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

HUDSON INSTITUTE OF PROCESS RESEARCH, INC., Plaintiff,	)	
v.	)	No. 2022 L 006829
ABIGAIL SCHULTZ and JOSHUA STURMAN, Defendants.	)	Hon. Michael F. Otto

MEMORANDUM OPINION AND ORDER

Plaintiff Hudson Institute of Process Research, Inc. ("Hudson") fired its employees, Defendants Abigail Schultz ("Schultz") and Joshua Sturman ("Sturman"), then filed this lawsuit against them. Hudson brings claims for breach of contract (Counts I and III), theft of trade secrets (Count II), and commercial disparagement (Count IV). The matter is before the court on Defendants' motions to dismiss. Defendants contend all counts of Hudson's Complaint are meritless and that Hudson filed this suit to retaliate against Defendants for their union organization activities. The motions have been fully briefed, and the court heard oral argument. The court agrees with Defendants and grants the motions in their entirety for the reasons stated below.

The following facts are taken from the Complaint, except as otherwise noted. Hudson is a legal consultancy firm that services law firms representing non-citizens seeking United States' employment-based visas. Hudson hired Schultz in December 2018 to work as a Legal Writing Specialist in its Chicago office and hired Sturman in May 2019 as a Legal Writing Specialist in its Pittsburgh office. Both Schultz and Sturman prepared immigration-related letters and documents and conducted legal and project-related research during the course of their employment. Hudson promoted Sturman to RFE writer in April 2020 and Schultz to RFE Team Leader in April 2021.

As part of their employment, Defendants both signed identical Confidentiality Agreements and Non-Compete Agreements. The Confidentiality Agreements signed by both Defendants state:

> 1. I acknowledge that I have been advised by the HIPR and Hudson Legal that all information and documents that I may have knowledge of or access to through my employment with HIPR and Hudson Legal are strictly confidential.
>
> 2. I agree at all times to treat as confidential all information acquired through my employment with HIPR and Hudson Legal, and not to disclose the same except as authorized in the course of my employment or by law.

Compl. Exhs. A, C. The Confidentiality Agreements then provide examples of types of information considered confidential, but the list is non-exhaustive.

The Non-Compete Agreements signed by both Defendants include, in relevant part, a Non-Disparagement Clause, which states:

> Employee agrees that employee will not, at any time, publish, post, and/or make any comments about the Company that are, or could be interpreted to be, disparaging, derogatory, or that will paint the Company in a negative light. Specifically, Employee agrees, among other things, that employee will not publish, post, and/or make any disparaging, derogatory or negative comments about Company officers, directors, owners, employees, products, practices and office culture and office environment. If employee breaches the commitments contained in this Section, employee will be liable to the Company for any resulting harm and legal costs incurred

Compl. Exhs. B, D. Schultz signed both the Confidentiality and Non-Compete Agreements on December 12, 2018, and Sturman signed both Agreements on May 31, 2019. The Non-Compete Agreement includes a choice of law provision requiring courts to apply Michigan law.

Unionization Efforts[1]

In Spring of 2020, Hudson employees began discussing the prospect of forming a union. Sturman contacted the United Electrical, Radio & Machine Workers of America union ("United Electrical") and became a founding member of Hudson's union organizing committee. Schultz became a union organizer in June 2020. In July 2021, Sturman sent of a copy of the National Labor Relations Board ("NLRB") voluntary recognition petition to Hudson's president.

On July 9, 2021, Defendants created a Twitter account called Hudson Workers United. The account posted statements concerning Hudson's labor practices. Specifically, Defendants tweeted that "nearly every employee who was given an affidavit or testimony to the NLRB has now been fired in retaliation." Compl. ¶ 13.

Hudson alleges that during August and September of 2021, Defendants accessed and downloaded over 800 documents from Hudson's server and disclosed some of those documents to Sturman's attorney.

In early September 2021, Defendants both testified at a hearing before the NLRB concerning the upcoming election of Hudson employees on whether to become unionized. Hudson management witnessed the testimony from both Defendants. During this month, Sturman also notified the United States Department of Labor of Hudson's various allegedly illegal pay practices. In mid-September 2021, Schultz took a leave of absence from Hudson in accordance with the Family Medical Leave Act and, upon her return, requested to be reassigned to a position as a legal writer from her Team Leader position. On October 5 and again on October 11, 2021, Hudson denied Schultz's request to transfer to a different position.

[1] The facts in this section are taken from both the Complaint and Defendants' affidavits in support of their motion to dismiss. Hudson does not dispute the truth of the facts contained in Defendants' affidavits nor does Hudson object to the court considering the same for purposes of the 2-619 portion of Defendants' Motions.

On October 9, 2021, Defendants created a website (https://gogreened.wordpress.com/). The website accused Hudson and its owners of unlawful business practices. One statement on the website says, "we are here to expose the truth behind the questionable business practices of business tyrants [Hudson owners]" and "what is really going on inside the leading immigration law firm [Hudson]." Compl. ¶ 14. On October 12, 2021, Sturman filed a discrimination claim against Hudson with the City of Pittsburgh Commission on Human Relations. On October 14, 2021, the Department of Labor notified Hudson of Sturman's September complaint regarding Hudson's illegal pay practices.

On October 19, 2021, Hudson placed both Defendants on administrative leave for downloading documents. Hudson officially terminated Defendants on October 29, 2021. Since their discharge, both Schultz and Sturman remained active in United Electrical's efforts to unionize Hudson and both have filed unfair labor practice claims with the NLRB. The unionization efforts were successful, and in July 2022, the NLRB ruled that Hudson employees had elected to become unionized and United Electrical would be their bargaining agent. Five days later, Hudson filed this suit.

Analysis

Hudson filed a seven-page, four-count Complaint against Defendants sounding in breach of the Confidentiality Agreement (Count I), violation of the Illinois Trade Secrets Act (Count II), breach of the Non-Disparagement Clause (Count III), and commercial disparagement. Defendants move to dismiss the Complaint on multiple grounds. First, Defendants argue that the Complaint is brought in violation of the Citizen Participation Act (735 ILCS 110/15). To that end, Defendants move to dismiss all four counts under section 2-619 of the Illinois Code of Civil Procedure (the "Code"). Defendants also seek dismissal under section 2-615 of the Code..

I. Legal Standard

A party is permitted to combine a 735 ILCS 5/2-615 motion to dismiss based upon insufficient pleadings with a 735 ILCS 5/2-619 motion to dismiss based upon certain defects or defenses under 735 ILCS 5/2-619.1. *Illinois Non-Profit Risk Mgmt Ass'n v. Human Serv. Ctr.*, 378 Ill. App. 3d 713, 719 (2008).

A section 2-615 motion to dismiss considers whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. 735 ILCS 5/2-615; *LaSalle Bank N.A. v. City of Oakbrook Terrace*, 393 Ill. App. 3d 905, 910 (2009). To survive a motion to dismiss, a plaintiff must allege sufficient facts and not "mere conclusions of law or fact unsupported by specific factual allegations." *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996). A cause of action should only be dismissed with prejudice if it is clear that no set of facts can be proven that would entitle the plaintiff to recovery. *Tedrick v. Cmty. Res. Ctr., Inc.*, 235 Ill. 2d 155, 161 (2009); *Canel v. Topinka*, 212 Ill.2d 311, 318 (2004).

A section 2-619 motion to dismiss is a mechanism by which the court may involuntarily dismiss an action based on certain defects or defenses. The court must accept as true for the purposes of analysis all well-pleaded facts and inferences. *Porter v. Decatur Mem. Hosp.*, 227 Ill. 2d 343, 352 (Ill. 2008). A section 2-619(a)(9) motion attacks the complaint because "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619 (a)(9). An affirmative matter is "something in the nature of a defense that negates the cause of action completely or refutes . . . conclusions of material fact contained in or inferred from the complaint." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004); *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d, 469, 486 (1994).

II. Citizen Participation Act

A "SLAPP" (Strategic Lawsuit Against Public Participation) is litigation aimed at preventing citizens from exercising their political rights or punishing those who do so by using the threat of money damages or extensive legal fees to silence citizen participation. *Wright Development Group, LLC v. Walsh*, 238 Ill.2d 620, 630 (2010). In order for a lawsuit to be deemed a SLAPP and subject to dismissal under the Illinois Citizen Participation Act (the ICPA), 735 ILCS 110/0.01, et seq., the movant must show: "(1) the defendants' acts were in furtherance of the right to petition, speak, associate or otherwise participate in government; (2) the plaintiff's claims are solely based on, related to, or in response to the defendants' 'acts in furtherance'; and (3) the plaintiff fails to produce clear and convincing evidence that the defendants' acts were not genuinely aimed at solely procuring favorable government action." *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 34, quoting *Hammons v. Society of Permanent Cosmetic Professionals*, 2012 IL App (1st) 102644, ¶ 18. The Citizen Participation Act only applies to truly meritless lawsuits intended to chill the participation in government through delay, expense, and distraction. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 44.

A "meritless" claim is one that fails to state a legal claim pursuant to section 2-619. *Sandholm*, 2012 IL 111443, ¶ 55; *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, ¶¶ 21, 30 (mere failure to state a claim, per section 2-615, is not adequate to show a claim to be meritless for purposes of the Citizen Participation Act). However, a claim is also "meritless" for purposes of the Citizen Participation Act if the defendant disproves some essential element of the plaintiff's claim. See, *e.g.*, *Wright Development Group*, 238 Ill. 2d at 638 (plaintiff's defamation claim was meritless because defendant showed that allegedly defamatory statement was actually true). Therefore, if the defendant disproves an essential element of any claim, then the court may grant the defendants' motion to dismiss. *Samoylovich v. Montesdeoca*, 2014 IL App (1st) 121545, ¶ 44.

Here, Defendants were engaged in acts in furtherance of the right to petition, speak, associate, or otherwise participate in government by promoting unionization efforts at Hudson. *See Schlicher v. Bd. of Fire & Police Comm'rs*, 363 Ill. App. 3d 869, 880-883 (2nd Dist. 2006) (holding union activities are protected under the First Amendment of the United States Constitution). Hudson argues that Defendants' actions were not genuinely aimed at procuring favorable government action but cites no authority and provides no explanation for that argument. The court, accordingly, rejects Hudson's argument, and turns to the question of whether Hudson's Complaint is "meritless" for purposes of the Citizen Participation Act.

III. The Confidentiality Agreements are void for being overly broad.

Count I alleges breach of the Confidentiality Agreements. Hudson alleges that "Defendants have breached their Confidentiality Agreements by, a [*sic*] minimum, stealing Hudson's confidential documents and publishing the identity of one or more Hudson clients." Compl. ¶ 20. Defendants argue that, as a matter of law, the Confidentiality Agreements are void for being overly broad. Schultz and Hudson contend the court should analyze whether the Confidentiality Agreements are overly broad under Illinois law, as Schultz is located in Illinois and, according to Hudson, the conspiracy to disparage Hudson took place in Illinois. Sturman argues—without citation to authority—that because he lives and performed the work in Pennsylvania, Pennsylvania law should apply. Under a section 2-619 motion to dismiss, however, the court must accept Hudson's well-pleaded facts as true and consider the alleged conspiracy. Thus, Illinois law governs the analysis for both Schultz and Sturman.

Under Illinois law, restrictive covenants like the Confidentiality Agreements "should be narrowly tailored to protect only against activities that threaten the employer's interest." *AssuredPartners, Inc. v. Schmitt*, 2015 IL App (1st) 141863, ¶ 36, quoting *Cambridge Engineering, Inc. v. Mercury Partners 90 BI, Inc.*, 378 Ill. App. 3d 437, 452 (2007). Confidentiality provisions are "enforceable only if their chronological and geographical limitations are reasonable, the information which they seek to protect is in fact confidential, and their restrictions are reasonably necessary for the protection of a legitimate proprietary interest." *North American Paper Co. v. Unterberger*, 172 Ill. App. 3d 410, 415 (1988); *see also Cincinnati Tool Steel Co. v. Breed*, 136 Ill. App. 3d 267, 275-76 (1985).

In applying these principles, the court in *AssuredPartners* held that a confidentiality agreement was unenforceable as a matter of law because the information covered by the confidentiality agreement was overly broad. *AssuredPartners, Inc.*, 2015 IL App (1st) 141863, ¶ 45. The provision at issue prohibited "the use or disclosure of any 'information, observations and data (including trade secrets) obtained by [the defendant] during the course of [his] employment with [the plaintiffs] concerning the business or affairs of [plaintiffs] and their respective Subsidiaries and Affiliates.'" *AssuredPartners, Inc.*, 2015 IL App (1st) 141863, ¶ 44. The court reasoned this provision "purport[ed] to protect virtually every kind of information that [the employee] learned during the period of his employment even if non-confidential, and [went] far beyond any possible legitimate protectable interest of [the employer]." *Id.*, quoting *North American Paper Co.*, 172 Ill. App. 3d at 416.

Hudson attempts to distinguish *AssuredPartners* on the grounds that there, the restrictive covenant was related to a post-employment non-compete agreement. However, the court specifically analyzed the confidentiality agreement separately from the non-compete provision.

In both *AssuredPartners* and here, the agreements were signed at the time the employee began working for the company and both contain confidentiality agreements that are separate from other obligations the employee may have to the employer. Thus, *AssuredPartners* is instructive.

Here, the Confidentiality Agreements signed by Defendants treated as confidential "*all* information acquired through [Defendants'] employment." Compl. Exhs. A, C. Just like the Confidentiality Agreement in *AssuredPartners*, the provision protects virtually every kind of information that Defendants learned during the period of their employment—even if non-confidential. The Confidentiality Agreements went far beyond any legitimate protectable interest of Hudson. The Confidentiality Agreements are patently overbroad, and therefore void. This cause of action, accordingly, is meritless because it is defeated by the "affirmative matter" (735 ILCS 5/2-619(a)(9)) of the voidness of the Confidentiality Agreement.

IV. Defendants did not violate the Illinois Trade Secrets Act by downloading the documents during the course of their employment.

Count II alleges violation of the Illinois Trade Secrets Act ("ITSA"). To establish a claim under the ITSA, a plaintiff must show "(1) a trade secret exited; (2) the trade secret was appropriated through improper acquisition, disclosure, or use; and (3) the owner of the trade secret was damaged by the misappropriation." *Destiny Health, Inc. v. Connecticut General Life Insurance Co.*, 2015 IL App (1st) 142530, ¶ 26. Hudson alleges that Defendants misappropriated trade secrets by downloading documents, disclosing those documents to Sturman's attorney (who is not his current attorney), and intending to disclose the documents to a Hudson competitor. Of the alleged misappropriation, only improperly downloading the documents would give rise to a claim under the ITSA. "Intent to disclose" is not a violation of the ITSA, and disclosure to Sturman's attorney is not prohibited under the ITSA.

The question the court must answer, then, is whether Defendants "improperly" acquired the documents they downloaded. Misappropriation by improper acquisition is defined as "theft, bribery, breach or inducement of a breach of a confidential relationship or other duty to maintain secrecy or limit use, or espionage through electronic or other means." 765 ILCS 1065/2(a). Here, Defendants had permission to download the documents. In the Complaint, Hudson even alleges that Defendants had the ability to download documents, but the download came with the following warning:

> Legal Notice: You are now working at an un-authorized location. All the activities will be logged. Be sure to delete all the company documents within the personal electronic devices and software after you complete the projects. All the documents are proprietary assets and protected by 18 U.S.C. 1832, 18 U.S.C. § 1030 (CFAA) and Uniform Trade Secrets Act (UTSA).

Compl. ¶ 17 (the "Legal Notice"). The Legal Notice expressly contemplates employees downloading documents on their personal devices. Additionally, Schultz avers in her affidavit that Hudson stores work-related documents in both CMS and Google Drive and that the Legal Notice only appears in the CMS system. Exh. 2 to Schultz's Mtn to Dismiss, ¶ 7.

Hudson did not allege facts in its Complaint nor aver in the affidavit attached to Hudson's Response to both motions[2] that Defendants did not have reason to download the documents or that they improperly kept the downloaded materials after they were necessary. The court cannot conclude that the acquisition was improper where Defendants were expressly permitted to download documents and there is no contention—beyond conclusory allegations—that the downloading was outside of the realm of what was permitted. Thus, Hudson's cause of action under the ITSA is meritless because Defendants have disproven an essential element of Hudson's claim.

[2] Defendants moved to strike Cici Wang's affidavit, attached as Exhibit 1 to Hudson's response to both Defendants' motions to dismiss. That motion is denied as moot given the outcome of the motion to dismiss.

V. Defendants' statements were subjective opinion and did not violate the Non-Disparagement Clause.

Count III alleges breach of the Non-Disparagement Clauses in each Defendants' Non-Compete Agreement. The Non-Disparagement Clauses state, in relevant part, "Employee agrees that employee will not, at any time, publish, post, and/or make any comments about the Company that are, or could be interpreted to be, disparaging, derogatory, or that will paint the Company in a negative light." Compl. Exhs. B, D. The Non-Compete Agreements have choice of law provisions that state Michigan law governs.

Schultz argues the Michigan choice of law provision should be disregarded in her case because "[a] choice of law provision will not be honored if the agreement is contrary to the fundamental policy of a State with a materially greater interest than the chosen State." *Lyons v. Turner Constr. Co.*, 195 Ill.App.3d 36, 41-42 (1990). However, there is no applicable Illinois policy that prohibits the application of Michigan law. Schultz points to the Workplace Transparency Act, which is inapplicable because it was enacted after the alleged disparagement took place, and the Illinois Whistleblower Act, which is inapplicable because it only protects disclosures to another government entity. Michigan law must be applied to both Defendants.

Under Michigan law, defamatory statements must be facts that can be proven verifiably false. *Ireland v. Edwards*, 230 Mich. App. 607, 614 (1998). Michigan courts apply the same standard to disparaging statements—they must be statements of fact that can be proven verifiably false. *Holsapple v. Cunningham*, 817 F. App'x 95, 110 (6th Cir. 2020). Thus, subjective opinions are neither defamatory nor disparaging under Michigan law.

Hudson argues that *Holsapple* is not applicable because it is a non-binding, unpublished opinion. However, Federal Rule of Appellate Procedure 32.1 explicitly permits parties to cite to unpublished opinions—despite them carrying no precedential weight—because "their reasoning may be 'instructive' or helpful." *Crump v. Lafler*, 657 F.3d 393, 405 (6th Cir. 2011). Here, like in *Holsapple*, the Non-Disparagement Clause does not define disparagement and Hudson does not offer a definition. Thus, the court must turn to *Holsapple* to determine whether Defendants' statements violated the Non-Disparagement Clause.

Here, none of the statements made by Defendants are statements of fact that are capable of being proven verifiably false. Stating Hudson uses "questionable business practice of business tyrants" and seeking to expose "what is really going on inside the leading immigration law firm" (Compl. ¶ 14) are clearly subjective opinions, not statements of fact. Hudson argues, however, that Defendants' Twitter statement that "nearly every employee who was given an affidavit or testimony to the NLRB has now been fired in retaliation" is a factual statement. According to the Complaint, of the eight employees who Hudson is aware of giving testimony to the NLRB, two are still employed by Hudson, two voluntarily resigned, and four were terminated for unrelated reasons. The court disagrees, however, and finds this statement as well to constitute opinion.

Defendants were engaged in a unionization effort at Hudson and view their termination as retaliation. It is their opinion that the individuals no longer working for Hudson after giving testimony to the NLRB were fired in retaliation for those efforts. It is well-established that statements are not actionable where they constitute the speaker's "interpretation, [] theory, conjecture, or surmise." *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993), citing *inter alia Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 17-21, 111 L. Ed. 2d 1, 110 S. Ct. 2695 (1990). In *Haynes*, the Seventh Circuit concluded that statements regarding an individual's motivations for his actions were "obvious statements of opinion … rather than of fact," as an individual's motives "can never be known for sure … and anyone is entitled to speculate on a person's motives from the known facts of his behavior." *Id.* Additionally, the term "nearly" makes the statement further ambiguous and non-provable. *See Edwards v. Detroit News, Inc.*, 322 Mich. App. 1, 19 (2017) (finding protected opinion speech in a defamation case because defendants used the term "leader," an ambiguous word that could plausibly mean different things to different people).

Based on the above analysis, Defendants' statements are subjective opinion that do not violate the Non-Disparagement Clauses, and the cause of action is meritless because it is defeated by the affirmative matter of the statements being subjective opinions under section 2-619(a)(9).

VI. Defendants' statements did not concern the quality of Hudson's goods or services.

Count IV alleges commercial disparagement against Defendants. Hudson alleges that "Defendants' statements falsely accuse Hudson of unlawful treatment of its employees and impugn the integrity of its business." Compl. ¶ 28. Defendants publicly posted on Twitter and the website the created that "nearly every employee who was given an affidavit or testimony to the NLRB has now been fired in retaliation," Hudson uses "questionable business practices of business tyrants," and that they seek to expose "what is really going on inside the leading immigration law firm." Compl. ¶ 13-14. Schultz argues that Illinois law applies, while Sturman argues Pennsylvania law applies. As with Count I, the court will apply Illinois law due to the alleged conspiracy between Defendants.

Under Illinois law, an actionable claim for commercial disparagement involves false statements about the quality of a business' goods or services, requires a showing of malice and cannot be based on expressions of opinion. *Sonderland Bros. v. Carrier Corp.*, 278 Ill. App. 3d 606, 619-620 (1995). Here, as previously discussed, the statements are opinions, and thus nonactionable. Moreover, the statements—even if they were false statements of fact—do not involve Hudson's goods or services. The statements only concern Hudson's employment practices.

Hudson argues that the statements could impugn Hudson's services and thus fall under the umbrella of commercial disparagement, but Hudson cites no authority for such a proposition, and such an exception would swallow the rule—any business could argue that statements relating to any facet of its operations might tend to create doubt regarding the goods or services it provides. On their face, the statements do not concern or impugn Hudson's goods or services as legal consultants. Therefore, none of Defendants' statements are actionable under Illinois law and the cause of action is meritless because it is defeated by the affirmative matter of the statements not relating to products or services under section 2-619(a)(9).

Conclusion

Hudson's claims are meritless under the Citizen Participation Act. Therefore, both of Defendants' motions to dismiss are GRANTED with prejudice. The April 26, 2023, status date stands for presentment of Defendants' counterclaim.

ENTER: ______________________________

Judge Michael Otto

Judge Michael F. Otto
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