

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

VICTOR E. CRETELLA III)

Plaintiff)

v.)

Case No. 3:08CV109

DAVID L. KUZMINSKI)

Defendant)

PLAINTIFF'S AMENDED COMPLAINT

Plaintiff, Victor E. Cretella III, files this Amended Complaint against Defendant David L. Kuzminski, stating as follows:

1. Plaintiff Victor E. Cretella III ("Cretella" or "Plaintiff") is domiciled in and a citizen of the State of Maryland, residing in Frederick County.
2. Defendant David L. Kuzminski ("Kuzminski" or "Defendant") is domiciled in and a citizen of the Commonwealth of Virginia, residing in Petersburg City.
3. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332 based upon the fact that the amount in controversy exceeds \$75,000 and there is a diversity of citizenship between the parties to this matter. This Court has venue over this action pursuant to 28 U.S.C. § 1391 based upon Defendant's residence in the Eastern District of Virginia.
4. **JURY DEMAND**: Plaintiff has demanded a jury trial on all issues so triable.
5. Plaintiff has been admitted to practice law in the State of Maryland since

December, 1996. From January, 1997 until April, 2007, Plaintiff was employed as an attorney for the law firm of Gordon & Simmons in Frederick, Maryland. One of Plaintiff's clients was Publish America, LLLP ("PublishAmerica"), which was (and still is) a book publisher located in Frederick, Maryland.

6. In early 2007, PublishAmerica identified a number of false and defamatory statements concerning it that had been published by Christine Norris ("Norris") on the Internet. In order to stop this tortious conduct, PublishAmerica hired Plaintiff to send Norris a cease and desist letter. In furtherance of this goal, Plaintiff served Christine Norris with a cease and desist letter on February 7, 2007; in this letter Plaintiff identified himself as PublishAmerica's attorney. When Norris continued publishing defamatory statements about PublishAmerica on the Internet after receiving the cease and desist letter, PublishAmerica served her with a second notice on or about February 15, 2007. After receiving that notice, Ms. Norris posted a message on the Internet claiming that she would comply with the cease and desist letter at least temporarily.

7. On February 16, 2007 at 10:15 a.m., David Kuzminski published the following statement about the cease and desist notices on the Absolute Write website:

I say it's time to report Vic Cretella to the Maryland Bar Association for attempted extortion. Let them sort it out and decide whether that's what he's involved in or not.

Let's not forget his law firm. They might not know what he's doing. They might not want the blackeye [sic] he's giving them.

[Http://www.absolutewrite.com/forums/showthreadd.php?t=55381&page=3](http://www.absolutewrite.com/forums/showthreadd.php?t=55381&page=3).

8. Less than an hour later, Defendant posted a copy of an e-mail, which he had

purportedly sent to Plaintiff's employer, on the same website. The contents of this letter are as follows:

Perhaps your office is unaware, but Mr. Cretella seems to be involved in what I would characterize as extortion. I've enclosed a copy of the documentation that leads me to express this extreme displeasure with one of your lawyers because he appears to not only represent a business I consider to be among the sleaziest in the world, but to be actively consorting with them in furthering its unethical if not illegal methods. I fully intend to also report him to the Maryland State Bar Association for disciplinary action.

Defendant also indicated that he copied the e-mail to a number of "related offices in the Maryland State Bar Association and nearly every member of their Ethics Committee." When commenting on what he had done, he said: "Well, let's see Vic deal with this. . . . **Yes, this just went out in e-mail. They want to play rough, then let's level the playing field just a bit.**" (Emphasis in original).

9. Kuzminski reiterated his defamatory accusations several minutes later when he posted the following message on the website:

Okay, folks, if you want to help, send an e-mail to those addresses. . . . If you have documentation about PA or Vic, offer to give it to the Maryland State Bar Association to use in considering whether to administer disciplinary action to dear ole Vic.

Hey Vic, I hope you're reading this so you can include me on the offer you made to Christine.

10. In April 2007, Plaintiff was hired by PublishAmerica full time. At 10:49 a.m. on May 4, 2007, Defendant published the following statement about Plaintiff's change of employment on the Absolute Write Internet message board:

“I’m certain that Victor Cretella will be grateful for the work since he’s now PA’s general counsel. We can only speculate on how much embarrassment he caused his former employer but PA’s [sic] obviously thinks highly of him. I guess he resonates with them like a glove.” At 11:57 p.m. on May 4, 2007, Christine Norris posed a question on the Absolute Write website, asking how PublishAmerica paid Plaintiff. In response, Defendant made the following statement of and concerning Plaintiff:

Look at it this way. Without his former firm vouching for him to the State Bar Association, he might be just that much closer to losing his license. I think all the letters of complaint we wrote to the authorities in MD might have actually had some effect. If that’s so, then we do it again the very next time he steps out of line again.

<http://www.absolutewrite.com/forums/showthread.php?p=1311594>.

11. Starting in April 2007, members of the Guild website, started discussing Plaintiff’s change of employment from Gordon & Simmons to PublishAmerica. Defendant published the following comment about the transition on May 5, 2007 at 7:39 p.m. on the Guild website:

Well before Vic’s professional move, he was targeting a writer who frequents another board. In response, a number of writers sent emails to various lawyers in Maryland who look over ethics among Md lawyers and such. I also sent emails to over twenty such lawyers and included the law firm that Vic worked for at the time. I suspect his sudden change of employment might have been due to the backlash against his attempt to attack that writer. In other words, he’d been representing PA for a number of years now without any problems. There’s no other readily apparent reason for such a dramatic employment change.

12. On July 10, 2007, a PublishAmerica author, Marie Pacha, accused

PublishAmerica on the Absolute Write Internet message board of breaching her contract by violating rules of procedure for the American Arbitration Association. In response, Dave Kuzminski published the following statement on the website: "Seems to me ole Vic is demonstrating why he's no longer with his former firm. I guess socializing only goes so far, doesn't it, Vic? Somewhere along the line you actually have to produce."

[Http://absolutewrite.com/forums/showthread.php?t=66307&page=3](http://absolutewrite.com/forums/showthread.php?t=66307&page=3).

13. He republished this statement several days later on his Preditors & Editors website:

7/14/07: PublishAmerica lawyer Victor Cretella infringing contract? This is what we've had reported to P&E. According to our source, Vic has infringed upon or is breaching the terms of the contract in regards to the Arbitration clause.

So, this is how PA operates? They don't honor their contracts or show any good faith even when it comes to negotiations and arbitration?

By the way, anyone who has had dealings with an attorney in Maryland who knows they are in violation of the law of their ethics code can file a complaint against the attorney using the information at <http://www.courts.state.md.us/attygrievance/complaint.html>. This site lists some of the sanctions applied to various attorneys. According to our sources, sounds like it's time to report Vic for his behavior.

[Http://anotherrealm.com/preditors/pebp.htm](http://anotherrealm.com/preditors/pebp.htm).

14. On November 17, 2007, Defendant republished on the Absolute Write message board his accusation that Plaintiff had acted unethically:

Vic had to leave his former employer after a certain party contacted the entire Ethics Committee for the Maryland Bar Association

along with his employers after an attempt by Vic to extort payment to PA from an AW writer who expressed her opinion about PA on the AW site.

[Http://absolutewrite.com/forums/showthread.php?p=1821873](http://absolutewrite.com/forums/showthread.php?p=1821873).

15. On February 11, 2008, Defendant again republished on the Absolute Write message board his belief that Plaintiff had acted unethically:

Gosh, I didn't think Vic could be so mean. After all, we were so close. We could have been kissing cousins...well, except for that awful face paint. You don't think Vic is upset with me for reporting him to the Maryland Board of Ethics for attorneys for attacking an AW member, do ya? Well, and his former employers, too. I'm sure they liked having that can of worms thrown in their laps.

<http://absolutewrite.com/forums/showthread.php?t+38537&page=333>.

16. Defendant's statements that Plaintiff committed extortion and acted unethically were published to numerous third parties. First, Kuzminski's statements were read by many persons who accessed the AbsoluteWrite, Preditors & Editors, and Guild websites through the Internet, including, but not limited to, persons with the following screen names: "Christine N.", "Queen of Swords", "Gabriel", "rtilyarms", "SouthernWriter1978", "James D. Macdonald", "Birol", "victoriastrauss", "maddog", "zizban", "spike", "JimmyD1318", "xhouseboy", "sonarbabe", "PeeDee", "Sean D. Schaffer", "WildScribe", "TemlynWriting", "KCH", "roach", "Bartholomew", "catslave", "Atomic Bear", "LeslieB", "NCRomanceWriter", "brainstorm77", "Sarashay", "JulieB", "Julie Worth", "AC Crispin", "veinglory", "Moon Daughter", "Esopha", "ChunkyC", "Vgrossack", "briamm", "CaoPaux", "aruna", "Kate Thornton", "Stormie", "Caro", "Sparhawk", "roach", "rekd", "scribhneoir", "Mom'sWrite", "KimJo", "Old Hack",

“Unimportant”, “rllgthunder”, Tina”, “Mmo”, “Merricat”, “Cathy C”, “MadScientistMatt”, “Ol’ Fashioned Girl”, “Cav Guy”, “Dawno”, “kristie911”, “sanremoave”, “kjh7073”, “Alan Yee”, and “Leva”. These statements are still available to the public.

17. Second, Defendant published his defamatory accusations in Maryland to Plaintiff’s employer and members of the Maryland State Bar Association on or about February 16, 2007. Specifically, the e-mail described in paragraph 8 was sent to and read by the users of the following e-mail addresses: officemail@gordonsimmons.com, praschke@oag.state.md.us, tmurphy@murphyslawmd.com, phe@eqmrh.com, tbcarnell@venable.com, lschwartz@paleyrothman.com, cpham@rosenbergmartin.com, ariana.arnold@usdoj.gov, joan.gordon@courts.state.md.us, wchilds@linowes-law.com, gayle.driver@montgomerycountymd.gov, gklakring@opd.state.md.us, tlerer@comcast.net, tlynch@milesstockbridge.com, tmaloney@jgllaw.com, gmartin@rosenbergmartin.com, john.miller@courts.state.md.us, almorgan@co.pg.md.us, jay.morstein@dlapiper.com, praschke@oag.state.md.us, marc.rasinsky@courts.state.md.us, rosen@wilcalros.com, donald.sharpe@dlapiper.com, mdt@mygt.com, jbw@cwtm.net, pmw@paleyrothman.com, cswinner@fisherwinner.com, wandf@qis.net, jhoward@sagallaw.com.

18. When publishing the defamatory statements on the AbsoluteWrite, Preditors & Editors, and Guild websites and to Plaintiff’s employer and the Maryland Bar Association, Defendant intended to impute criminal and unethical conduct to Plaintiff in his professional capacity as an attorney at law. The persons to whom the defamatory matter was communicated understood defendant’s words to have the intended meaning and that the defamatory matter was

of and concerning Plaintiff, whose name was specifically referenced in Defendant's publications. In fact, many of the third parties who posted on the AbsoluteWrite website repeated Kuzminski's defamatory imputations or encouraged Kuzminski to bring ethics charges against Plaintiff. Thus, not only did these statements expose Plaintiff to public scorn, hatred, contempt, and ridicule to third persons, but these statements were defamatory per se in that they accused Plaintiff of criminal conduct as well as imputing "unethical" conduct inimical to Plaintiff's profession as an attorney.

19. All of Defendant's statements concerning Plaintiff were false, including Defendant's accusation that Plaintiff committed extortion and acted unethically.

20. Defendant made these defamatory statements with actual malice, i.e. with knowledge of their falsity or with reckless disregard thereof, and with the intent to injure, disgrace and defame Plaintiff; in the alternative, Defendant made these defamatory statements without using due care to identify their falsity.

21. As a direct and proximate result of the publication of the untrue and defamatory statements by Defendant, Plaintiff has been exposed to public hatred, contempt, and ridicule. Such defamatory and untrue statements have been a source of great embarrassment and humiliation to plaintiff. In particular Plaintiff's character and reputation for honesty and integrity has been impaired, as well as his standing in his profession and the community at large. The stigma caused by Defendant's defamatory statements will deter prospective employers and clients from hiring Plaintiff. Plaintiff has suffered a great wrong and injury on account of the above-mentioned actions of defendant, causing damage to Plaintiff in the sum of \$200,000.00.

COUNT I

22. Plaintiff incorporates paragraphs 1 to 9 and 16 to 21 as if set forth herein.

23. The allegations incorporated into this Count I constitute a single claim of defamation.

WHEREFORE, Plaintiff demands judgment for Two Hundred Thousand Dollars (\$200,000.00) in compensatory damages, Two Hundred Thousand Dollars (\$200,000.00) in punitive damages, interest, costs, and such further relief as justice requires.

COUNT II

24. Plaintiff incorporates paragraphs 1 to 6, 10, 16, and 18 to 21 as if set forth herein.

25. The allegations incorporated into this Count II constitute a single claim of defamation.

WHEREFORE, Plaintiff demands judgment for Two Hundred Thousand Dollars (\$200,000.00) in compensatory damages, Two Hundred Thousand Dollars (\$200,000.00) in punitive damages, interest, costs, and such further relief as justice requires.

COUNT III

26. Plaintiff incorporates paragraphs 1 to 6, 11, 16, and 18 to 21 as if set forth herein.

27. The allegations incorporated into this Count III constitute a single claim of defamation.

WHEREFORE, Plaintiff demands judgment for Two Hundred Thousand Dollars (\$200,000.00) in compensatory damages, Two Hundred Thousand Dollars (\$200,000.00) in punitive damages, interest, costs, and such further relief as justice requires.

COUNT IV

28. Plaintiff incorporates paragraphs 1 to 6, 12, 16, and 18 to 20 as if set forth herein.

29. The allegations incorporated into this Count IV constitute a single claim of defamation.

WHEREFORE, Plaintiff demands judgment for Two Hundred Thousand Dollars (\$200,000.00) in compensatory damages, Two Hundred Thousand Dollars (\$200,000.00) in punitive damages, interest, costs, and such further relief as justice requires.

COUNT V

30. Plaintiff incorporates paragraphs 1 to 6, 13, 16, and 18 to 21 as if set forth herein.

31. The allegations incorporated into this Count V constitute a single claim of defamation.

WHEREFORE, Plaintiff demands judgment for Two Hundred Thousand Dollars (\$200,000.00) in compensatory damages, Two Hundred Thousand Dollars (\$200,000.00) in punitive damages, interest, costs, and such further relief as justice requires.

COUNT VI

32. Plaintiff incorporates paragraphs 1 to 6, 14, 16, and 18 to 21 as if set forth herein.

33. The allegations incorporated into this Count VI constitute a single claim of defamation.

WHEREFORE, Plaintiff demands judgment for Two Hundred Thousand Dollars (\$200,000.00) in compensatory damages, Two Hundred Thousand Dollars (\$200,000.00) in punitive damages, interest, costs, and such further relief as justice requires.

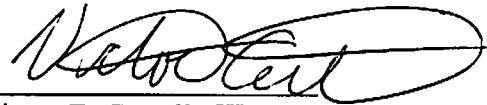
COUNT VII

34. Plaintiff incorporates paragraphs 1 to 6, 15 to 16, and 18 to 21 as if set forth herein.

35. The allegations incorporated into this Count VII constitute a single claim of defamation.

WHEREFORE, Plaintiff demands judgment for Two Hundred Thousand Dollars (\$200,000.00) in compensatory damages, Two Hundred Thousand Dollars (\$200,000.00) in punitive damages, interest, costs, and such further relief as justice requires.

Respectfully Submitted,



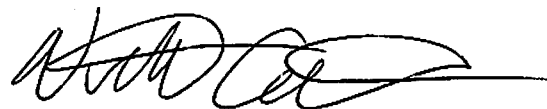
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PO Box 151
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301-695-6804
301-631-9073 (fax)
vec@publishamerica.com
Plaintiff, pro se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Amended Complaint was sent via first class mail, postage prepaid, to:

David L. Kuzminski
2581 Pine Hurst Drive
Petersburg, Virginia

this 17th day of April, 2008.



Victor E. Cretella III