

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Laura Luhn,

Plaintiff

v.

Suzanne Scott, et. al

Defendants.

Case Number: 1:19-cv-1180

**PLAINTIFF LAURIE LUHN’S AMENDED¹ OPPOSITION TO DEFENDANTS
SUZANNE SCOTT AND THE FOX CORPORATION’S MOTION TO DISMISS**

Plaintiff Laurie Luhn (“Plaintiff Luhn”) has been the subject of a decades-long pattern and practice of heinous and severe sexual and other abuse by former CEO of Fox News Channel, Roger Ailes (“Ailes”). The Complaint details the years of this abuse that Plaintiff Luhn had to endure, Comp. ¶¶ 26-73, which Defendant Suzanne Scott (“Defendant Scott”), the current CEO of Fox News Channel, as Ailes’ female enabler, despicably covered up. Comp. ¶ 71. Incredibly, a fellow woman, Defendant Scott, sold out Ms. Luhn to advance her own career. And it worked - she is now the CEO of Fox News - having stepped into the shoes of a man who put simply was a both a pervert and a monster to women, not that much different that the infamous Harvey Weinstein. This cover-up is ongoing. Now, in her new role, Defendant Scott, acting on behalf of and in concert with Defendant Fox, has engaged in a campaign to try to defame, smear, and discredit the women who have publicly accused Ailes of abuse, including Plaintiff Luhn. Indeed, the Complaint sets forth:

The Guardian also reported that “[Defendant] Scott is also cited in lawsuits brought by the former Fox News staffers Andrea Tantaros and Julie Roginsky, as one of the executives at the company who either did not respond to or covered up their complaints of harassment. Comp. ¶ 10.

¹ This amended opposition is being submitted to correct typographical errors made in the original opposition.

Defendant Scott has now gone on the “offensive” to actively try to discredit Ailes’ accusers, including Plaintiff Luhn, in order to try to protect the tarnished reputation of her employer, as well as to serve her own interests. In this regard, she has knowingly made false statements to the Los Angeles Times that she had no knowledge of Ailes’ behavior, and was quoted as saying, “I had no clue what was going on in Roger Ailes’ office....I have never had any issues with any sort of harassment myself.” This is false and is roughly akin to residents of Munich, Germany claiming, after World War II, that they did not know that the Holocaust was occurring in their city, occurring at Dachau, which was located right in the center of town.

The Complaint sets forth in excruciating detail not only that Defendant Scott covered-up Ailes’ nefarious actions, but also that counsel for Plaintiff Luhn sent Defendant Scott press releases – which included the complaints themselves which were embedded in and linked to the press releases - regarding related cases filed by Plaintiff Luhn involving Ailes’s abuse. Thus, at a minimum, Defendant Scott was aware of Plaintiff Luhn’s allegations. The timing of her interview with the Los Angeles Times, right after receiving the press releases with the embedded and linked complaints from Plaintiff Luhn, and in the midst of media coverage thereof, shows that Defendant Scott was specifically targeting Plaintiff Luhn.

By categorically denying Plaintiff Luhn’s allegations publicly, she has knowingly falsely cast Plaintiff Luhn as a liar and an individual who fabricates sexual assault allegations of cover-up for their own gain simply because Plaintiff Luhn finally was able to muster up the strength and courage to speak out after enduring decades of extreme abuse, so much so that she, as pled in the Complaint, which is sworn to and verified by Ms. Luhn under oath, attempted suicide on two occasions. She remains a totally broken women, with extreme anxiety, bouts of constant severe depression, and continued thoughts of suicide. To deny falsely that Defendant Scott never knew

of the sexual harassment and abuse, when in fact she does, as Plaintiff Luhn swears to under oath, not only defames Plaintiff Luhn by branding her as a liar, but reinforces the severe emotional torture that she was subjected to by a self-centered career driven “yes woman” and enabler of this heinous monster. It does not take a rocket scientist to understand that the owners of Fox News, the Murdochs, made Defendant Scott CEO after Ailes was revealed to be a sexual predator, to serve as yet more cover for the network – as having a woman, who knows where all the female bodies are buried, serves as yet more insulation for this sordid if not criminal past. This despicable and illegal behavior must be remedied.

The Court is thus respectfully requested to read carefully the entirety of Plaintiff Luhn’s complaint, which she, from a factual standpoint, largely prepared on her own with edits from counsel, and then had the courage to put “her money where her mouth is” and swore to under oath under penalty of perjury.

LEGAL STANDARD

Fed. R. Civ. P. 8(a)(2) states that a pleading need only include “a short and plain statement of the claim showing that the pleader is entitled to relief.” When reviewing a Fed. R. Civ. P. 12(b)(6) motion, the court must “accept the complaint’s allegations as true and draw all reasonable inferences in favor of the non-moving party.” *Gordon v. United States Capitol Police*, 778 F.3d 158, 163-164 (D.C. Cir. 2015). A complaint “does not require detailed factual allegations.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (U.S. 2009) (internal quotations omitted). To survive a motion to dismiss, a complaint need only “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.* (internal quotations omitted).

When deciding on a motion to dismiss a claim for defamation, the Court “must assume, as the complaint alleges, the falsity of any express or implied factual statements made in the

article.” *Weyrich v. New Republic, Inc.*, 235 F.3d 617, 623 (D.C. Cir. 2001). It must also assume that the defamatory statements were made “with knowledge of their falsity or reckless disregard for their truth.” *Id.* In situations where resolution is necessarily fact intensive, like defamation, the U.S. Supreme Court has held that “[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.” *Dimick v. Schiedt*, 293 U.S. 474, 486 (U.S. 1935). As such, it is crucial and required that Plaintiff be afforded the opportunity to conduct discovery and present its findings to the proper fact-finding body—the jury. In fact, courts have held that even in a summary judgment motion for defamation, taking the matter out of the jury’s hands is almost always inappropriate, except in those rare cases where the circumstances surrounding the allegedly defamatory communication are completely undisputed. *See, e.g., Shaw v. R.J. Reynolds Tobacco Co.*, 818 F. Supp. 1539, 1541 (M.D. Fla. 1993), *aff’d*, 15 F.3d 1097 (11th Cir. 1994).

LEGAL ARGUMENT

I. The Fox Corporation is a Proper Party

Defendants falsely assert that Defendant Fox is not properly named as a party because the Complaint does not make specific allegations. The Complaint makes it clear that Defendant Scott, at all times, was “acting on behalf of and in concert with Defendant [Fox]....” Comp. ¶ 75.

In an article published by the Los Angeles Times, written by Stephen Battaglia, Defendant Scott made false, malicious, and defamatory statements about Plaintiff Luhn which also held her in a false light, who was the victim of a decades long pattern and practice of sexual, psychological, emotional and physical abuse by Ailes. Comp. ¶ 11

The Los Angeles Times article reported that Defendant Scott told FNC employees that “she had no knowledge of Ailes’ behavior even though she was part of his inner circle.”....Defendant Scott was quoted as saying, “I had no clue on what was going on in Roger Ailes’ office.... I have never had any issues with any sort of harassment

myself.” Comp. ¶¶ 12 – 13.

These are provably false statements of fact that were made by Defendant Scott to defame, discredit, smear and hold Plaintiff Luhn in a false light, who had previously filed a lawsuit in the Superior Court for Los Angeles County and then U.S. District Court for the District of Delaware (the “Delaware Case”) detailing the decades-long abuse that she endured at the hands of Ailes, and which was covered up in part by Defendant Scott. *See Luhn v. Showtime Inc., et al*, 1:19-cv-618 (D. Del.); *Luhn v. Showtime Inc., et al*, 19SMCV00110 (Los Angeles Sup. Ct.). Press releases announcing these cases were sent to Scott and FNC, detailing Plaintiff Luhn’s allegations in suits filed against Showtime, Blumhouse TV, LLC, and the writer of the upcoming eight part mini-series “Loudest Voice in the Room,” where A list actress Annabelle Wallace portrays Plaintiff Laura Luhn. This eight-part mini-series is currently scheduled to air on Showtime June 30, 2019, with the first episode. Thus, Plaintiff Luhn had directly informed Defendant Scott of the allegations in the Los Angeles and Delaware Cases even before they were filed, and had sent out press releases regarding the Delaware Case. Comp. ¶¶ 14 – 15

Defendants Scott and FNC have engaged in a criminal enterprise to further their financial well-being by covering up the sexual abuse and discrimination that was and on information and belief remains rampant at the network. In so doing, persons like Plaintiff Luhn had to be silenced through coercion, intimidation and threats, notwithstanding overt acts designed to destroy them through defamation by ruining their reputations and subjecting them to extreme emotional distress with resulting physical ailments, which could even in Luhn’s case result in suicide. Comp. ¶ 25.

Ailes continuously told Plaintiff that she had “no friends” and that he was her only friend in the world. “I’ll protect you,” Ailes told Plaintiff. “You need to do this for me, stay quiet and show your loyalty, Laurie.” Ailes continued to threaten Plaintiff by telling her not to trust anyone with the exception of Ailes’ inner circle at Fox News, which included Judy Laterza, Michael Tammero, Brian Lewis, Bill Shine, and Defendant Scott. In fact, Defendant Scott was tasked with constantly monitoring Plaintiff Luhn, which included weekly lunches as status reports to Ailes. Luhn was constantly questioned about why her apartment had not sold. Comp. ¶¶ 49 – 50.

Plaintiff has suffered and continues to suffer serious, debilitating and life threatening trauma, anxiety and other serious health complications as a result of Ailes’ severe psychological torture and mind control. This was covered up and furthered by his inner circle, including but not limited to Judy Laterza, Bill Shine, Brian Lewis, Irena Briganti and Suzanne Scott. Comp. ¶ 71.

This makes perfect sense. By smearing, defaming, and discrediting Plaintiff Luhn, Defendant Scott was serving her employer, Defendant Fox, by trying to protect its tarnished and disgusting reputation while serving her own interests and that of Fox News. Because the Complaint alleges

Defendant Scott's actions were taken on behalf of Defendant Fox, it is properly named.²

II. Defendants' Motion to Dismiss Under Rule 12(b)(6) Must Be Denied

1. Plaintiff Luhn Has Properly Pled a Claim for Defamation

Under District of Columbia law, a valid defamation claim must plead only four elements:

[T]he defendant made a false and defamatory statement concerning the plaintiff"; (2) the defendant published the statement without privilege to a third party; (3) the defendant's fault in publishing the statement amounted to at least negligence; and (4) either the statement was actionable as a matter of law irrespective of special harm, or its publication caused the plaintiff special harm.

Devincci Salah Hourani v. Mirtchev, 796 F.3d 1, 16 (D.C. Cir. 2015) (internal quotations omitted). Defendants falsely assert two basis for dismissal: (1) that the statements at issue do not concern Plaintiff Luhn, and (2) that the statements at issue are not defamatory.

First and foremost, Defendants make no assertion that Plaintiff Luhn needed to have been explicitly named in the defamatory publications in order for it to be actionable, nor could they.

It is well-settled that "it is unnecessary for an article to name a person in order for it to be "of and concerning" that person. If it can be shown either that the implication of the article was that the plaintiff was the person meant or that he or she was understood to be the person spoken about in light of the existence of extrinsic facts not stated in the article, then it is "of and concerning" the plaintiff as though the plaintiff was specifically named.

SACK ON DEFAMATION § 2:9:1. *See also Jankovic v. Int'l Crisis Grp.*, 494 F.3d 1080, 1088-89 (D.C. Cir. 2007). Furthermore, as set forth in *Gazette, Inc. v. Harris*, 229 Va. 1, 325 S.E.2d 713, 737 (1985), a defamation plaintiff "need not show that he was mentioned by name in the publication. Instead, the plaintiff satisfies the 'of or concerning' test if he shows that the publication was intended to refer to him and would be so understood by persons reading it who

² Defendants attempt to create an issue regarding whether the proper corporate entity is The Fox Corporation or its subsidiary For News Channel. At a minimum, discovery is required to determine which entity Defendant Scott answers to. In the event that the Court determines that Fox News Channel is the proper entity, Plaintiff Luhn respectfully requests leave to amend in this regard.

knew him.” The same principle is echoed in the only case cited by Defendants in this regard, *Three Amigos SJJ Rest., Inc. v. CBS News Inc.*, 28 N.Y.3d 82, 86–87 (N.Y. 2016):

Specifically, the plaintiff “must plead and prove that the statement referred to them and that a person hearing or reading the statement reasonably could have interpreted it as such.” *Id.* (citing Prosser & Keeton, Torts § 111 at 783 (5th ed. 1984)). ECF No. 7 at 8.

Here, Plaintiff Luhn more than satisfies this burden. The Complaint pleads that it was widely known that Plaintiff Luhn had, at a minimum, alleged that she was the victim of a decades long pattern and practice of severe abuse by Ailes. Plaintiff Luhn had previously filed two lawsuits detailing the decades-long abuse that she endured at the hands of Ailes, and which was covered up by Defendant Scott. *See Luhn v. Showtime Inc.*, et al, 1:19-cv-618 (D. Del.); *Luhn v. Showtime Inc.*, et al, 19SMCV00110 (Los Angeles Sup. Ct.)” Comp. ¶ 14. The Complaint further alleges that these allegations were widely publicized and that “[p]ress releases announcing these cases were sent to Scott and FNC...” *Id.* Thus, it is clear that Defendants were fully aware of the allegations by Plaintiff Luhn.

As a matter of fact, Plaintiff Luhn’s victimhood in Ailes’ pattern and practice of monstrous abuse was so widely known that it is the subject of the upcoming seven-part mini-series ‘Loudest Voice in the Room,’ where A list actress Annabelle Wallis portrays Plaintiff Laura Luhn. This seven part mini-series is currently scheduled to air on Showtime June 30, 2019, with the first episode. *Id.* Indeed, if Showtime knew enough about Luhn’s allegations that it made her an integral part of the “Loudest Voice in the Room,” it is clear that Plaintiff Luhn’s allegations regarding Ailes are widely known. Thus, when Defendant Scott falsely stated that she “had no clue on what was going on in Ailes’ office” and that she “had no knowledge of Ailes’ behavior,” she was, in fact, calling Plaintiff Luhn a liar and creating the false implication that Plaintiff Luhn fabricated sexual assault allegations against Ailes. In sum, there are only so many

women who accused Ailes of abuse, and each of them are publicized to the extent that Showtime has made a mini-series about it. By lying about and denying these allegations that Defendant Scott covered all this up, it is reasonable that any listener would understand that they were “of and concerning” Plaintiff Luhn, the worst and most damaged of Ailes’ female victims.

Given that these statements were “of and concerning” Plaintiff Luhn, it is equally clear that they are defamatory. Falsely accusing an individual of lying is defamatory. The U.S. Court of Appeals for the District of Columbia Circuit has held, “The bald statement ‘[Plaintiff] is a liar,’ for example, would plainly fall within the class of factual defamatory statements.” *Moldea v. New York Times Co.*, 15 F.3d 1137, 1144 (D.C. Cir. 1994); *see also Zervos v. Trump*, Case No. 150522/2017 (Sup. Ct. NY). Here, Defendant Scott was aware of the allegations made by Plaintiff Luhn, as she was sent the press releases with embedded and linked complaints that accompanied Plaintiff Luhn’s previously filed lawsuits. Comp. ¶ 15. The Complaint also alleges that Defendant Scott personally participated in the cover up:

Plaintiff has suffered and continues to suffer serious, debilitating and life threatening trauma, anxiety and other serious health complications as a result of Ailes’ severe psychological torture and mind control. This was covered up and furthered by his inner circle, including but not limited to Judy Laterza, Bill Shine, Brian Lewis, Irena Briganti and Suzanne Scott. Comp. ¶ 71.

In fact, Defendant Scott was tasked with constantly monitoring Plaintiff Luhn, which included weekly lunches as status reports to Ailes. Luhn was constantly questioned about why her apartment had not sold. Comp. ¶ 50.

Ailes had her stay at the Warwick Hotel in New York under the name Suzanne Scott, who is today the CEO of Fox News. Comp. ¶ 57.

Thus, by then publicly saying that she had no knowledge of Ailes’ behavior, Defendant Scott was calling Plaintiff Luhn a liar and knowingly creating the false implication that Plaintiff Luhn fabricated sexual assault allegations against Ailes. This is clearly defamatory under *Moldea*.

2. Plaintiff Luhn Has Properly Pled a Claim Intentional Infliction of

Emotional Distress

“To succeed on a claim of intentional infliction of emotional distress, a plaintiff must show (1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes the plaintiff severe emotional distress.” *Armstrong v. Thompson*, 80 A.3d 177, 189 (D.C. 2013).

Despite Defendants’ attempts to minimize the impact of her statements by couching them as simply stating that “she herself was not aware of Ailes’s alleged misconduct at the time it was happening,” ECF No. 7 at 14, it is clear that there was much more at issue. The Complaint sets forth in detail the decades-long pattern and practice of severe psychological and sexual abuse that Plaintiff Luhn endured at the hand of Ailes, Comp. ¶¶ 26 – 73, which Defendant Scott assisted in covering up. Comp. ¶ 71. When Plaintiff Luhn finally mustered enough strength and courage to “fight back” by getting her story out there, she has been knowingly falsely branded as a liar and an individual who fabricates sexual assault allegations of cover-up by Defendants. This has only further the severe emotional distress suffered by Plaintiff Luhn as a result of the cover-up of her abuse and the lies by Defendants in this regard:

Plaintiff twice attempted suicide and to this day continues to be severely damaged with PTSD and bouts of intermittent anxiety and hopelessness. She continues to feel isolated and ostracized by society. The long-term impact and severe damage caused by Ailes’ mind control techniques, and the cover-up and complicity of his abovementioned top aides, and the resulting Stockholm Syndrome still gripping and strangling the Plaintiff is incalculable. Plaintiff has never been able to reach closure through this ongoing painful process of defamation, a tragedy resulting in loss of income and any chance of a healthy existence. Comp. ¶ 71.

3. Plaintiff Luhn Has Properly Pled a Claim for False Light

“A false light claim . . . requires a showing of: (1) publicity; (2) about a false statement, representation or imputation; (3) understood to be of and concerning the plaintiff; and (4) which places the plaintiff in a false light that would be offensive to a reasonable person.” *Doe v.*

Bernabei & Wachtel, PLLC, 116 A.3d 1262, 1267 (D.C. 2015) (internal quotation omitted). Plaintiff Luhn's allegations squarely satisfy these elements.

Defendants assert that Plaintiff Luhn's false light claim fails for the same reasons as her claims for defamation. However, as shown above, Plaintiff Luhn has properly pled a defamation claim. Not only were Defendants' statement made publicly, they were understood to be concerning Plaintiff Luhn. These statements cast her as a liar and an individual who fabricates sexual abuse allegations and cover-ups, which are undeniably offensive.

CONCLUSION

Based on the foregoing, Plaintiff Luhn respectfully requests that this Court deny Defendants' Motion to Dismiss, as she has clearly pled more than sufficient facts in support of her causes of action. Again, a full reading of the sworn allegations of the complaint, which at this stage of the case must be accepted, shows the strength of Plaintiff Luhn's case.

This case is important to protect the rights of not just Plaintiff Luhn, but all women to be respected, not sexually harassed and abused, and then victimized further – after they have been psychologically and physically destroyed – and then lied about by the very same enabler that furthered the monstrous behavior of the sexual predator. This enabler, Defendant Scott, acting in concert with Defendant Fox, callously continued to harm a fellow woman to advance and then further her career as the only woman CEO of a major television network. To sell a fellow woman out for one's own gain – and what could be worse than this -- it is finally time that the Defendants account before the bar of justice and a jury of their peers.

Dated: June 25, 2019

Respectfully Submitted,

/s/ Larry Klayman
Larry Klayman, Esq.
KLAYMAN LAW GROUP, P.A.

D.C. Bar Number: 334581
2020 Pennsylvania Ave NW #800
Washington, DC, 20006
Telephone: (310)-595-0800
Email: leklayman@gmail.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served through the court's ECF system to all counsel of record or parties on June 25, 2019.

/s/ Larry Klayman _____