

CAUSE NO. 08-06317

FILED

09 FEB 23 PM 3:56

TIM DARNELL,

Plaintiff

v.

HEATHER DOBROTT,

Defendant

§
§
§
§
§
§
§
§
§

GARY L. MOORE
DISTRICT CLERK
DALLAS COUNTY, TEXAS
IN THE 193rd JUDICIAL DISTRICT COURT
DEPUTY
DALLAS COUNTY, TEXAS

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

JAMES H. MOODY III
State Bar No. 03820050

MATTHEW J. KITA
State Bar No. 24050883

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (phone) / (214) 871-2111 (fax)

ATTORNEYS FOR DEFENDANT

I. SUMMARY

Plaintiff is the founder, President, and CEO of "Advantage Conferences," a company that does business throughout the United States and all over the world. According to Plaintiff, Advantage Conferences grossed more than a million dollars in only its second year of operation. Accordingly, when the Better Business Bureau of Greater Dallas accused Plaintiff of operating an illegal pyramid scheme, Plaintiff captured the attention of newspapers and internet "bloggers" across the country, many of whom began to investigate Plaintiff's background and Advantage Conferences' business model. One such "blogger" is the Defendant in this case, Heather Dobrott.

As part of an ongoing effort to mitigate the effect of his critics, Plaintiff began to publicly attack Defendant and others who were critical of him using the vast publicity resources he developed with Advantage Conferences. By this action, Plaintiff asks this Court to assist him in preventing Defendant from engaging in the public debate. Although this Court refused his request for injunctive relief on First Amendment grounds, he now seeks to silence Defendant by claiming that she owes him damages under theories of defamation, business disparagement, tortious interference, and invasion of privacy.

The First Amendment, however, bars Plaintiff's claims for damages. As a matter of law, Plaintiff is a limited-purpose public figure and therefore, Plaintiff has the burden to show that Defendant's allegedly-actionable statements were both false *and* published with actual malice. In the eight months that this case has been pending, Plaintiff has not produced evidence of a single statement that satisfies this standard. Nor has Plaintiff identified any damages that could be causally connected to Defendant's conduct. In the absence of same, Defendant is entitled to summary judgment on all of Plaintiff's causes of action.

II. UNDISPUTED MATERIAL FACTS

In June 2003, Plaintiff founded “Advantage Conferences, LLC,”¹ and currently serves as its CEO and President, as well as its sole officer and director.² According to Plaintiff, Advantage Conferences provided “Christian-based”³ “mentoring for entrepreneurs”⁴ by hosting seminars where relatively-unknown “middle-class millionaires” educated attendees on “very profound principles that most people are not aware of.”⁵ The cost of attending a two-day Advantage Conferences seminar was \$9,995.⁶

Plaintiff explained in his deposition that a network of nearly four hundred “Representatives” expanded his business across the United States and throughout the world.⁷ Plaintiff testified that Advantage Conferences’ Representatives were paid in accordance with a compensation scheme that he invented.⁸ In sum, a person could “qualify” as a Representative by selling three \$9,995 admission tickets to the above-referenced seminars.⁹ After selling three tickets, the newly-qualified Representative would earn a \$7,000 commission on his or her own sales *and* on the first two sales of each Representative he or she recruited.¹⁰ Although they were not required to pay to attend the conferences themselves, Plaintiff strongly encouraged potential Representatives to do so because (a) purchasing their own ticket counted towards one of the three required sales necessary to “qualify”; and (b) it provided a “cash incentive” for them to

¹ Ex. A, p. 45, ll. 1–3.

² Ex. B, p. 2, Resp. to Interrog. No. 2; Ex. C, p. 26, ll. 13–17.

³ Ex. C, p. 56, ll. 14–15.

⁴ Ex. A, p. 45, ll. 6–8.

⁵ Ex. C, p. 16, ll. 17–25; p. 17, ll. 1–4.

⁶ Ex. C, p. 50, ll. 4–6.

⁷ Ex. A, p. 85, ll. 15–19 (discussing the number of AC Representatives); p. 87, ll. 14–23 (discussing the geographic reach of Advantage Conferences).

⁸ Ex. C, p. 35, ll. 18–25; p. 36, ll. 1–25; p. 37, ll. 1–10.

⁹ Ex. C, p. 51, ll. 21–25.

¹⁰ Ex. C, p. 51, ll. 15–20.

recruit new Representatives.¹¹ Only two years after it was founded, Plaintiff claimed that Advantage Conferences grossed \$1,500,000 in sales.¹²

In 2005, the Better Business Bureau of Greater Dallas determined that Plaintiff was primarily engaged in promoting a pyramid scheme and accordingly, gave Advantage Conferences a negative review on its website.¹³ In response, Plaintiff filed suit against the BBB on Advantage Conference's behalf in a Dallas County District Court.¹⁴ While the lawsuit was pending, Plaintiff used Advantage Conferences' web site and AC Representatives to promote and distribute a book that he authored entitled *Slay Your Giant*.¹⁵ Therein, Plaintiff alluded to his lawsuit against the BBB, claiming that "an agency...falsely and erroneously made statements about my company...somewhat tarnish[ing] my company and me personally."¹⁶ According to Plaintiff, hundreds of thousands of copies of *Slay Your Giant* have been distributed to date.¹⁷

Around the time that Plaintiff initiated his suit against the BBB, the website *scam.com* began hosting a forum which featured a discussion on Plaintiff's business acumen and the legitimacy of Advantage Conferences' business model.¹⁸ Reports of certain Representatives' success also caught the attention of the *St. Petersburg Times*.¹⁹ In July 2006, the *Times* published an article entitled, "He Talks, They Buy, and the Money Rolls In." Although the author referenced Advantage Conference's pending dispute with the BBB, he also noted that at least one AC Representative had "earned more than \$250,000 in eight months."²⁰

¹¹ Ex. C, p. 54, ll. 15-18.

¹² Ex. A, p. 50, ll. 8-16.

¹³ Ex. A, p. 60, ll. 11-15.

¹⁴ Ex. A, p. 60, ll. 11-15.

¹⁵ Ex. A-2, p. 77, ll. 23-25, p. 78, ll. 1-24; p. 80, ll. 7-13.

¹⁶ Ex. A-3, p. 113.

¹⁷ Ex. A, p. 78, ll. 5-8.

¹⁸ Advantage Conferences BS (Merged), Post 1, <http://www.scam.com/showthread.php?t=13128> (Nov. 13, 2005) (last visited Feb. 22, 2009).

¹⁹ Ex. A-2.

²⁰ Ex. A-2, p. 2.

Other publications were not nearly as complimentary, however. A week after the article in the *St. Petersburg Times* was published, the *Broward-Palm Beach New Times* published a piece that was sarcastically titled “Jesus Saves,” in which the author chided Advantage Conferences as a “Jesus Christ-endorsed pyramid scheme.”²¹ The article also noted that Plaintiff was formerly associated with a business that had been recently fined \$115,000 by Arizona’s attorney general for “tricking consumers,” and commented that that Advantage Conferences’ suit against the BBB was still “under way.”²² The day after it was published, a contributor to the *scam.com* message board posted the text of the article, along with a link to the *Broward-Palm Beach New Times*’s website.²³

In October 2006, Judge Mary Murphy not only granted summary judgment in the BBB’s favor, she also ordered Advantage Conferences to pay the BBB’s attorneys’ fees.²⁴ This decision prompted *Houston Press* reporter Craig Malisow to contact Plaintiff.²⁵ According to Plaintiff, he and Malisow had an hour-long phone interview.²⁶ Shortly thereafter, the *Houston Press* published an article by Malisow entitled, “Millionaire Mindsetters: No Skeptics Need Apply to this Get-Rich-Quick Proposition.”²⁷ In addition to detailing the successful arguments that the BBB presented to the court in support of its assertion that Plaintiff’s “compensation plan” constituted a pyramid scheme, it also detailed Plaintiff’s prior business dealings with similarly-structured companies and individuals with criminal histories.²⁸

²¹ Ex. A-4, p. 2.

²² Ex. A-4, p. 1–2.

²³ Advantage Conferences BS (Merged), <http://www.scam.com/showpost.php?p=226775&postcount=1631> (July 28, 2006) (last visited Feb. 22, 2009).

²⁴ Ex. D.

²⁵ Ex. A, p. 104, ll. 9–22.

²⁶ Ex. A, p. 104, ll. 23–24.

²⁷ Ex. A-5.

²⁸ Ex. A-5, pp. 1–10.

The *Houston Press* article also noted the great deal of discussion that Plaintiff, Advantage Conferences, and the BBB lawsuit had generated on *scam.com*.²⁹ As with the article that appeared in the *Broward-Palm Beach New Times*, the text of Malisow's article was uploaded onto *scam.com* on the day it was published.³⁰ This prompted additional commentary from both those who opposed Darnell and Advantage Conferences as well as from those who supported them. For example, a contributor who posted under the username "aboveandbeyond" noted:

Craig is a very good writer and I should know because I'm a writer. I appreciate true talent....I mean it helps to know that I would have never discovered any of these facts out on my own.³¹

Another blogger, using the moniker "wishyouknew," voiced agreement:

Craig, your article is greatness, it made my day and is a wonderful read. It validates everything I have said for the last year. And boy I thought I did a investigation on [Plaintiff]. I only new 1/10 of the dirt on him.³²

Other readers, however, were not convinced. "ShiningLight" stated:

[I]f you do any homework, you will see the quality or lack thereof of that Houston paper and that article....The author, who does not even deserve to be named here uses the "f" word in his anti-networking, anti-Christian article....There are a lot of scams in the marketplace, and this is not one of them.³³

[T]he BBB was the defendant on that case and as you all should know, the defendant is innocent until proven otherwise. I guess the case was not proveable there, even though many believe the BBB was mistaken.³⁴

This thread on *scam.com* even drew the attention of Jack Weinzierl, Plaintiff's most successful Representative,³⁵ who also posted a response under his own name:

²⁹ Ex. A-5. p. 5.

³⁰ Advantage Conferences BS (Merged), <http://www.scam.com/showpost.php?p=299288&postcount=1985> (Dec. 14, 2006) (last viewed Feb. 22, 2009).

³¹ Advantage Conferences BS (Merged), <http://www.scam.com/showpost.php?p=299288&postcount=1997> (Dec. 15, 2006) (last viewed Feb. 22, 2009).

³² Advantage Conferences BS (Merged), <http://www.scam.com/showpost.php?p=299288&postcount=1993> (Dec. 15, 2006) (last viewed Feb. 22, 2009).

³³ Advantage Conferences BS (Merged), <http://www.scam.com/showpost.php?p=322935&postcount=2051> (Jan. 26, 2007) (last viewed Feb. 22, 2009).

³⁴ Advantage Conferences BS (Merged), <http://www.scam.com/showpost.php?p=323062&postcount=2060> (Jan. 27, 2007) (last viewed Feb. 22, 2009).

If you believe the writer in Houston did a good job in his article, well, you have the right to think that....I encourage you to look at the source, just like you would at *scam.com*. Find out the caliber and style of reporting done by this source....Any person with any degree of intelligence would see through either of these gutter venues immediately....If you choose to proclaim your faith in Jesus in a public forum like your business, you'll see what happens.³⁶

In fall 2007, Plaintiff learned that a contributor to *scam.com* who published her comments under the username "soapboxmom," was actually a woman named Heather Dobrott, the Defendant in this case.³⁷ To negate the effect that he believed the posts on *scam.com* by Defendant and others were having on Advantage Conference's business,³⁸ Plaintiff sent an e-mail to the "eight to nine thousand individuals" on Advantage Conferences' e-mail distribution list.³⁹ In the e-mail, Plaintiff identified Defendant by name and described her as an "attacker" who has "literally and physically stalked me."⁴⁰ He claimed that Defendant was motivated to post to *scam.com* because "it brings her an apparently needed sense of importance, and functionally raises the particular blog and website higher in the search engine rankings."⁴¹ In a subsequent message on Advantage Conferences' web site, Plaintiff accused Defendant of making "outlandish assertions with obviously very little understanding about our business, our industry, our products, and especially about me personally."⁴² He further claimed that "[Defendant's] smug, know-it-all comments have always been, not only incorrect, but also so biased that most easily see through her misdirected agenda."⁴³

³⁵ Ex. A, p. 65, ll. 16-18.

³⁶ Advantage Conferences BS (Merged), <http://www.scam.com/showpost.php?p=323500&postcount=2074> (Jan. 28, 2007) (last viewed Feb. 22, 2009).

³⁷ Ex. A, p. 116, ll. 21-25; p. 117, ll. 1-3.

³⁸ Ex. A, p. 134, ll. 6-23.

³⁹ Ex. A, p. 127, ll. 3-8.

⁴⁰ Ex. A-7.

⁴¹ Ex. A-7.

⁴² Ex. A-8.

⁴³ Ex. A-8.

Plaintiff filed this lawsuit on June 16, 2008 seeking unspecified damages and an injunction to prevent Defendant from publishing additional statements about Defendant or Advantage Conferences.⁴⁴ To support this request, Plaintiff attached several of Defendant's postings from *scam.com* to an affidavit.⁴⁵ Noting that "prior restraints on speech are presumptively unconstitutional," this Court denied Plaintiff's application for injunctive relief.⁴⁶

This case is currently set for trial on May 26, 2009 and the discovery period ends on April 6, 2009. Plaintiff has yet to designate any experts, notwithstanding the fact that his expert designation deadline was February 9, 2009. When asked to identify the specific allegedly-defamatory statements on which he based his claims, Plaintiff responded, "The affidavit in support of Plaintiff's Application for Temporary Restraining Order provides Defendant with notice of the offending remarks and their effects" and generally referred Defendant to "all statements made by Defendant that reference Plaintiff."⁴⁷ Moreover, when asked to disclose the legal theories and factual bases that support his claims, Plaintiff merely reiterated the statements in his request for injunctive relief, which this Court already denied.⁴⁸ Finally, the only damages he discloses are unidentified future costs "to remove all of the internet postings regarding Plaintiff" and general damages for "invasion of privacy."⁴⁹

⁴⁴ See Pl's Orig. Pet. & App. for Injunctive Relief.

⁴⁵ See Pl's Orig. Pet. & App. for Injunctive Relief, Exs. A-P.

⁴⁶ Ex. E, p. 76, ll. 9-17.

⁴⁷ Ex. B, p. 5, Resp. to Interrog. No. 6.

⁴⁸ See Ex. F.

⁴⁹ Ex. F, p. 6.

III. ARGUMENTS & AUTHORITIES

Defendant is entitled to summary judgment on both traditional and no-evidence grounds. Under the standards promulgated by both the Supreme Court of the United States and the Supreme Court of Texas, Plaintiff is a “limited-purpose public figure” as a matter of law because there are no genuine issues of material fact in dispute with regard to each of the elements of that standard.⁵⁰ Accordingly, to prevail on each of the causes of action he alleges, Plaintiff has the burden to prove that Defendant made a false statement of fact with actual malice. Because an adequate time for discovery has elapsed and Plaintiff can shown no evidence of this essential element, this Court should issue a summary judgment in Defendant’s favor on all of Plaintiff’s claims.⁵¹

A. Defendant is Entitled to Summary Judgment on Plaintiff’s Claim for Defamation.

To maintain a defamation cause of action, Plaintiff must prove that Defendant: (1) published a statement; (2) that was defamatory concerning the Plaintiff; (3) while acting with either actual malice, if the plaintiff was a public figure or negligence, if the plaintiff was a private individual.⁵² This Court, therefore, must first determine whether Plaintiff qualifies as a “public figure” for purposes of this suit.

1. Plaintiff Is a Limited-Purpose Public Figure.

Plaintiff’s attempt to recover damages for Defendant’s allegedly-defamatory statements warrants special scrutiny under the First Amendment because of his role in the present dispute. Although Plaintiff does not have “such pervasive fame or notoriety” that would render him a

⁵⁰ See TEX. R. CIV. P. 166a(c) (when the summary judgment evidence reflects that there is no genuine issue as to any material fact, the moving party is entitled to a judgment in its favor as a matter of law).

⁵¹ See TEX. R. CIV. P. 166a(i) (the Court must grant a motion for summary judgment if, after adequate time for discovery, the party with the burden of proof has no evidence of one or more essential elements of a claim or defense).

⁵² WFAA-TV, Inc. v. McLemore, 978 S.W.2d 568, 571 (Tex. 1998) (citing New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964)).

public figure “for all purposes and in all contexts,” Texas courts apply the following test to determine whether a plaintiff is a “limited-purpose public figure” for this particular controversy:

1. Is the controversy at issue public, both in the sense that people are discussing it and that people other than the immediate participants in the controversy are likely to feel the impact of its resolution?
2. Does the plaintiff have more than a trivial or tangential role in the controversy?
3. Is the alleged defamation germane to the plaintiff’s participation in the controversy?⁵³

Here, the undisputed facts establish that this classification is properly applied to Plaintiff.

The controversy in this case involves the legitimacy of the attacks on Plaintiff’s professional reputation and the legality of the compensation scheme which allegedly brought millions of dollars of revenue to Plaintiff’s company. These issues have been discussed at length, in two proceedings before a Dallas County District Court,⁵⁴ in at least three separate newspapers from three different cities in two states,⁵⁵ and on internet forums that are specifically designated for debate about Plaintiff and Advantage Conferences.⁵⁶ Moreover, Plaintiff admits that as many as four hundred people served as Representatives, all of whom have a “cash incentive” to learn whether they invested in an illegal pyramid scheme. Accordingly, the first element of the limited-purpose public figure test is established by the undisputed facts.

With regard to the second element, Texas courts find that a plaintiff has “more than a trivial or tangential role in the controversy” if he (1) actually sought publicity surrounding the controversy; (2) had access to the media; and (3) voluntarily engaged in activities that necessarily involved the risk of increased exposure and increased injury to reputation.⁵⁷ Here,

⁵³ *McLemore*, 978 S.W.2d at 571.

⁵⁴ *See generally*, Exs. A, C, D, E.

⁵⁵ *See generally*, Exs. A-2; A-4; A-5.

⁵⁶ *See generally*, Advantage Conferences BS (Merged), Post 1, <http://www.scam.com/showthread.php?t=13128> (last visited Feb. 22, 2009).

⁵⁷ *McLemore*, 978 S.W.2d at 572–73.

Plaintiff clearly sought publicity by filing lawsuits against those who disagreed with him,⁵⁸ by discussing the merits of his claims against the BBB in his book,⁵⁹ and by publicly attacking Defendant in e-mails and on Advantage Conferences' website.⁶⁰ In his deposition, Plaintiff explained his reasoning for this course of conduct:

DEFENDANT'S COUNSEL: [Y]ou were hoping...to negate...any negatives that were flowing from the efforts of [Defendant], correct?

PLAINTIFF: Yes.

DEFENDANT'S COUNSEL: And in that respect, by negating those negatives, you were hoping to further the business of Advantage Conferences?

PLAINTIFF: Save it, yes.

DEFENDANT'S COUNSEL: Okay. And also to the extent that anybody was not a [Representative] but was looking at becoming a [Representative], to basically put y'all's side of the story on the Internet so they would have ready access to it?

PLAINTIFF: Yes.

DEFENDANT'S COUNSEL: Okay. So that as they go about making their decision as to whether to participate, they won't just have a one-sided view of what's going on?

PLAINTIFF: Correct.⁶¹

Plaintiff's access to the media is undisputed; in fact, he admits that his book was distributed to "hundreds of thousands" of readers,⁶² that his e-mails to Dobrott reached between "eight and nine thousand" recipients,⁶³ and that he was contacted by and afforded an hour-long interview with a *Houston Press* reporter prior to the publication of its article about him and Advantage Conferences.⁶⁴ Plaintiff cannot reasonably dispute that he was able to distribute his version of events through means not ordinarily available to the typical private individual.

⁵⁸ See Pl.'s Orig. Pet. & App. for Injunctive Relief; Ex. A, p. 60, ll. 11-15; see generally Ex. C.

⁵⁹ Ex. A-3, p. 113.

⁶⁰ Ex. A-7, pp. 4-5, 7; Ex. 8, pp. 1-3.

⁶¹ Ex. A, p. 134, ll. 7-23.

⁶² Ex. A, p. 78, ll. 5-8.

⁶³ Ex. A, p. 127, ll. 3-8.

⁶⁴ Ex. A, p. 104, ll. 9-24.

Third, Defendant's alleged defamation is entirely germane to Plaintiff's participation in the controversy. According to his pleadings, Plaintiff complains that "when searched on the internet, [his name] is immediately affiliated with one of Defendant's postings on several websites."⁶⁵ By Plaintiff's own admission, however, the statements at issue in this case are those attached to his affidavit in support of his request for injunctive relief.⁶⁶ All of those statements were posted on the website *scam.com* in a forum specifically devoted to Advantage Conferences.⁶⁷ As Plaintiff is CEO, President, sole officer, and sole director of Advantage Conferences, the statements of which Plaintiff complains are directly related to Plaintiff's participation in the controversy.⁶⁸ Finally, as noted above, Plaintiff used Advantage Conferences' resources to respond to Defendant by attacking her reputation in a public forum, even though he knew that his participation would further prolong the already-existing debate:

DEFENDANT'S COUNSEL: [W]ould you agree with me that someone in your position who made the decision to identify Ms. Dobrott and to start making communications with third parties about the propriety of what she's doing, that it would be reasonable to expect that she would respond to those?

PLAINTIFF: Sure. Yes.

* * *

DEFENDANT'S COUNSEL: [Y]ou recognized that instead of just going away, one possibility was that she would continue to post and respond?

PLAINTIFF: Yes.⁶⁹

As the Texas Supreme Court recently noted, "By publishing your views you invite public criticism and rebuttal; you enter voluntarily into one of the submarkets of ideas and opinions and consent therefore to the rough competition in the marketplace."⁷⁰ Given Plaintiff's active

⁶⁵ Pl's Orig. Pet. & App. for Injunctive Relief, p. 3 ¶ 11.

⁶⁶ Ex. B, p. 5, Resp. to Interrog. No. 6.

⁶⁷ See Pl's Orig. Pet. & App. for Injunctive Relief, Exs. A-P.

⁶⁸ Ex. B, p. 2, Resp. to Interrog. No. 2; Ex. C, p. 26, ll. 13-17.

⁶⁹ Ex. A, p. 142, ll. 21-25; p. 143, ll. 1-2, 9-12.

⁷⁰ *McLemore*, 978 S.W.2d at 573 (citing *Dilworth v. Dudley*, 75 F.3d 307, 309 (7th Cir. 1996)).

participation in the present controversy despite his awareness of the risks of his conduct, the undisputed evidence establishes the third element of this inquiry as well.

In sum, the undisputed evidence confirms that Plaintiff “acted voluntarily to invite public attention and scrutiny on several occasions and in several different ways during the course of the public debate.”⁷¹ Because there are no genuine issues of material fact in dispute with regard to each of the elements of this standard, this Court should find that Plaintiff is a “limited-purpose public figure” as a matter of law.

2. Plaintiff Has No Evidence To Support Essential Elements of His Defamation Claim.

As noted above, under federal and Texas law, if a plaintiff is properly categorized as a limited-purpose public figure, he cannot recover for defamation unless he can prove that the defendant published a defamatory falsehood with actual malice.⁷² To date, Plaintiff has not even produced evidence of a single defamatory falsehood by Defendant, let alone a statement that would meet the federal Constitutional standard of “actual malice.” Because an adequate time for discovery has elapsed and Plaintiff can shown no evidence of these essential elements, this Court should issue a summary judgment in Defendant’s favor on Plaintiff’s defamation claim.

B. Plaintiff Has No Evidence to Support His Business Disparagement Claim.

The Texas Supreme Court has noted that a business disparagement claim is similar to a claim for defamation, except that it places more stringent requirements on Plaintiff in three important respects—falsity of the statement, fault of the defendant, and proof of damage.⁷³ Regardless of whether a plaintiff is a public or private figure, he or she must establish that the defendant published non-privileged false and disparaging information about it with actual malice

⁷¹ See *McLemore*, 978 S.W.2d at 573.

⁷² *McLemore*, 978 S.W.2d 571 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974)).

⁷³ *Hurlbut v. Gulf Atlantic Life Ins. Co.*, 749 S.W.2d 762, 766 (Tex. 1987).

and he must also plead and prove special damages.⁷⁴ Even assuming—without conceding—that as an individual, Plaintiff has standing to pursue a business disparagement claim on behalf of a limited liability company that is not a party to this suit, Plaintiff has no evidence of a single false statement that was made with actual malice. Moreover, Plaintiff's discovery responses do not identify any special damages, nor an expert witness who could reasonably connect the harm Plaintiff allegedly suffered to Defendant's alleged conduct.⁷⁵ Accordingly Plaintiff has no evidence to support essential elements of a business disparagement claim. Therefore, Defendant is entitled to summary judgment on this cause of action as well.

C. Plaintiff's Other Causes of Action Fail As a Matter of Law.

In his pleadings, Plaintiff also pleads causes of action for negligence, tortious interference with existing contract, tortious interference with prospective contract, and invasion of privacy.⁷⁶ Both the United States and Texas Supreme Courts have held, however, that the same protections which the First Amendment affords defendants from libel claims also protect them from non-libel claims that are based on the same alleged defamatory publications.⁷⁷ Here, Plaintiff, does not identify any conduct on Defendant's part other than making the allegedly-false statements that form the basis of his defamation and business disparagement causes of action. As discussed above, Plaintiff has no evidence to support essential elements on either of these claims. Because these causes of action fail as a matter of law, Defendant is also entitled to summary judgment on all of Plaintiff's remaining claims.

IV. CONCLUSION

⁷⁴ *Forbes, Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 170–71 (Tex. 2001).

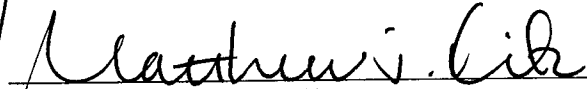
⁷⁵ Ex. F, pp. 6, 7, Resp. to Req. for Disclosure (d) and (f).

⁷⁶ Pl's Orig. Pet. & App. For Injunctive Relief, pp. 5–6.

⁷⁷ *Channel 4, KGBT v. Briggs*, 759 S.W.2d 939, 942 (Tex. 1988).

The substance of Plaintiff's claims is reflected in the minimal evidence that he has presented to this Court. Having failed to convince this Court that he is entitled to injunctive relief against Plaintiff, he has allowed this suit to linger in hopes that the inconvenience of defending it would persuade Defendant to voluntarily refrain from participating in a public debate. As Plaintiff should have realized after his previous attempts to engage Defendant in public, she has no interest in sacrificing her First Amendment rights for his or Advantage Conferences' benefit. Because Plaintiff has not produced any evidence to support his claims, Defendant is entitled to summary judgment.

Respectfully submitted,



JAMES H. MOODY III
State Bar No. 03820050

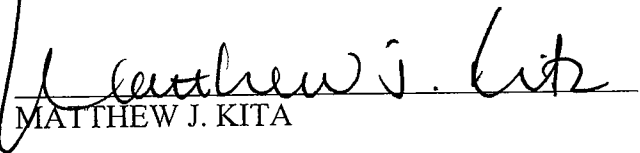
MATTHEW J. KITA
State Bar No. 24050883

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (phone) / (214) 871-2111 (fax)

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that copy of this document was served on Plaintiff's counsel of record in accordance with Texas Rule of Civil Procedure 21a on February 24, 2008.



MATTHEW J. KITA