

DIANE MARIE FREMGEN,

Plaintiff,

CIVIL COMPLAINT; LIBEL;
LIBEL PER SE; TEMPORARY
INJUNCTION

-v-

FULLOF BOLOGNA.COM

Defendant,

DENNIS PAYNE, REGISTRANT
AND ADMINISTRATOR OF FULL
OF BOLOGNA.COM
1708 Roosevelt Ave.
Oshkosh WI 54901,

Defendant,

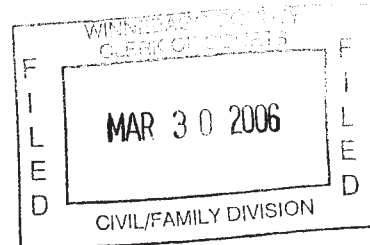
Case No. 06 CV

JOHN DOE, A/K/A
MR. IMPERFECT
Anonymous poster to the website
Full of Bologna.com,

Defendant,

STUDIO 28, Web Design and
Hosting, by its agent, DENNIS
PAYNE,

Defendant.



COMPLAINT

NOW COMES the Plaintiff, Diane Marie Fremgen, by her attorneys, Kindt, Phillips, Friedman & Fremgen, S.C., by attorney Andrew J. Phillips, and as for a cause of action against the Defendants named above, alleges and shows to the court as follows:

COUNT I: LIBEL PER SE AND LIBEL

1. The Plaintiff, Diane Marie Fremgen, is an adult who currently resides in Oshkosh, Wisconsin, Winnebago County;
2. The Plaintiff, Diane Marie Fremgen, is an elected official, the Clerk of the Circuit Court, for Winnebago County, Wisconsin;

3. The Defendant, FULLOFBOLOGNA.COM (herein FOB) is a website/bulletin board, the Defendant, DENNIS PAYNE is the Registrant/Administrator and technical support for the website/bulletin board, is an adult, and resides at 1708 Roosevelt Avenue, Oshkosh, Wisconsin, Winnebago County, the Defendant MR. IMPERFECT (herein "Mr. Imperfect") is an anonymous poster to the website/bulletin board, and the Defendant, STUDIO 28, is the web design and hosting company, owned and/or operated by the Defendant, DENNIS PAYNE;
4. The Defendant, FOB, has published the comments that the Plaintiff alleges are both libelous and libelous per se;
5. The Defendant, Dennis Payne, has registered the domain name "FULLOFBOLOGNA.COM" through GoDaddy.com, having been created on January 15, 2005, and updated on January 15, 2006;
6. The Defendant, Studio 28, designed and hosts the website, FOB, and is owned and/or operated by the Defendant, Dennis Payne;
7. Further, the Plaintiff believes that at all times relevant to the allegations within this complaint, that the Defendants, FOB, Dennis Payne and Studio 28, have operated the website in question, and published the comments in question, from 1708 Roosevelt Avenue, in Oshkosh, Wisconsin, 54901;
8. On or about March 22, 2006, at 4:59 PM, the Defendant Mr. Imperfect, the anonymous web poster, posted the following message in a thread of messages on FullofBologna.com:

"And Diane Fremgen....Spread your legs for Joe, open your mouth for Tom. What a fine woman you are! Did Mark lose a bet or did he feel sorry for you?"

9. The above post has remained on the website/bulletin board, registered by and administered by the Defendant, Dennis Payne, since March 22, 2006, and has been further re-published on the same thread of posts by "Legs" an anonymous poster, on or about March 27, 2006 at 2:23 PM;
10. The Plaintiff denies the truth of the statements in paragraph 8 above;
11. Further, the Plaintiff, believes that the Defendant, Mr. Imperfect, is clearly referring to sexual behavior in that the same Defendant offers the following post on or about March 24, 2006 at 12:21 PM:

"Now lets see, Fremgen has had a history of having inappropriate relationships with men of power....wonder if that includes Gritton and maybe his wife?"

12. The Plaintiff denies the truth of the statements in paragraph 11;
13. At all times relevant as to the cause of action stated above, Defendant, Dennis Payne, has been the administrator and registrant of the Defendant website FullofBologna.com;
14. The Plaintiff believes that the comments referenced above, and the references to the other individuals, establishes that the Defendants Mr. Imperfect and Dennis Payne, have committed libel per se in that:

- a. The matter was in writing;
 - b. The matter was published to others (by virtue of being displayed on a website);
 - c. The matters are libelous per se in that they allege that the Plaintiff is an unchaste woman;
15. Further, the Plaintiff believes that the comments referenced above, and the references to other individuals, establishes that the Defendants Mr. Imperfect and Dennis Payne, have committed libel:
- a. The matter was in writing;
 - b. The matter was published to others (by virtue of being displayed on a website);
 - c. The matter alludes to an inappropriate relationship between the Plaintiff, a judge and the judge's wife;
 - d. Further the matter refers to "inappropriate relationships" which implies either lewd, lascivious or adulterous sexual conduct;
 - e. The alluded to behavior tends to harm the reputation of the Plaintiff, tends to diminish the Plaintiff's esteem, goodwill and confidence held in her, and tends to excite adverse, derogatory, unpleasant feeling or opinions of the Plaintiff;
16. Further, the Plaintiff does not believe that any privilege exists to defend against this action. Specifically, the Plaintiff does not believe that the defamatory comments were privileged since the comments were neither made in the context of a governmental proceeding nor were they comments related to the reporting of government or public proceedings;
17. Further, the Plaintiff believes that the Defendants Mr. Imperfect and Dennis Payne published the comments on the Defendant website, FOB, with actual malice. That is, the Defendants knew the statements were false or acted in reckless disregard for the truth of the published statements. However, in no way does this imply that the Plaintiff concedes that the Defendants may be characterized as "media" Defendants;
18. Further, since the Defendant website, FOB, as it is maintained by the Defendant, Dennis Payne, and used by the Defendant, Mr. Imperfect, is a bulletin board of postings from various sources, it is not entitled to the opportunity and requirement of retraction, under sec. 895.05 (2), Wis. Stats.;

WHEREFORE, the Plaintiff seeks the following judgements in light of the cause of action referenced in paragraphs 1 through 23 above:

- A. Monetary damages in excess of \$100,000;
- B. Punitive damages in excess of \$500,000;
- C. Any and all costs associated with the prosecution of this complaint, including, but not limited to filing fees;
- D. Any and all attorney fees;
- E. An Order requiring permanent restraining provision from continued or future publication of similarly libelous statements;
- F. Any and all reasonable relief that the Court deems appropriate.

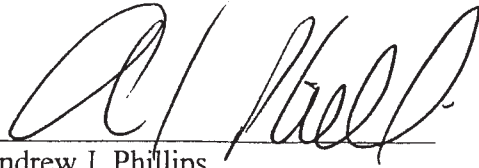
FURTHER, the Plaintiff seeks an immediate Temporary and Extraordinary Writ, pursuant to sec. 813.02 (1), Wis. Stats. enjoining the Defendants (collectively and individually) from maintaining the Defendant website, FOB, suspending all access to and operations of said website until further order of the court, enjoining the Defendants from designing, hosting, maintaining or creating a similar website while this cause of action is pending, and requiring the removal of the complained statements in the paragraphs above, and any republication of said threads within the full website. In this regard, the Plaintiff offers the following in support for such relief:

- A. The Defendant website, FOB, and Defendant, Dennis Payne, indicate on the site that they prohibit vulgar, obscene or sexually explicit statements, and reserve the right to remove such posts, but that due to the inability to monitor all posts, can not ensure compliance with this prohibition;
- B. The website has allowed the offending posts to remain on the site as of the filing of this action;
- C. The injury to the Plaintiff by the statements of the Defendants is significant and has caused irreparable injury to reputation;
- D. The failure to grant a Temporary Restraining Order would cause continued irreparable injury to the Plaintiff's reputation and continue to adversely excite derogatory feelings and opinions of the Plaintiff;
- E. The conduct recited in paragraphs 1 through 23 adequately demonstrate that the Plaintiff is likely to succeed on the merits of a libel per se, as well as a libel cause of action;
- F. There is no other adequate remedy available while a civil cause of action for libel per se and libel is pending, when the statements that arise to the actionable (per se) defamation are allowed to continue to be published and the site that has allowed the publication to first occur and then to continue is not temporarily restrained from operating the site and required to remove the offending posts;
- G. Further, the Plaintiff requests that the Court Order the requested injunctive relief, ex parte in that: (1) The Defendants have failed to remove the offending posts, (2) the posts have been the subject of additional responding posts by other anonymous posts, (3) the Defendants have attempted to maintain anonymity by using false names, monikers, and nicknames to purposefully hide their true identities, and (4) the libelous statements are so perverse and offensive that equity requires the immediate removal of the offending statements and cessation of the website to ensure future compliance while the lawsuit is pursued.

THE PLAINTIFF RESERVES THE RIGHT TO PURSUE COSTS AND ATTORNEY FESS FOR FRIVIOLOUS DEFENSES OR DEFENSES THAT ARE NOT PURSUED IN GOOD FAITH.

THE PLAINTIFF RESERVES THE RIGHT TO PURSUE OTHER DEFENDANTS AND ANY AND ALL REPUBLICATIONS OF ANY OFFENDING STATEMENTS HEREIN.

Dated in Oshkosh, Wisconsin, this 30th day of March 2006.



Andrew J. Phillips
Attorney for Plaintiff
State Bar No. ~~105~~ 1018902
Kindt Phillips Friedman & Fremgen, S.C.
PO Box 1338
Oshkosh WI 54903-1338
920-231-1500

I attest that I have reviewed and agree with the statements listed above as the basis for this cause of action and request for temporary injunctive relief.

Dated in Oshkosh, Wisconsin, this 29 day of March 2006.



Diane Marie Fremgen
Plaintiff

Subscribed and sworn before me
This 29 day of March 2006.



Notary Public

My commission is permanent.