IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-LAW DIVISION

HORIZON GROUP MANAGEMENT, LLC,	§	
An Illinois limited liability company,	§	
Plaintiff,	§	**No. 2009 L 008675**
	§	
vs.	§	**CALENDAR B**
	§	
AMANDA BONNEN,	§	
Defendant.	§	

REPLY MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT'S 2-615 MOTION TO DISMISS

In its Response to Defendant Amanda Bonnen's Motion to Dismiss[1], Plaintiff fails to show that Ms. Bonnen's tweet is defamatory as a matter of law, improperly includes materials not within the four corners of the Complaint, and improperly moves to file an amended complaint for what it erroneously characterizes as "typographical errors." Given these failures, Ms. Bonnen asks that Plaintiff's Complaint be stricken and that its cause of action for defamation be dismissed with prejudice.

I. Plaintiff Fails to Show that the Tweet in Question Was a False Statement of Fact.

As a matter of law, the Complaint does not meet the elements for defamation. In a cause of action for defamation, a plaintiff must show that "(1) the defendant made a false statement concerning the plaintiff; (2) there was an unprivileged publication of the defamatory statement to a third party by defendant; and (3) the publication of the defamatory statement damaged the plaintiff." *Brennan v. Kadner*, 351 Ill. App. 3d 963, 968 (1st Dist. 2004). That statement must also fall within one of the four categories of defamation *per se*. *Bryson v. News American Publications, Inc.*, 174 Ill. 2d 77, 88-89 (1996). Even if a statement falls into a defamation *per*

[1] Plaintiff erroneously labels its pleading as "Plaintiff's Reply," which will be correctly referenced herein as Plaintiff's Response.

se category, it is not actionable as a matter of law "if it is reasonably susceptible of an innocent construction." *Harrison v. Chicago Sun-Times*, 341 Ill. App. 3d 555, 569 (1st Dist. 2003). "[T]rial courts may apply the innocent construction rule when deciding a motion to dismiss brought pursuant to *section 2-615*." *Becker v. Zellner*, 292 Ill. App. 3d 116, 122-23 (2d Dist. 1997). Application of this rule demonstrates that Ms. Bonnen's tweet is not a false statement of fact but rather is reasonably susceptible of innocent construction.

A. Plaintiff misapplies the rule of innocent construction.

Plaintiff erroneously argues that Ms. Bonnen's tweet cannot be innocently construed because the court in *Bryson*, 174 Ill. 2d at 94, stated that the innocent construction rule does not require courts "to espouse a naivete unwarranted under the circumstances." When applying *Bryson*, however, "the context of a statement is critical in determining its meaning. A given statement may convey entirely different meanings when presented in different contexts." *Tuite v. Corbitt*, 224 Ill. 2d 490, 512 (2006). As detailed in Ms. Bonnen's memorandum of law in support of the motion to dismiss (Bonnen Memorandum), the tweet exists within a context of random and imprecise hyperbolic comments void of explanation. *See also* Complaint Ex. A. This context makes clear that the tweet is not a false statement of fact but, rather, is reasonably susceptible of innocent construction and deserving of First Amendment protection.

B. Plaintiff ignores the reality that the tweet lacks factual context and is thus protected by the First Amendment.

Plaintiff ignores the lack of factual context for the tweet and incorrectly states that Ms. Bonnen wishes the court to use a "mere opinion" rationale. Plaintiff tries to support its misunderstanding by noting that "couching . . . statements in terms of opinion" does not protect a speaker from a defamation claim. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19 (1990). The *Milkovich* court holds, however, that it still follows the lines of cases that provide "protection for

statements that cannot 'reasonably [be] interpreted as stating actual facts.'" *Id.* at 20. In evaluating a statement or opinion to determine whether it merits protection, the court must consider not only whether the statement is "an articulation of an objectively verifiable fact," but also the general tenor of the statement's context, including whether the speaker uses "loose, figurative, or hyperbolic language." *Id.* at 20-21. In applying *Milkovich*, the Illinois Supreme Court holds that to determine whether First Amendment protection applies, a court should analyze "(1) whether the statement has a precise and readily understood meaning, (2) whether the statement is verifiable, and (3) whether the statement's literary or social context signals that it has factual content." *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 398 (2008). An application of this test affirms that Ms. Bonnen's tweet enjoys First Amendment protection.

1. The tweet is not objectively verifiable.

Plaintiff ignores the reality that Ms. Bonnen's tweet is not objectively verifiable, as set forth in the Bonnen Memorandum. "Only factual statements capable of being proven true or false are actionable." *Brennan*, 351 Ill. App. 3d at 969. A court is not required "to accept the plaintiff's *interpretation* of the disputed statement as defamatory *per se*." *Tuite*, 224 Ill. 2d at 510. Rather, the court "must evaluate the totality of the circumstances and should consider whether the statement is capable of objective verification as true or false." *Piersall v. Sportsvision of Chicago*, 230 Ill. App. 3d 503, 510 (1st Dist. 1992).

Plaintiff directs the court to dicta in the *Milkovich* case, which notes that "the statement, 'In my opinion Jones is a liar,' can cause as much damage to reputation as the statement, 'Jones is a liar.'" *Milkovich* at 19.[2] Whether someone has lied or committed perjury is susceptible of

[2] Plaintiff also attempts to rely for support on the "*Love*" case. However, the document that it cites and attaches to its response is neither authoritative nor persuasive. It is merely a memorandum of law related to a

being proved true or false. However, Ms. Bonnen does not state that "Horizon realty" committed any specific action. She merely speculates as to what "Horizon realty" *thinks*. The issue here is not Ms. Bonnen's thoughts. The issue is whether what "Horizon realty" thinks is objectively verifiable. It is not. Hence, the statement is not actionable.

Furthermore, Plaintiff ignores the reality that the reader has no factual context for the tweet. Plaintiff erroneously would have the court believe that the instant case approximates *Milkovich*, where a reporter wrote an article titled "Maple beats the law with the 'big lie'" and provided many factual details about a wrestling meet and a subsequent hearing. *Milkovich* at 4-5. In contrast, a "general statement, in the absence of factual context, is . . . not objectively verifiable and devoid of factual content." *Dubinsky v. United Airlines Master Executive Council,* 303 Ill. App. 3d 317, 330 (1st Dist. 1999) (where calling plaintiff a "crook" at a meeting was nonactionable because those present did not have the necessary factual context).

The *Piersall* court also held that a baseball team owner did not defame two sportscasters where media quoted him as saying, "I don't mind criticism, but they both told a lot of lies. They wanted us to lose." and "The public could not know the truth about them; they are both liars. They both said things on the air they knew were not true." *Piersall*, 230 Ill. App. 3d at 506. That court found that the statements lacked a context of specific facts that would make the statements "capable of being objectively verified as true or false." *Id.* at 511; *see also Rose v. Hollinger Int'l Inc.*, 383 Ill. App. 3d 8, 13-15 (1st Dist. 2008).

Similarly here, while Ms. Bonnen's Twitter readers might know that her Twitter account location is Chicago, the tweet does not state where she lives, does not note that she lives in any property managed by Plaintiff, and does not offer any details to provide a factual context.

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motion to dismiss under California's anti-SLAPP statute. Furthermore, this attachment does not fall within the four corners of Plaintiff's complaint and thus must be ignored, as explained *infra*.

Complaint Ex. A. There is no way for a reader to be "completely apprised of all the developments" relating to the statement. *Dubinsky*, 303 Ill. App. 3d at 330. The tweet lacks a context of specific facts, is not objectively verifiable, and thus is reasonably susceptible of innocent construction and protected by the First Amendment.

2. The tweet is not precise.

Ms. Bonnen's tweet lacks the precision necessary to find it defamatory. A statement that is "broad, conclusory, and subjective" is not actionable. *Hopewell v. Vitullo*, 299 Ill. App. 3d, 513, 520 (1st Dist. 1998). Plaintiff contends that, because "moldy" can be readily understood as meaning "covered by mold producing fungus," it is defamatory. However, Plaintiff admits that the term "moldy" can have different meanings and ignores the necessity for a defamatory statement to have not only a "readily understood" meaning but also a "precise" meaning. *Green v. Rogers*, 234 Ill. 2d 478, 489 (2009). Ms. Bonnen's tweet lacks precise meaning both because it can have different meanings and because it lacks factual context, as noted *supra*.

The facts in the instant case are similar to those in *Schivarelli v. CBS*, 333 Ill. App. 3d 755 (1st Dist. 2002). There the court found no defamation when a promotional on-air announcement showed an investigative reporter telling the plaintiff, "Let's sum this up for a second, the evidence seems to indicate that you're cheating the city." *Id.* At 762. That court reasoned that the statement was not made in any specific factual context and that the reporter "did not explain the evidence that she was referring to, nor did she state why she thought [her target] was cheating the city, how he was cheating the city, or even what she meant by the term 'cheating.'" *Id.* Similarly here, Ms. Bonnen's tweet provides no factual details to explain her statement, which thus lacks any precise meaning, rendering the tweet reasonably susceptible of innocent construction and protected by the First Amendment.

3. Plaintiff fails to consider the tweet's social context.

Plaintiff fails to properly consider the social context of the tweet, which shows that the tweet cannot reasonably be interpreted as stating actual fact but is reasonably susceptible of innocent construction. In evaluating whether a statement is "constitutionally protected opinion," a court looks "to the statement's literary or social context to see whether it signals that it has factual content." *Rose*, 383 Ill. App. 3d at 18-19. Plaintiff contends that "Twitter tweets must be taken seriously and treated no different [sic] than other publications."[3] Response at 3. Bonnen's Memorandum, however, cites a bar journal article's conclusion that, while a "finite definition of Twitter is tricky," one should recognize that Twitter is "pure personal reaction . . . [that] can run the gamut, from academic and insightful, to casual and silly, to at times drivel." Matthews, Steve, "Technology: Lawyer Marketing with Twitter," 71 Tex. B. J. 450 (June 2008)

Furthermore, a "given statement may convey entirely different meanings when presented in different contexts." *Tuite*, 224 Ill. 2d at 512. For example, a reader will view a statement published "in a regularly featured column by a journalist who regularly expressed his personal opinions on a wide range of public and social issues" differently from that same statement published in "the news columns of defendant's newspaper." *Moriarty v. Greene*, 315 Ill. App. 3d 225, 235 (1st Dist. 2000). As detailed in Bonnen's Memorandum, Ms. Bonnen's Twitter account is replete with tweets that are exaggerations. Given this context, a reasonable reader will view the tweet not as a literal assertion but as yet more rhetorical hyperbole, and "the first amendment protects overly loose, figurative, rhetorical, or hyperbolic language, which negates the impression that the statement actually presents facts." *Hopewell*, 299 Ill. App. 3d at 518.

[3] Plaintiff inappropriately references self-conducted research that allegedly shows that reputable parties tweet. Such references lack authoritative or persuasive value. Plaintiff also attaches tweets from the Centers for Disease Control. This attachment must be disregarded because it does not fall within the four corners of Plaintiff's complaint, as discussed *supra*.

C. Plaintiff inaccurately argues that pleading the entire allegedly defamatory statement is all that is required.

Plaintiff argues that the Complaint meets the requirement of pleading with precision and particularity because Plaintiff attaches to the Complaint Ms. Bonnen's full Twitter account tweets. Merely attaching the allegedly defamatory language is not enough. Plaintiff still fails as a matter of law to plead that the tweet is defamatory *per se*. Plaintiff has not pled facts to establish the elements of a defamation *per se* claim, and the Complaint is legally insufficient because Plaintiff has not shown that the tweet is a false statement of fact that cannot be innocently construed.

II. The Tweet Is Not Of and Concerning Plaintiff.

Plaintiff fails to show that Ms. Bonnen's tweet concerned Plaintiff. A plaintiff must allege that the disputed statement concerned plaintiff. *Brennan,* 351 Ill. App. 3d at 968. A complaint is "fatally flawed for failing to allege that the readers of the [statement] reasonably understood [it] to refer to [the plaintiff]." *Homerin v. Mid-Illinois Newspapers,* 245 Ill. App. 3d 402, 405 (3d Dist. 1993). *See also Velle Transcendental Research Assn., Inc. v. Esquire, Inc.,* 41 Ill. App. 3d 799, 802-03 (1st Dist. 1976).

To connect the allegedly defamatory statement to a plaintiff, the plaintiff's identity must be clear to the statement's readers, but Plaintiff here alleges that Horizon Group Management, LLC "conducts business" under several different names that incorporate the common term "Horizon."[4] Complaint ¶1. Plaintiff fails to allege (1) that the tweet refers to any of the business entities named in the Complaint and (2) that a third party understood that the tweet was of and concerning Plaintiff. Plaintiff merely states that Ms. Bonnen's account was "public,"

[4] In defamation *per se*, "[s]ome very common names, such as John Smith or Jane Jones, may not be enough to identify a particular plaintiff without need for extrinsic evidence." *Muzikowski v. Paramount Pictures Corp.*, 2001 U.S. Dist. Lexis 19397, *7 (N.D. Ill. Nov. 28, 2001) *rev'd on other grounds.*

Complaint ¶6, and that Ms. Bonnen "published" the tweet, allowing it to be "distributed throughout the world." Complaint ¶8.

Where an allegedly defamatory statement does not specifically name the plaintiff, "plaintiff must plead extrinsic facts to demonstrate that third persons other than the plaintiff and the defendant must have reasonably understood that the article or broadcast was about the plaintiff." *Chicago City Day School v. Wade,* 297 Ill. App. 3d 465, 473 (1st Dist. 1998). Illinois courts have consistently held that, under the innocent construction rule, if the defamatory statement can "reasonably be interpreted as referring to someone other than the plaintiff, it cannot be actionable *per se*." *Chapski v. Copley Press*, 92 Ill. 2d 344, 352 (1982). Plaintiff argues that since Ms. Bonnen listed her location as Chicago, "readers of Defendant's publication did not need to know Defendant lived in one of Plaintiff's apartments in order to determine Defendant's tweet pertained to Plaintiff." Response at 7. However, Ms. Bonnen's tweet does not give the location of "Horizon realty" or her address. Ms. Bonnen's surrounding tweets actually reference a number of cities, including Boston, Philadelphia, Fort Myers, and Pittsburgh. Complaint Ex. A. Because there are no details pointing to "Horizon realty" being in Chicago as opposed to any of the other cities appearing in her tweets, a reader cannot reasonably conclude that the tweet is about Plaintiff.[5]

Additionally, as explained *infra*, Plaintiff does not know itself who it is. It refers to itself in the verified Complaint as both "Horizon Group Management, LLC" and "Horizon Realty Group, LLC." Another court in this circuit dismissed a complaint against Horizon Realty Group, LLC, because the plaintiff denied the legal existence of "Horizon Realty Group, LLC," and attached to its own pleading an Illinois Secretary of State printout showing eight other entities

[5] Plaintiff attempts in its Response to inject "facts" to show that the tweet referred to Plaintiff, but these facts consist of references and materials impermissible in a 2-615 motion to dismiss, as discussed *infra*.

using variations of "Horizon Realty." *See* Attachment B.[6] If Plaintiff itself does not know who it is, a reasonable reader certainly cannot know to whom Ms. Bonnen's tweet refers.

Because Plaintiff has pled no extrinsic facts to show that third parties reasonably understood that the tweet referred to Plaintiff, as a matter of law Plaintiff has not met the "of and concerning" requirement to maintain a defamation *per se* claim. The court should strike the Complaint and dismiss the case with prejudice.

III. Plaintiff Has Not Properly Pled Publication.

Publication is "an essential element" of a cause of action for defamation. *Popko v. Continental Cas. Co.*, 355 Ill. App. 3d 257, 261 (1st Dist. 2005). A plaintiff must show the statement was communicated to someone other than the plaintiff. *Emery v. Northeast Ill. Reg'l Commuter R.R. Corp.*, 377 Ill. App. 3d 1013, 1021 (1st Dist. 2007). Plaintiff alleges that Ms. Bonnen's Twitter account "is public" and that, if a Twitter account is public, "anybody in the world can view the account holder's Tweets." Complaint ¶¶5-6. Plaintiff does not allege in the Complaint, however, that anyone other than Plaintiff saw the allegedly defamatory tweet.

Plaintiff argues in its Response that publication occurred because Ms. Bonnen "intended to make a libelous statement about Plaintiff," Response at 5, but this allegation is merely a legal conclusion. Where a public figure asserts a defamation claim, that plaintiff must also show that the defendant published the allegedly defamatory statement with actual malice. *Brown & Williamson Tobacco Corp. v. Jacobson*, 827 F.2d 1119, 1128 (7th Cir. 1987). As "one of Chicago's premiere apartment leasing and management companies," Complaint ¶1, and a public figure, Plaintiff must plead facts to show that the tweet was made with actual malice. Where allegations use such terms as "wrongfully, intentionally and maliciously," then "malice is not sufficiently pleaded by simply repeating that epithet without any facts tending to support that

[6] The court may take judicial notice of this case as discussed *infra*.

conclusion," and such a complaint is "insufficient in law." *Arlington Heights Nat'l Bank v. Arlington Heights Federal Savings and Loan Assn.*, 37 Ill. 2d 546, 552 (1967). The Complaint merely alleges malice as a conclusion, stating that Ms. Bonnen "maliciously and wrongfully composed and wrote" the tweet and "maliciously and wrongfully published" the tweet. Complaint ¶¶7-8. Plaintiff does not support these legal conclusions. Since this court should "disregard legal and factual conclusions that are unsupported by allegations of fact," *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 165 (2d Dist. 2004), Plaintiff's unsupported statement that Ms. Bonnen "maliciously and wrongfully published" the tweet must be disregarded, and the Complaint should be stricken for failure to allege publication to a third party with actual malice.

IV. Plaintiff Has Not Pled Special Damages Required for Defamation *Per Quod.*

Not only is Plaintiff incapable of pleading defamation *per se*, but Plaintiff also has not pled defamation *per quod*. "A plaintiff bringing a *per quod* claim must also plead and prove special damages to recover," *Maag v. Illinois Coalition for Jobs, Growth and Prosperity*, 368 Ill. App. 3d 844, 853 (5th Dist. 2006), and plead those damages with particularity. *Downers Grove Volkswagen, Inc. v. Wigglewworth Imports, Inc.*, 190 Ill. App. 3d 524, 530 (2d Dist. 1989). "General allegations as to damages, such as damage . . . to reputation and economic loss, are insufficient to state a cause of action for defamation *per quod*." *Heerey v. Berke*, 188 Ill. App. 3d 527, 532-33 (1st Dist. 1989). Here, Plaintiff has failed to allege special damages, merely claiming damage to its reputation in support of its single count for "liable [sic] per se. Damages are presumed." Complaint ¶10. Because Plaintiff fails to plead a cause of action for defamation *per se* and there is no set of facts that can be proved that would entitle Plaintiff to relief under either defamation *per se* or defamation *per quod*, the court should strike the Complaint and dismiss the case with prejudice.

V. Plaintiff Improperly References and Attaches Materials that Must Be Ignored.

Plaintiff's Response improperly references statements, pleadings, news articles, and self-conducted Internet searches that are not within the four corners of the verified Complaint. Section 2-615 motions may not "be supported by reference to any facts or exhibits that are not alleged in or attached to the complaint under attack." *Scott Wetzel Services v. Regard,* 271 Ill. App. 3d 478, 480-81 (1st Dist. 1995). A court may not consider such materials in ruling on a section 2-615 motion. *See Cwikla v. Sheir,* 345 Ill. App. 3d 23, 29 (1st Dist. 2003). Therefore, this court should disregard the following materials found in Plaintiff's Response[7]:

- The Memorandum and Points of Authority, for the *Simorangkir v. Love* case. Response at 1, 6, and Ex. A. A brief filed in California concerning a motion to dismiss under California's anti-SLAPP statute also has no authority or persuasive value in Illinois.
- Reference to a news story on LJWorld.com. Response at footnote 2.
- Reference to a news story on "Mashable, the Social Media Guide." Response at footnote 2.
- A "tweet" purportedly from the Centers for Disease Control. Response at Ex. B.
- Reference to a news story about Facebook on CNN.com. Response at footnote 3.
- Reference to comments made by a reader of an Eric Zorn blog. Response at footnote 4.
- Reference to a news story on CNN.com. Response at 5.
- Reference to "a quick Google search of 'Horizon realty'" and a summary of the purported results of that search. Response at 7.

The Court should not consider these impermissible materials and references.

[7] Ms. Bonnen separately filed a Motion to Strike the portions of Plaintiff's Response that contain these improper references that the court must ignore when considering a section 2-615 motion to dismiss.

VI. Plaintiff's Failure to Identity Itself Remains and Its Attempt to Correct This Failure by Amendment Is Improper.

Plaintiff still has not identified itself or the entity that has allegedly been defamed, nor can Plaintiff correct this fatal flaw by an amended pleading. The name Plaintiff gives as its own in the caption of the complaint is "HORIZON GROUP MANAGEMENT, LLC," but Plaintiff avers that it is "HORIZON REALTY GROUP, LLC" in its verification, prayer for relief, and signature. In its Response, Plaintiff asserts that the conflicting names, including one that is not a legally recognized entity, was "an obvious typographical error." It then incorrectly presupposes, "Such misnomer can be corrected by Filing a Rule 366 Motion to Correct a Misnomer, or, as a matter of judicial economy, the error can be corrected on its face. Plaintiff so moves." Response at 2. This statement contains a number of errors, each of which denies Plaintiff's assertion that it can merely amend the Complaint to select which entity it now wishes to be.[8]

A. Plaintiff verified its Complaint as Horizon Realty Group, LLC, which was found in another case not to be a legally recognized entity.

In the instant case, Plaintiff verifies that it is "HORIZON REALTY GROUP, LLC" by an authorized agent of that entity, but another court in this circuit found that Horizon Realty Group, LLC, is not a legal entity. Attachment A. "[F]or purposes of a section 2-615 motion, the court considers matters subject to judicial notice and judicial admissions in the record. Facts in a prior court opinion are subject to judicial notice." *Kirchner v. Greene*, 294 Ill. App. 3d 672, 677 (1st Dist. 1998). In Case No. 09 CH 20365, "Horizon Realty Group, LLC" moved to dismiss Ms. Bonnen's complaint against Horizon Realty Group, LLC, for return of a security deposit, stating that "'Horizon Realty Group, LLC,' is not a legal entity recognized by law." Attachment B. The Circuit Court of Cook County, Chancery Division, granted that motion, of which this court may take judicial notice. Attachment A. Given that another court in this circuit has found that the

[8] See Ms. Bonnen's Motion to Strike concerning Plaintiff's request to amend its Complaint.

entity that both verified and seeks relief by the instant Complaint – i.e., Horizon Realty Group, LLC — is non-existent, this Complaint must be dismissed.

B. Plaintiff chose to file a verified complaint, which judicially estops it from attempting to change its name.

Because Plaintiff chose to verify its Complaint by an authorized agent of an entity other than the one identified in the caption and first paragraph of the Complaint, Plaintiff is judicially estopped from attempting to change its name by an amended pleading. A statement of fact that has been admitted in a pleading is a judicial admission and is binding on the party making it. *State Security Insurance Co. v. Linton*, 67 Ill. App. 3d 480, 484 (1st Dist. 1978). "Judicial admissions are . . . formal admissions in the pleadings . . . dispensing wholly with the need for proof of the fact." *Precision Extrusions, Inc. v. Stewart*, 36 Ill. App. 2d 30, 50 (1st Dist. 1962). "[O]riginal *verified* pleadings will remain binding as judicial admissions even after the filing of an amended pleading . . . unless the amended pleading discloses that the original pleading was made through mistake or inadvertence. *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 558 (1st Dist. 2005). However, unsupported conclusive statements of "inadvertence" are insufficient to support a claim of mistake or inadvertence. *See Beverly Bank v. Coleman Air Transport*, 134 Ill. App. 3d 699, 704 (1st Dist. 1985).

Here, Plaintiff verifies (1) that Horizon Realty Group, LLC [an entity not recognized at law] seeks relief by this Complaint and (2) that Horizon Group Management, LLC, a separate entity, was defamed. Although Plaintiff calls this conflict "a typographical error in the signature page," Response at 7, it neither explains that conflict nor accounts for the verification by "an authorized agent for Horizon Realty Group, LLC [a legally non-existent entity] the plaintiff herein." Complaint at 4. Plaintiff's judicial admissions show that it does not know its own name

or the status of its business. Its failure to explain this confusion cannot be construed as "inadvertence" and estops Plaintiff from amending its Complaint to decide who it wishes to be.

C. Plaintiff cannot explain away its conflicted identification as mistake or inadvertence.

Even if Plaintiff's judicial admissions in its verified Complaint were somehow ignored, Plaintiff cannot explain away its error in self-identification given (1) the nature of its Complaint, (2) its previous insistence that "Horizon Realty Group, LLC" is a non-entity, and (3) the expectation that a lawyer should know his client. First, as discussed *supra*, in a cause of action for defamation, a plaintiff must show that the defendant made a false statement concerning the plaintiff. Plaintiff's failure to meet this required element because it does not know who it is, its corporate standing, or who was defamed cannot reasonably be interpreted as inadvertence. Second, Horizon Realty Group, LLC's successful motion in this circuit to dismiss a case because Horizon Realty Group, LLC, is not a legal entity shows Plaintiff's concern for and insistence on precision, which belies Plaintiff's assertion here that the name Horizon Realty Group, LLC in the Complaint's prayer for relief, signature, and verification was inadvertent. Third, "[a] lawyer should know his client when he files his suit," *Alton Evening Telegraph v. Doak,* 11 Ill. App. 3d 381, 382 (5th Dist. 1973) (granting motion to vacate because plaintiff was not properly named). When Plaintiff's attorney signed the Complaint for defamation of Horizon Group Management, LLC, on behalf of Horizon Realty Group, LLC, he showed a failure to understand the essence of both who the client is and the nature of this Complaint. Given the seriousness of these issues, Plaintiff cannot legitimately assert that the multiple contradictory – and sometimes legally impossible – identifications of the Plaintiff in this Complaint were the result of inadvertence. The Complaint remains fatally flawed in that we still do not and cannot know Plaintiff's identity.

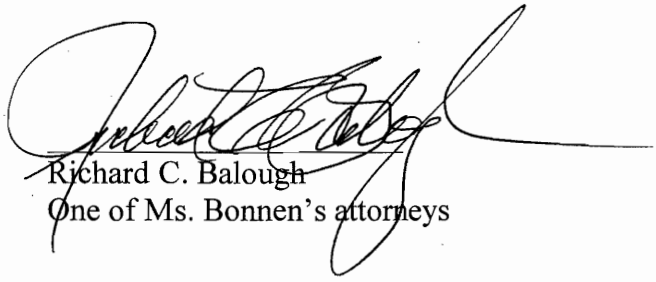
D. Plaintiff fails to properly move to amend the Complaint.

Plaintiff has failed to properly move to amend its Complaint. A party should not seek to amend a pleading without attaching the proposed pleading to its motion. *See Edwards v. City of Henry*, 385 Ill. App. 3d 1026, 1034 (3d Dist. 2008). At a minimum, the party must present the facts and reasoning that form the basis of the proposed amendment. *Baker v. Walker*, 173 Ill. App. 3d 836, 842 (1st Dist. 1988). Here, Plaintiff fails to accomplish either task. Plaintiff sets forth the substance of its "movement" in two lines in its Response and does not attach its proposed amended pleading to its "motion." It also, as detailed above, fails to explain and cannot legitimately explain the reasons for the multiple contradictory identities of the Plaintiff. Plaintiff's sole support for its request to amend its Complaint is its claimed "Rule 366 Motion to Correct a Misnomer." Response at 2. Assuming that Plaintiff is referring to Illinois Supreme Court Rule 366, that rule references the powers of a *reviewing court*, not a trial court. Ill. Sup. Ct. Rule 366(a). Hence, Plaintiff has no support for its request to amend its Complaint.

VII. Complaint Should Be Dismissed with Prejudice.

Plaintiff argues that the court should not "dismiss with prejudice with a quick pen." Response at 1, citing *Hensler v. Busey Bank,* 231 Ill. App. 3d 920, 924 (4th Dist. 1992). However, in *Hensler*, the court did dismiss a count with prejudice when that plaintiff failed to allege facts to support its cause of action. Moreover, in a defamation *per se* case, where a court finds that the statement at issue can reasonably be innocently construed, dismissal with prejudice is the proper action. *Imperial Apparel*, 227 Ill. 2d at 402. Because Ms. Bonnen's tweet should be innocently construed and there is no set of facts by which plaintiff can state a cause of action for defamation *per se* or *per quod*, this court should strike the Complaint and dismiss the case with prejudice.

Respectfully submitted,



Richard C. Balough
One of Ms. Bonnen's attorneys

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CERTIFICATE OF SERVICE

I, Richard C. Balough, do hereby certify that a true and correct copy of the foregoing Reply Memorandum of Law in Support of Defendant's Motion to Dismiss the Verified Complaint has been served upon:

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by electronic mail on this 11th day of January, 2010.

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Attachment A

Order (Rev. 9/13/04) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

BONNEN

v.

No. 09 CH 20365

HORIZON REALTY GROUP, LLC

ORDER

This matter coming on to be heard upon defendant's motion to dismiss plaintiff's complaint, the parties appearing through counsel and the Court being fully advised, it is hereby ordered

1) Defendant's motion to dismiss plaintiff's action pursuant to section 2-619(a)(2) is GRANTED. 3 of Must Prejudice

2) Plaintiff is allowed 28 days, to December 21, 2009, to file an amended complaint.

3) Plaintiff's motion to correct misnomer is DENIED 2-401

ENTERED
JUDGE SOPHIA H. HALL-0162
NOV 23 2009
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ENTER: _____ DEPUTY CLERK

Atty. No.: 25167
Name: Sulaiman Ltd
Atty. for: Defendant
Address: 180 N. LaSalle
City/State/Zip: Chicago 60601
Telephone: 312-263-6728

_____ Judge

_____ Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

AMANDA BONNEN, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	No. 09 CH 20365
HORIZON REALTY GROUP, LLC,	)	
Defendant.	)	

MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Now comes defendant, HORIZON REALTY GROUP, LLC ("Horizon"), by and through its attorneys, SANFORD KAHN, LTD., and moves to dismiss plaintiff's complaint pursuant to section 2-619(a)(2) of the Code of Civil Procedure, and in support thereof states as follows:

1. Plaintiff filed its complaint herein against defendant "Horizon Realty Group, LLC."

2. Section 2-619(a)(2) of the Code of Civil Procedure provides that a defendant may, within the time for pleading, file a motion for dismissal of the action upon the ground "that the defendant does not have legal capacity to be sued." 735 ILCS 5/2-619(a)(2) (2008).

3. "Horizon Realty Group, LLC" is not a legal entity recognized by law. See Secretary of State Corporation/LLC Search Results, attached hereto as Exhibit A.

4. Where a suit is brought against an entity which is legally nonexistent, the proceedings are void ab initio and its invalidity may be called to the court's attention at any stage of the proceedings. Palen v. Daewoo Group, 358 Ill.App.3d 649, 832 N.E.2d

173 (1st Dist. 2005); Tyler v. J.C. Penney Company, 145 Ill.App.3d 967, 496 N.E.2d 323 (4th Dist. 1986).

5. Here, plaintiff has sued a party that is not a recognized entity. As a result, plaintiff's action must be dismissed. Palen, id.

WHEREFORE, defendant moves pursuant to section 2-619(a)(2) of the Code that plaintiff's action be dismissed and for its costs of suit.

HORIZON REALTY GROUP, LLC

by: _____
one of its attorneys

SANFORD KAHN, LTD.
Attorneys for Defendant,
Horizon Realty Group, LLC
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EXHIBIT A

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CORPORATION/LLC SEARCH RESULTS

Search Criteria: HORIZON REALTY

Entity Type	File Number	Corporation/LLC Name
LLC MST	01482831	HORIZON REALTY ACQUISITIONS COMPANY, LLC
CORP MST	63843415	HORIZON REALTY BROKERS, INC.
CORP MST	57745665	HORIZON REALTY GROUP, INC.
LLC MST	00323713	HORIZON REALTY GROUP L.L.C.
CORP MST	53351875	HORIZON REALTY, INC.
CORP MST	58513814	HORIZON REALTY, INC.
CORP MST	59832565	HORIZON REALTY, INC.
CORP MST	60777195	HORIZON REALTY SERVICES, INC.

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