properly instructed jury could find that the statements made by Defendant were statements conveying alleged facts, rather than merely hyperbolic or opinion statements.

As to the second element of a claim for defamation, the Court notes that no special privilege has been claimed or established, and therefore, this prong has been

satisfied. The Court now addresses the third element of a claim of defamation, namely, satisfaction of the requisite standard of fault.

In order to determine whether the requisite standard of fault has been satisfied, the Court must first determine whether Plaintiff is a limited-purpose public figure. Generally, a plaintiff must show that the defendant's fault in publishing the statement amounted to at least negligence. However, if a plaintiff is a public figure or limited purpose public figure, the plaintiff must prove that the defendant published the defamatory material with actual malice, by clear and convincing evidence. *Mann*, 150 A.3d at 1251-52.

The Court uses a three-step test to analyze whether a defamation plaintiff is a limited purpose public figure. First, the Court must determine whether there is a public controversy and, if there is, the scope of the controversy. Second, the Court must find that the plaintiff achieved special prominence in the debate and either deliberately attempted to influence the outcome or could realistically be expected to have an impact on its resolution. Third, if the first two prongs are satisfied, the Court must answer whether the alleged defamation was relevant to the plaintiff's participation in the controversy. *Moss v. Stockard*, 580 A.2d 1011, 1030-33 (D.C. 1990) (adopting the holding in *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287 (D.C. Cir. 1980)).

First, the existence of a public controversy is a two-part inquiry: (1) whether the controversy to which the defamation related was the subject of public discussion *prior* to the defamation, and (2) whether “a reasonable person would have expected persons beyond the immediate participants in the dispute to feel the impact of its resolution.” *Moss*, 580 A.2d 1031 (citing *Tavoulareas v. Piro*, 817 F.2d 762, 722 (D.C. Cir. 1987); *Waldbaum*, 627 F.2d at 1297)). The controversy linked to the alleged defamation consisted of statements published by Defendant Luke Rosiak on the internet, television, radio, and in his book published by Defendant Salem Media Group, Inc. The controversy’s existence was a public matter, as it was a part of a public discussion prior to the alleged defamation. The incident surrounding Plaintiffs was reported in the media, and was commented on by former President Donald J. Trump. It is clear that this issue was a part of public discussion prior to the alleged defamation of Plaintiffs. Further, it is likely that a reasonable person would have expected persons beyond the immediate participants in the matter to feel the impact of its resolution, as it revolved around a matter of national security concerns and the United States House of Representatives. Therefore, a public controversy exists in this matter.

Here, the Court finds that Plaintiffs are not limited purpose public figures. The controversy at issue concerned an investigation by the FBI and the United States Department of Justice regarding a national security issue. This matter is clearly of

public concern. However, Plaintiffs did not bring themselves to the forefront of this issue in order to influence the resolution of the issues involved. *Wolston v. Reader's Digest Association*, 443 U.S. 157 (1979); *See also Moss v. Stockard*, 580 A.2d 1011, 1030 (D.C. 1990). Plaintiffs are private citizens who were involuntarily thrust into the controversy. *Id.* At 166. Plaintiffs did not deliberately attempt to influence the outcome of the issue outside of bringing this lawsuit. As the United States Supreme Court states in *Wolston*, “A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention.” *Id.* at 167. Further, Plaintiffs’ status as working as information technology specialists for members of Congress does not automatically give them status as public figures, as their roles were solely outside of the public eye.

Given that Plaintiffs are not limited-purpose public figures, the Court need not determine whether a properly instructed jury could find that Defendant acted with actual malice when publishing the allegedly defamatory statements about Plaintiffs.

Finally, this Court will address the final prong of a claim for defamation, which requires a showing that the statements at issue were “actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm.” *Mann*, 150 A.3d at 1240 (citing *Oparaugo*, 884 A.2d at 76) (citations omitted). Further, there are some instances where special damages need not be proven because a statement is actionable *per se*. *See Wallace v. Skadden, Arps, Slate,*

*Meagher & Flom*, 715 A.2d 873, 877-78 (D.C. 1998) (“One who publishes a slander that ascribes to another conduct, characteristics or a condition that would adversely affect [her] fitness for the proper conduct of [her] lawful business, trade or profession . . . is subject to liability without proof of special harm.”); *Smith v. District of Columbia*, 399 A.2d 213, 220 (D.C. 1979) (“[W]ords[] charging another with the commission of a criminal act, are actionable *per se* unless the statement, at the time made, was qualifiedly privileged.”). Based upon the law in this jurisdiction, and the allegations in the Amended Complaint, the Court finds that a reasonable jury could determine that Plaintiffs have either suffered special damages or that Defendants’ statements were defamatory *per se*.

This Court finds that a reasonable jury, properly instructed on the applicable law, could find that Defendants’ statements were defamatory; made without privilege to a third-party; and caused Plaintiffs special harm. This Court further finds that Plaintiffs have demonstrated the likelihood of success on the merits of their defamation claim against Defendants Luke Rosiak and Salem Media Group, Inc. Consequently, Defendants’ Special Motions to Dismiss are denied as to Plaintiffs’ claim for Defamation.

#### **IV. Plaintiffs’ Intentional Infliction of Emotional Distress Claims**

District of Columbia courts have consistently recognized that the elements for intentional infliction of emotional distress are: “(1) extreme and outrageous conduct

on the part of the defendants, which (2) intentionally or recklessly (3) causes the plaintiff severe emotional distress.” See *Competitive Enter. Inst v. Mann*, 150 A.3d 1213, 1260 (D.C. 2016) (citing *Williams v. District of Columbia*, 9 A.3d 484, 493-94 (D.C. 2010)). This Court finds that a properly instructed jury could find that the statements made by Defendant Luke Rosiak both in his book, published by Defendant Salem Media Group, Inc., and through interviews and articles published by him, rise to the level of extreme and outrageous conduct. Plaintiffs’ declarations attached to Plaintiffs’ Opposition to Defendants’ Motions to Dismiss show the likelihood of success on the merits of a claim for intentional infliction of emotional distress, as it details Plaintiffs’ alleged severe emotional distress that was caused by Defendants’ alleged actions. Plaintiff Imran Awan discussed in his declaration how he lost sleep and felt suicidal due to Defendants’ actions. *Declaration of Imran Awan*, p. 6. Plaintiff Jamal Awan explained the extreme anxiety he felt and the panic attacks he suffered as a result of Defendants’ actions. *Declaration of Jamal Awan*, p. 11. The Plaintiffs discussed the trauma they have endured due to this matter, and how their safety has been compromised. *Declaration of Plaintiffs*. The Court believes that Plaintiffs, based on the declarations of Plaintiffs attached to Plaintiffs’ Opposition to Defendants’ Motions to Dismiss, sufficiently demonstrate the prongs of intentional infliction of emotional distress and their likelihood of success on the merits. Further, a properly instructed jury could find that Defendants committed



extreme and outrageous conduct that intentionally or recklessly caused Plaintiffs severe emotional distress. Therefore, Defendants' Special Motions to Dismiss are denied as to Plaintiffs' claim for Intentional Infliction of Emotional Distress.

#### **V. Plaintiffs' Unjust Enrichment Claims**

To prevail on a claim of unjust enrichment, Plaintiffs must allege that "1) the plaintiff conferred a benefit on the defendant, 2) the defendant retains the benefit, and 3) under the circumstances, the defendant's retention of the benefit is unjust." *Falconi-Sachs v. LPF Senate Square, LLC*, 142 A.3d 550, 556 (D.C. 2016). Here, Plaintiffs' claims for unjust enrichment stem from Defendants' alleged revenue and profits obtained by publishing the alleged defamatory allegations about Plaintiffs. This Court finds that a properly instructed jury could look at the totality of the circumstances regarding the defamation claims and unjust enrichment claims and find for Plaintiffs. This Court believes that Plaintiffs have sufficiently shown that there is a likelihood of success on the merits of their unjust enrichment claim, and therefore, Defendants' Special Motions to Dismiss are denied as to Plaintiffs' claim for Unjust Enrichment.

#### **VI. 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. Therefore, the Defamation, Intentional Infliction of Emotional Distress, and Unjust Enrichment claims that are not time-barred have been sufficiently pleaded under Superior Court Rules of Civil Procedure 12(b)(6) and 8(a) and are therefore not dismissed. At this stage, the Court finds that this matter should proceed, and that Defendants will have an opportunity to challenge the sufficiency of Plaintiffs' claims through an appropriate motion once discovery is completed.

This Court believes that Plaintiffs have sufficiently shown possible likelihood of success on the merits of their claims, and that this matter should proceed to a jury trial, with a jury properly instructed on the relevant law.

Accordingly, upon consideration of and the entire record herein, it is this 20th day of December 2021, hereby

**ORDERED** Defendant Luke Rosiak's Special Motion to Dismiss Pursuant to the D.C. Anti-Strategic Lawsuits Against Public Participation Act ("Anti-SLAPP Act") is **DENIED**. It is

**FURTHER ORDERED** that Defendant Salem Media Group, Inc.'s Special Motion to Dismiss Plaintiffs' Amended Complaint Under the D.C. Anti-SLAPP Act of 2010 and Superior Court Rule 12(b)(6) is **DENIED**.



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**FERN FLANAGAN SADDLER**  
**ASSOCIATE JUDGE**

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