IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PRESTON HOLLOW CAPITAL LLC, Plaintiff, v. NUVEEN LLC, NUVEEN INVESTMENTS, INC., NUVEEN SECURITIES LLC, and NUVEEN ASSET MANAGEMENT LLC, Defendants.	)	C.A. No. N19C-10-107 MMJ CCLD

Submitted: March 24, 2022
Decided: June 14, 2022

On Defendant Nuveen Asset Management LLC's Motion for Summary Judgment
GRANTED

On Plaintiff's Motion for Partial Summary Judgement
GRANTED

OPINION

R. Judson Scaggs, Jr., Esq., Elizabeth A. Mullin, Esq., Morris, Nichols, Arsht & Tunnell LLP, Wilmington, DE, David H. Wollmuth, Esq., R. Scott Thompson, Esq. (Argued), Michael C. Ledley , Esq., Joshua M. Slocum, Esq., Sean P. McGonigle, Esq., Wollmuth Maher & Deutsch LLP, New York, NY, *Attorneys for Plaintiff*

Peter J. Walsh, Jr., Esq., Jennifer C. Wasson, Esq., David A. Seal, Esq., Potter Anderson & Corroon LLP, Wilmington, DE, Leonard A. Gail, Esq. (Argued), Rachel S. Morse, Esq., Caitlin A. Kovacs, Esq. (Argued), Hillary W. Coustan, Esq., Massey & Gail LLP, Chicago, IL, Jonathan S. Massey, Esq., Jeremy G. Mallory, Esq., Massey & Gail LLP, Washington, D.C., Eva W. Cole, Winston & Strawn LLP, New York, NY, *Attorneys for Defendant*

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

This defamation action involves statements made by one business competitor about another. The facts set forth in the Court's prior Opinion in *Preston Hollow Capital LLC v. Nuveen LLC*,[1] issued on December 15, 2020, are incorporated by reference. Preston Hollow and Nuveen are both institutional investors involved in the high-yield municipal bond market.

The parties have filed cross Motions for Summary Judgement. Defendant argues: (1) Plaintiff cannot show harm to its reputation or business proximately caused by Defendant's Statements; (2) alternatively, several of Defendant's Statements are unactionable because they are opinions; and (3) Plaintiff is not entitled to presumed general damages for defamation *per se*.

Plaintiff seeks Partial Summary Judgment on the Second, Seventh, Ninth, Fourteenth, Seventeenth, and Twenty-Second Affirmative Defenses. Plaintiff also claims entitlement to summary judgment on the grounds that it is not a limited

[1] 2020 WL 7365808 (Del. Super.).

purpose public figure. The parties agree that Defenses Two, Seventeen, and Twenty-Two are no longer at issue. Defendants have also conceded that Defense Nine is no longer viable because there is no controversy regarding whether Plaintiff is a limited purpose public figure. Thus, the Court will only address Affirmative Defenses Seven and Fourteen.

SUMMARY JUDGMENT STANDARD

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[2] All facts are viewed in a light most favorable to the non-moving party.[3] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[4] When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.[5] If the non-moving party bears the burden of proof at trial, yet "fails to make a showing sufficient to establish the existence of an element essential to that party's case," then summary judgment may be granted against that party.[6]

Superior Court Rule 56(h) provides:

---

[2] Super. Ct. Civ. R. 56(c).
[3] *Burkhart v. Davies*, 602 A.2d 56, 58–59 (Del. 1991).
[4] Super. Ct. Civ. R. 56(c).
[5] *Wooten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).
[6] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

> Where the parties have filed cross motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.[7]

The Court will evaluate any contested facts pursuant to Rule 56(c). All facts are viewed in a light most favorable to the non-moving party.[8] The Court will evaluate the facts relating to each precise issue. The Court will take all reasonable inferences into consideration.

ANALYSIS

Court of Chancery Opinion

On April 9, 2020, the Court of Chancery issued a post-trial Memorandum Opinion in *Preston Hollow Capital LLC v. Nuveen, LLC*.[9] The Court of Chancery determined that Preston Hollow had a reasonable probability of business opportunity, with which Nuveen intentionally interfered.[10] Defendant's interference proximately caused Plaintiff's harm. The Court of Chancery found: "Nuveen went to the broker-dealers and gave them a clear message, and in response the broker-dealers took actions that curtailed the business expectancies of Preston Hollow."[11] The Court of Chancery characterized these messages as

[7] Super. Ct. Civ. R. 56.
[8] *Burkhart v. Davies*, 602 A.2d 56, 58–59 (Del.).
[9] 2020 WL 1814756 (Del. Ch.).
[10] *Id.* at *13-15.
[11] *Id.* at *16.

wrongful,[12] damaging,[13] malicious[14] and false.[15] The Court of Chancery found that Defendant committed tortious interference with business relations. Plaintiff sought permanent injunctive relief, which the court denied.[16] The Court of Chancery held: "Nuveen has committed a tort; the usual remedy for loss caused by tort is money damages. Such damages would be available here, had Preston Hollow sought to demonstrate them."[17] In short, Defendant did not present any evidence of damage, but could have.

Superior Court Opinion

On September 15, 2020, this Court issued an Opinion.[18] This Court found that the law of the case doctrine applies—preventing parties from relitigating previously-decided issues.[19] "For purposes of law of the case, the prior rulings of the Court of Chancery were—and still are—treated as if they were made by a Superior Court judge."[20]

---

[12] *Id.* at *17 ("Because I find that Nuveen employed wrongful means in competing with Preston Hollow, I do not address the other elements.").
[13] *Id.* at *1 ("I find that Nuveen used threats and lies in a successful attempt to damage the Plaintiff in its business relationships.").
[14] *Id.* at *21 ("Furthermore, in light of this decision, it would be exceedingly unwise for Nuveen to mount a similar campaign of malicious behavior.").
[15] *Id*. at *1 ("Their circumlocutions for falsehoods—'hedge,' 'bluff,' 'exaggeration,' 'role-play,' 'scenario,' 'overstatement,' 'blustering,' 'short-cutting,' 'puff,' 'shorthand,' 'overblowing'—in situations where more quotidian creatures would simply say 'lie,' might make one doubt that the latter word is in their vocabulary.").
[16] *Id.* at *22.
[17] *Id.* at *20.
[18] *Preston Hollow Capital LLC v. Nuveen LLC*, 2020 WL 7365808 (Del. Super.).
[19] *Id*. at *6.
[20] *Id*.

This Court also applied the doctrine of collateral estoppel to the statements made by Nuveen against Goldman Sachs.

> The Court finds that the statements made by Miller to Goldman shall be given collateral estoppel effect in this action. Nuveen is estopped from relitigating the "existence, falsity, and malicious nature" of either of these statements: (1) that Preston Hollow lied to its issuers and that Nuveen had evidence of such lies; and (2) that Preston Hollow's "unethical practices" had "caught the attention of the states' attorneys general" who sent "nastygrams." Therefore, the portion of Preston Hollow's motion requesting that collateral estoppel be applied to the Statements Made to Goldman must be granted.[21]
>
> ***
>
> Nuveen is barred from relitigating: (1) the existence of the Statements Made to Goldman; (2) the falsity of those statements; and (3) the fact that those statements were made with either knowledge of their falsity or reckless indifference to the truth.[22]

Defendant Nuveen Asset Management, LLC's ["Defendant's"] Motion for Summary Judgment

Elements of Defamation

A communication is considered defamatory "if it tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him."[23] The defamatory statement must affect the plaintiff's reputation in the entire community—causing it to be "grievously fractured."[24]

---

[21] *Id.* at *11.
[22] *Id.* at *13.
[23] *Spence v. Funk*, 396 A.2d 967, 969 (Del. 1978) (quoting Restatement (Second) of Torts § 559 (Am. Law Inst. 1977)).
[24] *Q-Tone Broad. Co. v. Musicradio of Maryland, Inc.*, 1994 WL 555391, at *4 (Del. Super.).

In order to succeed on a claim for defamation, a plaintiff must show that: "(1) the defendant made a defamatory statement; (2) concerning the plaintiff; (3) the statement was published; and (4) a third party would understand the character of the communication as defamatory."[25]

Ultimately, the plaintiff also must prove injury.[26] "Where the plaintiff is a corporation, it must additionally 'show that the defamatory statements tend to prejudice the corporation in its business or to deter others from dealing with it.'"[27] When the plaintiff is a limited purpose public figure, the plaintiff must prove that the defamatory statement is both false and made with actual malice.[28]

Defamation Per Se - *Issues*

The legal issues left to be resolved regarding defamation *per se* are whether it is necessary to prove: (1) nominal damages; (2) compensatory or special damages; and (3) injury or reputational loss.

Additionally, in its December 15, 2020 Opinion, this Court outlined a number of factual disputes regarding defamation that made summary judgement inappropriate at that time. First, did Preston Hollow suffer any reputational loss? Second, was there publication to certain broker-dealers? Third, were certain statements more than mere non-actionable opinions? Fourth, did the defamation

[25] *Doe v. Cahill*, 884 A.2d 451, 463 (Del.).
[26] *Los v. Davis*, 1991 WL 53458, at *1 (Del. Super.), *aff'd*, 602 A.2d 1081 (Del.).
[27] *Preston Hollow*, 2020 WL 7365808, at *11.
[28] *Doe*, 884 A.2d at 463.

cause injury? Fifth, was the defamation a "substantial cause" of any injury? And sixth, did the recipients of defamatory statements understand those statements to be defamatory?

Damages - Defamation Per Se

Generally, "oral defamation is not actionable without special damages."[29] "Special harm is the loss of something having economic or pecuniary value."[30] "However, statements which 'malign one in a trade, business or profession' are a 'category of defamation, commonly called slander *per se*, which [is] actionable without proof of special damages.'"[31] "There is a presumption of damages with respect to statements that 'malign one in a trade, business or profession.'"[32]

Defendant[33] argues that this Court should not apply defamation *per se*. Alternatively, Defendant asserts that if defamation *per se* does apply, Plaintiff did not suffer general damages.

> Although special damages need not be proved if the communication is actionable per se, the Constitution is now held by the Supreme Court to require proof of "actual injury" to the plaintiff, at least if the defendant did not have knowledge of the falsity of the statement or act in reckless disregard as to its truth.[34]

[29] *Spence*, 396 A.2d at 970-71.
[30] Restatement (Second) of Torts § 621 cmt. a (Am. Law Inst. 1977).
[31] *Preston Hollow*, 2020 WL 7365808, at *12 (quoting *Spence*, 396 A.2d at 970-71).
[32] *Gannett Co., Inc. v. Kanaga*, 750 A.2d 1174, 1184 (Del.)(citing *Spence*, 396 A.2d at 970).
[33] Defendant Nuveen Asset Management is the sole Defendant moving for summary judgment.
[34] Restatement (Second) of Torts § 569 cmt. b (Am. Law. Inst. 1977).

"One who is liable for a defamatory communication is liable for the proved, actual harm caused to the reputation of the person defamed."[35] "At common law general damages have traditionally been awarded not only for harm to reputation that is proved to have occurred, but also, in the absence of this proof, for harm to reputation that would normally be assumed to flow from a defamatory publication of the nature involved."[36]

In *Professional Investigating & Consulting Agency, Incorporated v. Hewlett-Packard Company*,[37] this Court held that a defamation *per se* plaintiff need not prove special damages. "The Court finds that PICA need not prove economic injury to establish a *prima facie* case where the defamatory oral statements malign PICA's trade or business, because damages are presumed under the circumstances."[38]

The reasoning in *PICA*, is consistent with *Gannet Company, Incorporated v. Kanaga*.[39] In *Kanaga*, the Delaware Supreme Court permitted a showing of injury to reputation in lieu of proof of special damages. "Once liability is established, a plaintiff seeking recovery of damages in a tort action must establish causation and consequential damage."[40] However, "under Delaware law, injury to reputation is

[35] Restatement (Second) of Torts § 621 (Am. Law Inst. 1977).
[36] *Id.* at cmt. a.
[37] 2014 WL 4627141 (Del. Super.)(*"PICA"*).
[38] *Id.* at *11.
[39] 750 A.2d 1174 (Del.).
[40] *Id.* at 1188.

permitted without proof of special damages."[41] The *Kanaga* plaintiff was required to, and did, present evidence of reputation injury.[42]

Therefore, in order for a plaintiff to proceed on defamation *per se* without proof of special damages, plaintiff still must provide evidence of diminution in reputation.

The Court finds that defamation *per se* applies in this case. Plaintiff need not prove special damages. However, Plaintiff must prove injury to reputation in lieu of special damages. In the absence of proof of general damages, nominal damages may be awarded.[43]

Causation

"One who has committed a libel is also responsible 'for any special harm legally caused by the defamatory publication.' The libel is the 'legal cause' of the special harm if it is a 'substantial factor' in bringing about the harm."[44]

Defendant argues that Plaintiff's claim fails to demonstrate substantial causation because Plaintiff has not demonstrated any reputational loss. Defendant further argues that Plaintiff cannot show any person's opinion of its reputation changed as a result of Defendant's Statements.

---

[41] *Id*. at 1184.
[42] *Id*.
[43] *See Del. Exp. Shuttle, Inc. v. Older*, 2002 WL 31458243, at *22 (Del. Ch.).
[44] *Ramada Inns, Inc. v. Dow Jones & Co., Inc.*, 543 A.2d 313, 329 (Del. Super.)(citing Restatement (Second) of Torts § 622 (Am. Law Inst. 1977)).

Generally, a plaintiff must demonstrate proximate cause. "[W]here a harm is produced by concurrent acts, each act is the cause of the harm if it was a material element or 'substantial factor' in bringing the harm about."[45]

The defamatory statement must have caused plaintiff's standing in the community to be "grievously fractured."[46] A business defamation plaintiff must show some prejudice to its business or that the defamation "deter[red] others from dealing with it."[47]

The Court finds that Plaintiff must prove that Defendant's defamatory statements were a substantial factor in bringing about injury to Plaintiff's business reputation.[48]

Reputational Loss

> A corporation for profit has a business reputation and may therefore be defamed in this respect. Thus a corporation may maintain an action for defamatory words that discredit it and tend to cause loss to it in the conduct of its business, without proof of special harm resulting to it.[49]

When determining whether a Plaintiff has demonstrated any loss to reputation, "it must be measured by the perception of others, rather than that of the plaintiff [ ] because reputation is the estimation in which one's character is held by [ ] neighbors or associates."[50] Plaintiff must show that the defamatory statements

[45] *Comdyne I, Inc. v. Corbin*, 908 F.2d 1142, 1151 (3d Cir. 1990).
[46] *Q-Tone*, 1994 WL 555391, at *4.
[47] *Id*.
[48] Del. P.J.I. Civ. § 22.13 (2000).
[49] Restatement (Second) of Torts § 561 cmt. b (Am. Law Inst. 1977).
[50] *Synygy, Inc. v. ZS Associates, Inc.*, 110 F. Supp. 3d 602, 616 (E.D. Pa. 2015).

"tend to prejudice the corporation in its business" or "deter others from dealing with it."[51]

Defendant argues that Plaintiff cannot show any harm to its reputation or business proximately caused by Defendant's Statements. Defendant asserts that despite 80 depositions of 60 fact witnesses and 1,744,550 documents exchanged in discovery, Plaintiff is unable to show that any person's opinion changed. Defendant contends that Plaintiff cannot point to a single deal that actually was lost due to the alleged defamation. Additionally, Defendant asserts that out of the 35 broker-dealer representatives deposed, not one testified that their personal or their company's opinion of Plaintiff changed as a result of Defendant's Statements. There was no testimony that any of the broker-dealer's ceased doing business with Plaintiff.

Plaintiff contends that Defendant's Statements nonetheless have harmed Plaintiff's name and reputation among industry participants. Specifically,

> Goldman created a "matrix" to evaluate deals and declined to move forward on twelve potential deals; Deutsche retained a law firm to investigate Nuveen's allegations about PHC; Wells changed its procedures and gave Nuveen a right of first refusal; Citi stopped working on a deal with PHC and changed its policies; and KeyBanc had concerns with its reputation related to PHC and has not originated any 100% placements for PHC.[52]

[51] *Q-Tone,* 1994 WL 555391, at *4.
[52] Pl.'s Answering Br. at 25.

Plaintiff further contends that Plaintiff's witnesses will testify about the change in market perception of Plaintiff after Defendant's Statements.

Defendant counters that even if Plaintiff's representatives testify that Defendant's Statements reduced Plaintiff's reputation, the testimony would be excluded on a hearsay basis because those claims involve third party actors. Defendant relies on *Eaton v. Raven Transportation Incorporated*,[53] in which this Court excluded certain portions of the plaintiff's testimony about third parties' statements as inadmissible hearsay. The *Eaton* at-issue statements involved what was told to the plaintiff by a third-party. The *Eaton* plaintiff did not produce any corroborating evidentiary support.[54]

Defendant also contends that every grievance Plaintiff asserts is based on speculation. Testimony lacking "personal knowledge" of third parties' mental states constitute inadmissible hearsay. Defendant further contends that Plaintiff simply speculates that the third-party witnesses committed perjury when they testified that Defendant's Statements did not harm Plaintiff's reputation.

This Court "will not consider inadmissible hearsay when deciding a Motion for Summary Judgment…. The non-movant cannot create a genuine issue of fact with bare assertions or conclusory allegations, but must produce specific evidence

[53] 2010 WL 4703397 (Del. Super.).
[54] *Id.* at *4.

that would sustain a verdict in its favor.'"[55] Sheer speculation that a party has lied is insufficient to create a genuine issue of material fact.[56]

Plaintiff has submitted declarations from its own senior executives in support of its allegations of reputational harm. Plaintiff asserts that its witnesses will testify about the alleged change in market perception.

The Court of Chancery has held that affidavits "filled with hearsay, legal conclusions, and self-serving justifications" do not suffice to create ambiguity or present genuine issues of material fact.[57]

The Court finds that the record evidence does not include the testimony of any witnesses that their opinions were changed as a result of Defendant's Statements. There are no documents in the summary judgment record that support a finding of reputational loss. There are no: third-party witnesses; witnesses not affiliated with Plaintiff; or documents reflecting reputational loss to Plaintiff—demonstrating that the opinion about Plaintiff was changed in the community as a result of the defamatory statements.

The Court finds that *ipse dixit* evidence cannot create a genuine issue of material fact. Speculation and amorphous industry "chatter" is not sufficient to create a reasonable inference that Plaintiff's reputation was grievously fractured in

[55] *Williams v. United Parcel Serv. of Am., Inc.*, 2017 WL 10620619, at *2 (Del. Super.).
[56] *Geraci v. Moody-Tottrup, Int'l, Inc.*, 82 F.3d 578, 582 (3d Cir. 1996).
[57] *Paul Elton, LLC v. Rommel Delaware, LLC*, 2021 WL 6141588, at *5 (Del. Ch.).

the community. Speculation is not enough to present issues of credibility to demonstrate a genuine issue of material fact for the jury.

Therefore, Plaintiff has failed to present evidence demonstrating a genuine issue of material fact concerning reputational loss.

Preston Hollow's Motion for Partial Summary Judgement

Plaintiff originally moved for Partial Summary Judgment striking Defendants' Second, Seventh, Ninth, Fourteenth, Seventeenth, and Twenty-Second Affirmative Defenses. The parties agree that Defenses Two, Seventeen, and Twenty-Two are no longer at issue. Additionally, Defendants have conceded that Defense Nine is no longer viable because that there is no controversy regarding whether Plaintiff is a limited purpose public figure. Thus, the Court will only address Affirmative Defenses Seven and Fourteen.

Affirmative Defense Seven – Common Interest Qualified Privilege

Defendants' Seventh Affirmative Defense asserts that some or all of Defendant's Statements are protected by the common interest qualified privilege.

Qualified privilege extends to good faith communications, on a subject in which the writer has an interest, made to a person having a corresponding interest.[58] In *Klein v. Sunbeam Corporation*, the Delaware Supreme Court opined:

[58] *Klein v. Sunbeam Corp.*, 94 A.2d 385, 392 (Del.), *opinion adhered to on reargument*, 95 A.2d 460 (Del.).

> [W]e think the question of qualified privilege is a matter for defense depending upon the facts and circumstances surrounding the making of the publication. Since it is a matter of affirmative defense it may not be raised by a motion to dismiss under Rule 12(b)(6) but should be made a matter of answer to be supported by proof at the trial.[59]

Defendants[60] argue that the common interest being asserted is the health of the municipal bond industry. Defendants contend that the public has a strong interest in promoting the stability of the market. Defendants assert that Nuveen's Head of Municipal Finance expressed concern about Plaintiff's practices, which could directly impair the way the municipal bond market operates.

In *Q-Tone Broadcasting Company v. MusicRadio of Maryland, Incorporated*,[61] the parties also were competitors in their industry. This Court stated that it "could conceive of a proper limited claim of conditional privilege as to certain remarks allegedly made."[62] The *Q-Tone* defendants wanted to amend the answer to plead common interest privilege, based on a common "interest in the business practice of the radio industry."[63] This Court found that the rationale set forth by the *Q-Tone* defendants to was "too nebulous for legal recognition."[64]

---

[59] *Id*.
[60] Plaintiff's Motion for Partial Summary Judgment was brought against all Defendants.
[61] 1996 WL 944897 (Del. Super.).
[62] *Id.* at *1.
[63] *Id.*
[64] *Id.*

In *DeBonventura v. Nationwide Mutual Insurance Company*,[65] body shop owners alleged that defamatory statements by Nationwide resulted in diversion of prospective customers. The *DeBonventura* defendants argued qualified privilege. The Court of Chancery denied cross motions for summary judgment, finding that "common interest and good faith should permit the defense of qualified privilege" if "Nationwide actually intend to keep its costs and consequently its policyholders' premiums at a minimum by referring its insured to repair shops which were not 'too high.'"[66]

> [A] qualified privilege can be lost if the communication is not made in good faith or is made for a malicious purpose.
>
> "The existence of a conditional or qualified privilege depends upon the bona fides of the communication, and in determining whether or not it exists the court will look to the primary motive or purpose by which the defendant apparently was inspired. The privilege attaches only if the communication was made in good faith to serve the interests of the publisher and the person to whom it was addressed, and it does not exist if the privileged occasion was abused. There is no privilege if the publication was made primarily for the purpose of furthering an interest that is not entitled to protection, or if the defendant acted principally through motives of ill will, or so it is held, if he acted recklessly…."[67]

The Court finds that these cases distinguishable. Neither is on point with the facts of this case. Vice Chancellor Glasscock found that Defendants' Statements "malign Preston Hollow in its business as an investor in municipal bonds."[68] Thus,

---

[65] 1977 WL 9541 (Del. Ch.).
[66] *Id.* at *3.
[67] *DeBonaventura v. Nationwide Mut. Ins. Co*., 1977 WL 9541, at *2-3 (Del. Ch.)(quoting 50 Am. Jur.2d, Libel and Slander Sec. 197 at 702-03).
[68] *Preston Hollow Capital LLC, v. Nuveen LLC*, 216 A.3d 1, 10 (Del. Ch.).

Defendants' Statements were not made for the purpose of protecting the interests of a common industry.

The Court finds that Defendants are barred from asserting the Seventh Affirmative Defense of common interest qualified privilege.

Affirmative Defense Fourteen – Natural Person

Defendants Fourteenth Affirmative Defense asserts that Plaintiff is not a natural person, therefore defamation *per se* cannot apply.

Section 573 of the Restatement of Torts addresses *Slanderous Imputations Affecting Business, Trade, Profession or Office*. Comment B to the rule provides:

> The rule stated in this Section is applicable to false statements that tend to disparage another in the conduct of his business, trade or profession or in the discharge of his duty as an incumbent of a public or a private office. It therefore is applicable to any merchant or trader whose business is a lawful one.
>
> ***

It also protects the corporation itself against slander.[69] Delaware courts have sustained claims based on defamation *per se* brought by business entities.[70]

[69] Restatement (Second) of Torts § 573 cmt. b (Am. Law Inst. 1977).

[70] *See, e.g.*, *US Dominion, Inc. v. Fox News Network, LLC*, 2021 WL 5984265, at *28 (Del. Super.); *Dasso Int'l, Inc. v. MOSO N. Am., Inc*., 2020 WL 6287673, at *3 (D. Del.); *Optical Air Data Sys., LLC v. L-3 Commc'ns Corp*., 2019 WL 328429, at *8 (Del. Super.); *Prof'l Investigating & Consulting Agency, Inc. v. Hewlett-Packard Co*., 2015 WL 1417329, at *4 (Del. Super.); *PICA*, 2014 WL 4627141, at *11 (Del. Super.); *Spanish Tiles, Ltd. v. Hensey*, 2005 WL 3981740, at *6 (Del. Super.); *Del. Exp. Shuttle*, 2002 WL 31458243, at *22 (Del. Ch.); *Q-Tone*, 1994 WL 555391, at *5, *7-8 (Del. Super.).

The Court finds that defamation *per se* applies to both entities and natural persons.

CONCLUSION

The Court finds that defamation *per se* applies in this case. Plaintiff need not prove special damages. However, Plaintiff must prove injury to reputation in lieu of special damages. In the absence of proof of general damages, nominal damages may be awarded.

The Court finds that Plaintiff must prove that Defendant's defamatory statements were a substantial factor in bringing about injury to Plaintiff's business reputation.

The Court finds that *ipse dixit* evidence cannot create a genuine issue of material fact. Speculation and amorphous industry "chatter" is not sufficient to create a reasonable inference that Plaintiff's reputation was grievously fractured in the community. Speculation is not enough to present issues of credibility to demonstrate a genuine issue of material fact for the jury. Therefore, Plaintiff has failed to present evidence demonstrating a genuine issue of material fact concerning reputational loss.

THEREFORE, Defendant's Motion for Summary Judgment on the issue of defamation is hereby **GRANTED.**

The parties concede that Defenses Two, Seventeen, and Twenty-Two are no longer at issue. Defendants have conceded that Defense Nine, is no longer viable because there is no controversy regarding whether Plaintiff is a limited purpose public figure.

The Court finds that Defendants' Statements were not made for the purpose of protecting the interest of a common industry. Therefore, Defendants are barred from asserting the Seventh Affirmative Defense of common interest qualified privilege.

The Court further finds that defamation *per se* applies to both entities and natural persons. Therefore, Affirmative Defense Fourteen cannot stand.

THEREFORE, Plaintiff's Motion for Partial Summary Judgment striking Defendants' Seventh and Fourteenth Affirmative Defenses is hereby **GRANTED.**

IT IS SO ORDERED

/s/ Mary M. Johnston
The Honorable Mary M. Johnston