

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY COURT SERVICES

JOHN C. DEPP, II

Plaintiff/Counterclaim Defendant,

v.

AMBER LAURA HEARD,

Defendant/Counterclaim Plaintiff.

FILED
2020 AUG 31 10 1:36

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Civil Action No.: CL-2019-0002911

DEMURRER AND PLEA IN BAR TO COUNTERCLAIMS

Plaintiff John C. Depp, II (“Mr. Depp”), by and through his undersigned counsel, hereby files his Demurrer and Plea in Bar to Defendant’s Counterclaims filed on August 10, 2020. In support of this Demurrer and Plea in Bar, Mr. Depp states as follows:

Defendant Amber Laura Heard (“Ms. Heard”) has filed Counterclaims for Declaratory Judgment Under Va. Code §§ 8.01-184, *et seq.* (Count I), Defamation and Defamation Per Se (Count II), and Violation of the Virginia Computer Crimes Act (Count III). For the reasons stated below, and in the forthcoming memorandum of law, the Plaintiff respectfully requests that the Court should dismiss each Count in the Counterclaims in its entirety.

I. Demurrer

A. Count I

Ms. Heard’s counterclaim for declaratory judgment fails to state a claim upon which relief can be granted. Specifically, *inter alia*, Count I fails as a matter of law because it is merely a defense to Mr. Depp’s affirmative claim against Ms. Heard for defamation recharacterized as a counterclaim. *See Tyler v. Cashflow Technologies, Inc.*, Case No. 6:16-CV-00038, 2016 WL 6538006, at *1 (W.D. Va. Nov. 3, 2016) (dismissing counterclaims that “are merely defenses

masquerading as counterclaims”). Where, as here, a claim for declaratory judgment seeks a determination of a dispute rather than the adjudication of the parties’ rights, “the case is not one for declaratory judgment.” *Charlottesville Area Fitness Club Operators Ass’n v. Albermarle Cty. Bd. of Supervisors*, 285 Va. 87, 99 (2013) (quoting *Green v. Goodman-Gable-Gould Co.*, 268 Va. 102, 108 (2004)). The Court should therefore dismiss Count I of the Counterclaims.

B. Count II

Ms. Heard’s counterclaim for defamation fails to state a claim upon which relief can be granted. Specifically, *inter alia*, Count II fails as a matter of law because none of the allegedly defamatory statements identified is actionable. The allegedly defamatory statements are either opinions, rhetorical hyperbole, lack any defamatory implication, and/or are absolutely or qualifiedly privileged as statements made in connection with a judicial proceeding. The Court should therefore dismiss Count II of the Counterclaims.

C. Count III

Ms. Heard’s counterclaim for violation of the Virginia Computer Crimes Act fails to state a claim upon which relief can be granted. Specifically, *inter alia*, Count III fails as a matter of law because Ms. Heard has not alleged the requisite elements of “harassment by computer” as set out in Virginia Code § 18.2-152.7:1, including, *inter alia*, that Mr. Depp used a computer or computer network with the requisite intent, or that obscene language, an obscene proposal, or a threat of an illegal or immoral act was made. The Court should therefore dismiss Count III of the Counterclaims.

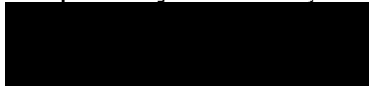
II. Plea in Bar

Ms. Heard’s counterclaim for defamation seeks to impose liability on Mr. Depp for statements she alleges were made between November 2018 and July 3, 2019 that are barred by

the applicable one-year statute of limitations. *See* Va. Code § 8.01-247.1. The Court should therefore dismiss Ms. Heard's counterclaim for defamation, Count II, insofar as the allegedly defamatory statements are barred by the statute of limitations. Mr. Depp is also entitled to statutory immunity from defamation liability under Virginia Code § 8.01-232.2, the Virginia anti-SLAPP statute, and should be awarded attorneys' fees and costs pursuant to the same provision.

WHEREFORE, in consideration of the foregoing, Mr. Depp respectfully moves this Court to (i) sustain his demurrer and dismiss all three counts of Ms. Heard's Counterclaims with prejudice; (ii) sustain his plea in bar and dismiss Count II of Ms. Heard's Counterclaims with prejudice; and (iii) grant such other and further relief as deemed appropriate as referenced above.

Respectfully submitted,


Benjamin G. Chew (VSB #29113)
BROWN RUDNICK LLP
601 Thirteenth Street NW, Suite 600
Washington, DC 20005
Tel.: (202) 536-1785
Fax: (617) 289-0717
bchew@brownrudnick.com

Camille M. Vasquez (*pro hac vice*)
BROWN RUDNICK LLP
2211 Michelson Drive
Irvine, CA 92612
Tel.: (949) 752-7100
Fax: (949) 252-1514
cvasquez@brownrudnick.com

Adam R. Waldman (*pro hac vice*)
THE ENDEAVOR GROUP LAW FIRM, P.C.
5163 Tilden Street, NW
Washington, DC 20016
Tel.: (202) 715-0966
Fax: (202) 715-0964
awaldman@theendevorgroup.com

*Counsel for Plaintiff and
Counterclaim Defendant John C. Depp, II*

Dated: August 31, 2020


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August 2020, I caused copies of the foregoing Demurrer and Plea in Bar to Counterclaims to be served via email (per written agreement between the Parties) on the following:

J. Benjamin Rottenborn (VSB No. 84796)
Joshua R. Treece (VSB No. 79149)
WOODS ROGERS PLC
10 S. Jefferson Street, Suite 1400
P.O. Box 14125
Roanoke, Virginia 24011
Telephone: (540) 983-7540
brottenborn@woodsrogers.com
jtreece@woodsrogers.com

Elaine Charlson Bredehoft (VSB No. 23766)
Carla D. Brown (VSB No. 44803)
Adam S. Nadelhaft (VSB No. 91717)
David E. Murphy (VSB No. 90938)
CHARLSON BREDEHOFT COHEN & BROWN, P.C.
11260 Roger Bacon Dr., Suite 201
Reston, VA 20190
Phone: 703-318-6800
Fax: 703-318-6808
ebredehoft@cbcblaw.com
cbrown@cbcblaw.com
anahelhaft@cbcblaw.com
dmurphy@cbcblaw.com

Counsel for Defendant Amber Laura Heard


Benjamin G. Chew