

allegation that “Defendants’ statements as described above were made with malice” is insufficient to overcome this privilege. *See* Second Amended Complaint, ¶ 188. This allegation is vague and completely discredited by the content of the articles. Absent an allegation that the journalist or publisher acted with malice that is not clearly discredited by the very publication alleged, as is the case here, the Salt Lake Tribune and Deseret Morning News are protected by the neutral reportage privilege.

II. The Militant

Plaintiffs next allege, “The Militant and its agents made the following publications, not as reports or statements by others, but as their own personal representations.” *See* Second Amended Complaint, ¶ 124. This initial allegation places The Militant on a different footing than its counterparts the Salt Lake Tribune and Deseret Morning News. It states that The Militant engaged in a personal, not neutral, publishing campaign. Plaintiffs did not include such an allegation against either the Salt Lake Tribune or Deseret Morning News.

The plaintiffs have also alleged that The Militant’s publishing campaign against it was extensive and unrelenting. While the plaintiffs have picked sentences from a limited number of articles published by the Salt Lake Tribune and Deseret Morning News, they have alleged repeated defamations by The Militant in 75 articles beginning on October 6, 2003 and continuing through April 4, 2005. These allegations, plaintiffs maintain, represent a pattern from which a reasonable person could infer an intent to undermine the plaintiffs reputation.

Extensive reporting, however, is not sufficient to state a claim for defamation. The content must meet the requirements under the law. The Court finds that the content of The Militant’s articles concerning the labor dispute could convey defamatory meaning. Where the Salt Lake Tribune and Deseret Morning News attempted to display the perspectives of both the

miners and the owners, it is arguable The Militant offered no such neutral forum. For instance, plaintiffs allege:

The Militant Editor Argiris Malapanis published these statements: The conditions at the Co-op were responsible for three deaths in the last half of the 1990s - half of the total coal mine deaths in the state.... The mine owners ... are notorious ... for their brutality against workers ... They are widely despised by working people for their abuse of women. For example, one of the directors of the Co-Op mine, John Kingston, was convicted for savagely beating his daughter.

See Second Amended Complaint, ¶ 135. The complete statements were published in the article as follows:

The conditions at Co-Op were responsible for three deaths in the last half of the 1990s - half of the total coal mine deaths in the state. A UMWA statement notes that in September, as miners were taking steps to organize a union, they were fired en masse after they protested the arbitrary dismissal of one of their co-workers.

The mine owners, the Kingstons, are a capitalist family notorious in the region for their brutality against workers they employ in their \$150 million business empire. They are widely despised by working people for their abuse of women.

The Militant, Editorial, *Solidarity with Utah Miners!*, December 1, 2003.

Unlike the articles published in the Salt Lake Tribune and Deseret Morning News, added context strengthens, rather than weakens, the claim of defamation. In this article, The Militant states (1) that the plaintiffs were responsible for half of the mine-related deaths in Utah in the 1990s, and (2) that they abuse women. A reasonable reader could infer an intent to injure the plaintiffs' reputation from each of these statements, which is sufficient to constitute malice under *Linn* and overcome a motion to dismiss. Moreover, the article does not offer the plaintiffs the opportunity to rebut these allegations. For these reasons, the Court finds that the alleged defamations published by The Militant are capable of conveying defamatory meaning.

Unlike the publications of Salt Lake Tribune and Deseret Morning News, the statements published by The Militant do not meet the requirements for protection under the neutral

reportage privilege. The Militant published reports concerning the labor dispute that a reasonable reader could conclude distorted the image of the plaintiffs. Moreover, The Militant did not seek out comments from the plaintiffs or appear to offer them the chance to rebut the published accusations. For these reasons, the neutral reportage privilege does not shield The Militant from claims for defamation.

III. The Individual Miners

Plaintiffs' fail to plead facts from which a reasonable person could infer malice on the part of Ricardo Chavez, William Estrada, Hector Flores, Daniel Hernandez, Guillermo Hernandez, Alyson Kennedy, Berthilda Leon, Samuel Villa Miranda, Domingo Olivas, Celso Panduro, Rodrigo Rodriguez, Gonzalo Salazar, Jesus Salazar, Jose Juan Salazar and Ana Marie Sanchez (collectively "Defendant Miners"). Plaintiffs cite a litany of statements made by Defendant Miners during the course of the labor dispute. Although these statements express the Defendant Miners' opinion that they were being treated unfairly, this does not rise to malice as required under the law. Laborers are entitled to their opinions. They are entitled to express those opinions, whether in the midst of a labor dispute or not. Plaintiffs' allegations seem to suggest that any opinion counter to their own is defamatory. Clearly, this is not the law. Plaintiffs' allegations against the Defendant Miners seem to be nothing more than an attempt to intimidate their employees and quell honest discussion concerning labor issues. Their claims of defamation against the individual miners are specious and disingenuous. Because plaintiffs fail to allege malice in the Defendant Miners' comments, they have failed to state a claim for defamation and those claims must be dismissed.

IV. The UMWA and Jobs With Justice

The plaintiffs have alleged facts concerning the UMWA and Jobs With Justice from which a reasonable person could infer malice. Specifically, the plaintiffs have alleged that the UMWA or its agents stated:

“These miners work for one of the most brutal companies around ... We need to stop this ruthless treatment of our miners.”; “Dalpiaz called CWM “one of the most brutal employers in the country”.”; “These workers are exploited” and what CWM was doing to the workers “went out with slavery.”; and “They take advantage of these workers and just thumb their noses at any kind of law.”

See Second Amended Complaint, ¶¶ 118, 119, and 122. These statements attack the plaintiffs’ reputation by comparing the plaintiffs’ practices to those utilized by slave-owners and labeling the plaintiffs as lawbreakers. Although dialogue in labor disputes is afforded great latitude, these statements may undermine the plaintiffs’ reputation. The intent to undermine is heightened by the apparent lack of opportunity given to the plaintiffs to rebut these assertions. For these reasons, a reasonable person could infer that the UMWA intended to injure the plaintiffs reputation; therefore, the alleged defamations are capable of conveying defamatory meaning.

Plaintiffs allege Jobs With Justice has published similar statements. For instance, plaintiffs allege Jobs With Justice stated:

Since [1979], this so-called union [IAUWU] has been owned, operated, and controlled by the powerful Kingston family. The union holds no meetings and its officers are not elected - they are appointed by and are members of the Kingston clan ... A mountain of evidence indicating that the Co-Op miners want representation with the UMWA and that the company union is a farce...

See Second Amended Complaint, ¶ 176. Like the statements published by the UMWA, these assertions impugn the plaintiffs’ reputation and they offer no opportunity for rebuttal. For these reasons, the Court finds that they are capable of conveying defamatory meaning and malice, and therefore can sustain a claim for defamation.

V. Conclusion on Defamation Claims

Based on the reasoning above, the motions to dismiss the defamation claims against the Salt Lake Tribune, Deseret Morning News, and the individual Defendant Miners are GRANTED and the motions to dismiss the defamation claims against The Militant, the UMW, and Jobs With Justice are DENIED.

The Court would have reached this same result had the defendants moved for summary judgment rather than dismissal. During oral argument, the parties discussed whether the defendants' motions would have been more properly postured as motions for summary judgment because the Court might be required to engage in some fact-finding. Rule 12(b) states that if matters outside the pleadings are presented to and not excluded by the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." *See Fed.R.Civ.P. 12*. The plaintiffs' Second Amended Complaint includes the articles and statements alleged to have been defamatory. The Court has not looked outside these articles in reaching its determinations; moreover, it is not inclined to extend discovery beyond the articles for purposes of summary judgment because the crux of defamation is whether the publication could carry defamatory meaning. Extending discovery would not illuminate this determination.

Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(c)*. With respect to the present defamation claims, there are no genuine issues of fact. No defendant disputes that the alleged defamatory statements were published. The publications clearly named the plaintiffs and the plaintiffs have cited the portions of the articles that they allege to be defamatory. The crucial remaining questions are whether the statements were capable of conveying defamatory meaning and whether they are protected by privilege, and each is a question of law to be resolved by the Court. As a matter of law, the articles published by the Salt Lake Tribune and Deseret

Morning News and the statements of the Defendant Miners are not capable of conveying defamatory meaning and the newspapers' statements are further protected by the neutral reportage privilege.

Where the statements are capable of conveying defamatory meaning and are not protected by any privilege, as is the case with the other defendants, limited discovery may be necessary to determine whether the statements are true and whether they actually injured the plaintiffs. The remaining defendants may bring motions for summary judgment in the future based on these two elements; however, the Court will limit discovery to evidence establishing the truth of the statements and the damage they caused.

B. Declaratory Relief

In conjunction with their defamation claims, the plaintiffs seek a declaratory judgment to the effect that seven of the individual defendants proffered inaccurate documentation when they secured employment and that several defendants combined to constitute an enterprise under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961(4).

With regard to immigration fraud, the United States government retains the exclusive right to enforce immigration statutes. *See Chavez v. Freshpict Foods, Inc.*, 456 F.2d 890 (10th Cir. 1972). In *Chavez*, "sixteen domestic workers from Colorado and Texas filed suit on behalf of themselves and others....They allege that the appellees, 34 employers of agricultural workers, employ Mexican nationals who have illegally entered the United States." *Id.*, at 891-892. The Trial Court "held that no private action for enforcement of the immigration laws was intended, either expressly or by implication." *Id.* The Tenth Circuit affirmed the Trial Court's ruling. Private parties, such as the plaintiffs, have no standing to raise such immigration issues.

Under RICO, a claim can proceed only where an injury attributed to RICO violations is alleged. See *Grider v. Texas Oil and Gas Corp.*, 868 F.2d 1147, 1149 (10th Cir. 1989). The *Grider* Court held, “It thus appears from the plain language of these two provisions that a plaintiff seeking civil damages for a violation of section 1962(a) must plead facts tending to show that he was injured by the use or investment of racketeering income.” *Id.* Plaintiffs have pled no facts tending to show injury by the use of racketeering income.

Even if the plaintiffs had overcome these barriers, Fed R. Civ. P. 9(b) requires averments of fraud to be stated with particularity. Plaintiffs have failed to plead fraud with any particularity, in violation of Rule 9(b) and this Court’s order. For these reasons, these claims are dismissed.

C. Unfair Labor Practices

Plaintiffs also claim certain defendants engaged in unfair labor practices. In *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959), the U.S. Supreme Court enunciated a rule of preemption that protects the exclusive jurisdiction of the NLRB over unfair labor practices. Specifically, the Court held that, “When an activity is arguably subject to §7 or §8 of the [National Labor Relations Act], the States as well as the federal courts must defer to the exclusive competence of the [NLRB] if the danger of state interference with national policy is to be averted.” *Id.*

In the plaintiffs’ second amended complaint, the plaintiffs allege violations of the labor agreement and unfair labor practices pursuant to 29 U.S.C. §158 and §159. See Second Amended Complaint ¶¶ 80-82. Both 29 U.S.C. §158 and §159 comprise part of §7 of the NLRB, and therefore are subject to the provisions of the NLRA under the Supreme Court’s ruling in

Garmon. Because these claims are subject to the exclusive competence of the NLRB, these claims are dismissed.

D. Invasion of Privacy

Plaintiffs also claim invasion of privacy. Invasion of privacy is a state law tort. Under Utah law:

The “false light” privacy tort provides that one is subject to liability to another for invasion of privacy if (1) he or she gives publicity to a matter concerning another that places the other before the public in a false light [; (2)] the false light in which the other was placed would be highly offensive to a reasonable person [;] and [(3)] the actor ha[d] knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Stein v. Marriott Ownership Resorts, Inc., 944 P.2d 374, 380 (Utah Ct. App. 1997) (Citations omitted).

Plaintiffs have failed to state a claim for false light/invasion of privacy. First, they have failed to comply with the court’s order that they plead their allegations with specificity.

Plaintiffs have pled:

201. Defendants gave publicity to matters concerning Plaintiffs that placed Plaintiffs before the public in a false light that would be highly offensive to a reasonable person. Defendants acted with knowledge of, or in reckless disregard as to, the falsity of the publicized matters and the false light in which Plaintiffs would be placed.

202. Aguilar, Chavez, Estrada, Flores, Gonzalez, Daniel and Guillermo Hernandez, Kennedy, Leon, Olivas, Panduro, Rodriguez, Gonzalo, Jesus, and Juan Salazar, Sanchez, Silva, Villa, UMWA and its officers and other agents, The Militant and its editors and reporters, PACE, Neckel, Utah Coalition of Jobs with Justice, Jobs with Justice, and one or more of the Doe Defendants, and each of them, conspired, planned, directed, instigated, advised, aided, abetted, encouraged, supported, participated in, mutually agreed to, and/or ratified the acts of one another as described herein, and are liable as though they had performed the acts themselves.

See Second Amended Complaint, ¶¶ 201-202. These allegations are utterly vague. They give the named defendants no indication of what acts allegedly placed the plaintiffs in a false light; only that they were “publicized matters.”

Even if the allegations were sufficiently specific, the facts pleaded have not stated a claim. Labor disputes are highly publicized by nature. The U.S. Supreme Court in *Linn* stated that labor disputes are “[a]re frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions. Both labor and management often speak bluntly and recklessly, embellishing their respective positions with imprecatory language.” See *Linn v. United Plant Guard Workers of America, Local 114*, 383 U.S. at 58 (citations omitted). The plaintiffs cannot use false light as a tool to punish its opponents for the publicity that naturally arises from any labor dispute. Plaintiffs have failed to plead facts from which a reasonable person could conclude that the defendants “had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed;” therefore these claims are dismissed.

E. Intentional Interference with Economic Relations

Plaintiffs also claim intentional interference with economic relations. In Utah, “A claim for intentional interference with economic relations “protects both existing contractual relationships and prospective relationships of economic advantage not yet reduced to a formal contract”.” *Anderson Develop. Co., L.C. v. Tobias*, 116 P.3d 323, 331(Utah 2005) (citations omitted). “To succeed on such a claim, a plaintiff must demonstrate that “(1) ... the defendant intentionally interfered with the plaintiff’s existing or potential economic relations, (2) for an

improper purpose or by improper means, (3) causing injury to the plaintiff.” *Id.* The Court then elaborated:

With respect to the second element, only one alternative, either improper purpose or improper means, need be established; a plaintiff need not prove both. (Citations omitted). To establish the first alternative, improper purpose, it is not enough to show that the defendant was motivated by ill will toward the plaintiff. (Citations omitted). Rather, the plaintiff must show that the defendant’s “predominant purpose was to injure the plaintiff.” (Citations omitted). To establish the second alternative, improper means, a plaintiff must show “that the defendant’s means of interference were contrary to statutory, regulatory, or common law or violated an established standard of a trade or profession.

Id.

Contrary to the requirements of the law, plaintiffs have alleged only that certain defendants have “intentionally interfered with CWM’s present and prospective economic relations ... by improper means or for a predominantly improper purpose.” *See* Second Amended Complaint, ¶¶ 208-210. Although this allegation tracks the language of the law, it fails to plead any facts that would suggest how the defendants committed this infraction.

Even if the plaintiffs had been sufficiently specific, nothing in the underlying facts of the case suggests that a claim for intentional interference with economic relations could be stated. Nothing in the background of the labor dispute suggests that the defendants’ interference was performed for an improper purpose or by improper means. The miners’ predominant purpose in the labor dispute, as stated in their statements published by the Salt Lake Tribune and the Deseret Morning News, was to improve their wages and working conditions. The other defendants’ primary purpose seems to have been to rally support for the miners. The Complaint itself highlights this. There is no indication of improper purpose in any of the defendants’ actions. Moreover, there is nothing to suggest that the labor dispute arose due to improper means. In fact,

the NLRB settlement tacitly acknowledges that the means used in the dispute were proper. For these reasons, the claim of intentional interference with economic relations is dismissed.

F. Negligence

Plaintiffs attempt to recast their unfair labor practice and intentional interference with economic relations claims as negligence by stating "Defendants owed Plaintiffs a duty of care to refrain from interfering with CWM's contractual relations with its employees." See Second Amended Complaint, ¶ 215. "To establish negligence or gross negligence, a plaintiff must first establish a duty of care owed by the defendant to the plaintiff." *Ferree v. State of Utah*, 784 P.2d 149, 151 (Utah 1989) (Citations omitted). "Duty is a question of whether the defendant is under any obligation for the benefit of a particular plaintiff." *Id.* (Citations omitted).

There is nothing to suggest that any defendant was under any obligation for the benefit of the plaintiffs. Certainly no defendants except the Defendant Miners were linked with the plaintiffs in any way, and no reasonable person would suggest that disputing or reporting labor conditions that may rise to the level of human rights violations, including exploitation and abuse, would breach any duty. The claim is dismissed.

G. Civil Conspiracy

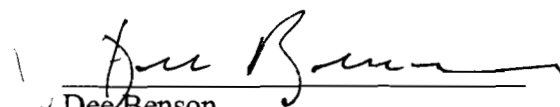
Plaintiffs' final claim is civil conspiracy. The crux of this claim clearly falls within plaintiffs' claims for unfair labor practices, over which the NLRB retains exclusive jurisdiction. For this reason, the claim is dismissed.

CONCLUSION

The motions to dismiss are hereby GRANTED in part and DENIED in part as set forth in this Opinion and Order. Reasonable attorneys' fees are awarded to the Salt Lake Tribune and Deseret Morning News.

IT IS SO ORDERED.

DATED this 30th day of April, 2006.


Dee Benson
United States District Judge