

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

THE GRAHAM COMPANY,	:	February Term 2017
	:	
Plaintiff,	:	
	:	
v.	:	No. 2712
	:	
CRAIG A. HARPER, LAUREN ALGEO and	:	
ALLIANT INSURANCE SERVICES, INC.,	:	Commerce Program
	:	
Defendants.	:	Control Number 18082381

18082361

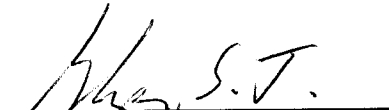
ORDER

AND NOW, this *29th* day of October, 2018, upon consideration plaintiff /counterclaim defendant The Graham's Company's Motion for Summary Judgment to defendants/counterclaim plaintiffs Craig A. Harper and Alliant Insurance Services, Inc.'s counterclaims and defendants/counterclaim plaintiffs response in opposition and in accord with the attached Opinion, it hereby is **ORDERED** that the Motion for Summary Judgment is **Granted in part** as follows:

1. The counterclaim for commercial disparagement by Craig A. Harper and Alliant Insurance Services, Inc. is dismissed.
2. The counterclaim for defamation by Alliant Insurance Services, Inc. is dismissed.
3. The counterclaim for defamation by Craig A. Harper is dismissed in part only as it pertains to the statement "not a team player".

All other aspects of the Motion are **Denied**.

BY THE COURT,



GLAZER, S.J.

The Graham Company Vs A-ORDOP



17020271200076

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

THE GRAHAM COMPANY,	:	February Term 2017
Plaintiff,	:	
v.	:	No. 2712
CRAIG A. HARPER, LAUREN ALGEO and	:	
ALLIANT INSURANCE SERVICES, INC.,	:	Commerce Program
Defendants.	:	
	:	Control Number 18082381

OPINION

Presently before the court is plaintiff /counterclaim defendant The Graham Company’s (“Plaintiff”) motion for summary judgment to defendants/counterclaim plaintiffs Alliant Insurance Services, Inc. and Craig A. Harper’s counterclaims. For the reasons discussed below, the motion for summary judgment is granted in part and denied in part.

Plaintiff is a commercial insurance broker. Defendant Craig A. Harper (“Harper”) began working for plaintiff in its employee benefits department as a producer in February 2007. Harper was responsible for acquiring new business and working with existing clients to generate business for the employee benefits department.¹ On February 9, 2016, Harper resigned his position and began working for Alliant Insurance Services, Inc., one of plaintiff’s competitors, as an employee benefits producer. On February 12, 2016, Tom Morrin, one of plaintiff’s producers and board member, reached out to a client, Larry Carlson of the United Methodist Homes, to advise him of Harper’s resignation and to discuss the recent changes at plaintiff’s company. During that conversation, Morrin told Carlson that Harper was a poor “team player”, “poor

¹ Defendant Lauren Algeo was also employed by plaintiff. Algeo has not asserted any counterclaims against plaintiff.

employee” and “poor performer”.² Harper was not a party to the conversation between Morrin and Carlson. However, Harper learned about the conversation between Morrin and Carlson in the first quarter of 2016 from Timothy Folk, a former employee at plaintiff’s company and an industry colleague. Folk learned about the conversation between Morrin and Carlson from Carlson and Folk relayed the conversation to Harper.³ Additionally, another industry contact informed Harper that Mr. Ewell, the CEO of plaintiff, told the chief executive officer of an employee benefits client that Harper was on a performance plan, was not a team player and did not perform well at plaintiff’s company.⁴ Harper claims that as a result of Morrin and Ewell’s statements, he has had to defend his reputation to clients and others within the industry and assure people that he is capable of performing the job.⁵ Harper also claims that he experienced anxiety, lost sleep and worried about his job and reputation causing him to seek medical help to

² Exhibit “4” to defendants/counterclaim plaintiff’s response to plaintiff/counterclaim defendant’s motion for summary judgment is Harper’s affidavit ¶ 11. Morrin disputes that he told Carlson that Harper was “on a performance improvement plan” and that he was a “rogue employee”. Morrin did testify that he told Carlson that Harper was “not being a team player” as it related to his interactions with other employees, his willingness to train other new employees and resistance to share referral business. Exhibit “5” to defendants/counterclaim plaintiff’s response to plaintiff/counterclaim defendant’s motion for summary judgment is Morrin’s deposition.

³ Harper testified at deposition that Folk told Harper that Morrin told Carlson that Harper was a “rogue employee”, on a “performance improvement plan” and was not meeting expectations. Exhibit “7” to defendants/counterclaim plaintiff’s response to plaintiff/counterclaim defendant’s motion for summary judgment is Harper’s deposition; see also Exhibit “4” Harper’s affidavit. Folk testified that he has no recollection of having the conversation with Carlson. Exhibit “14” to defendants/counterclaim plaintiff’s response to plaintiff/counterclaim defendants’ motion for summary judgment is Folk’s deposition. Defendants have not taken Carlson’s deposition.

⁴ Exhibit “4” Harper affidavit ¶ 13.

⁵ Id ¶ 20.

deal with the stress of plaintiff's actions.⁶ Harper became concerned he would be terminated and has allegedly encountered more resistance in the industry.⁷

On February 9, 2017, plaintiff instituted this action against Harper and Algeo for breach of employment contract and tortious interference with contract and against Alliant for tortious interference of contract. On March 22, 2017, after defendants' preliminary objections were overruled, defendants filed an answer to the complaint with new matter and defendants Harper and Alliant filed a counterclaim for commercial disparagement and defamation.

DISCUSSION

I. The counterclaim for commercial disparagement by Alliant and Harper is Dismissed.

The tort of commercial disparagement requires the plaintiff to prove (1) that the statement is false; (2) that the publisher either intends the publication to cause pecuniary loss or reasonably should recognize that publication will result in pecuniary loss; (3) that pecuniary loss does in fact result; and (4) that the publisher either knows that the statement is false or acts in reckless disregard of its truth or falsity.⁸ To recover for the tort of disparagement, a plaintiff must prove a direct pecuniary loss as a result of the disparagement.⁹

In the case *sub judice*, the claim for commercial disparagement fails. There is no evidence of any defamatory statements against Alliant, that its reputation was lowered in the opinion of others in the industry, or that Alliant suffered any direct pecuniary harm. In regards to Harper,

⁶ Exhibit "4" Harper affidavit ¶ 21.

⁷ Id. at ¶ 22.

⁸ *Pro Golf Mfg., Inc. v. Tribune Review Newspaper Co.*, 809 A.2d 243 (Pa. Super. 2002).

⁹ *Menefee v. Columbia Broadcasting System Inc.*, 458 Pa. 46, 329 A.2d 216 (1974).

the record is devoid of any direct evidence of pecuniary harm suffered by Harper as a result of plaintiff's alleged defamatory statements. Harper solely asserts that he suffered non-economic damages such as alleged reputational harm, distress, embarrassment, and anxiety. These non-economic damages do not constitute are not pecuniary loss. Consequently, Alliant and Harper's counterclaim for commercial disparagement fails.

II. Alliant's counterclaim for defamation fails in its entirety while Harper's counterclaim for defamation survives in part.

In an action for defamation, the plaintiff has the burden of proving: (1) the defamatory character of the communication, (2) its publication by the defendant, (3) its application to the plaintiff, (4) the understanding by the recipient of its defamatory meaning, (5) the understanding by the recipient of it as intended to be applied to the plaintiff, (6) special harm resulting to the plaintiff from its publication, (7) abuse of a conditionally privileged occasion.

"Defamation is a communication which tends to harm an individual's reputation so as to lower him or her in the estimation of the community or deter third persons from associating or dealing with him or her."¹⁰ Only statements of fact, not expressions of opinion, can support an action in defamation.¹¹ Further, whether a particular statement or writing constitutes fact or opinion is a question of law for the court to determine in the first instance.¹² Additionally, it is within the trial court's province to determine whether the challenged statements are capable of defamatory meaning.

¹⁰ *Moore v. Cobb-Nettleton*, 889 A.2d 1262, 1267 (Pa.Super. 2005) citing *Elia v. Erie Insurance Exchange*, 430 Pa.Super. 384, 634 A.2d 657, 660 (1993).

¹¹ *Id.*

¹² *Braig v. Field Communications*, 310 Pa.Super. 569, 456 A.2d 1366 (1983).

“A statement in the form of an opinion is actionable only if it may reasonably be understood to imply the existence of *undisclosed* defamatory facts justifying the opinion. A simple expression of opinion based on disclosed ... facts is not itself sufficient for defamation.”¹³

As it pertains to Alliant, since there is no evidence of any defamatory communication against Alliant by plaintiff, the counterclaim for defamation by Alliant fails and summary judgment is granted in favor of plaintiff and against Alliant on the defamation counterclaim. As it pertains to Harper, the counterclaim for defamation survives in part. The basis for Harper’s counterclaim for defamation appears to arise from two sources, Morrin’s statement to Carlson and Ewell’s statements to an undisclosed industry contact.¹⁴ The alleged defamatory statements identified by Harper are as follows: Harper was a poor “team player”, Harper is a “poor employee”, Harper is a “poor performer”, and Harper is a “rogue employee”. Focusing on the statement that Harper “was not a team player”, the court finds that this statement is a nonactionable statement of opinion. The record shows that Morrin and Ewell fully disclosed the facts upon which this opinion statement was made, that is, Harper had been unwilling to mentor new producers at plaintiff’s company or share in internal referrals with other producers. Since the opinion by Morrin and Ewell do not imply the existence of any undisclosed facts, this statement may not be the subject of a defamation claim and therefore the motion for summary judgment is granted in this regard.

As it pertains to the remaining statements set forth above, the motion for summary judgment is denied. Subject to any evidentiary challenges which may be raised by plaintiffs at trial or by

¹³*Braig v. Field Communications*, 310 Pa.Super. 569, 456 A.2d 1366 (1983); *see also Neish v. Beaver Newspapers, Inc.*, 398 Pa.Super. 588, 581 A.2d 619, 622-624 (1990).

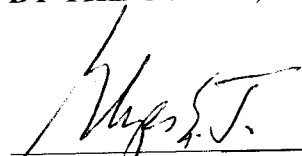
¹⁴ Exhibit “4” -Harper’s affidavit.

motion in limine, the statements may be sufficient to satisfy the requirements to show defamations and the motion is denied in this regard.¹⁵

CONCLUSION

Based on the foregoing, plaintiff/counterclaim defendant's motion for summary judgment is granted in part and denied in part.

BY THE COURT,



GLAZER, S. J.

¹⁵ Plaintiff also argues that the statute of limitations bars Alliant and Harper's counterclaim. At this time, disputed issues of fact exist as to when Harper discovered that the alleged statements were made. As such, the motion is denied in this regard.