UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Molly Mayfield, *et al.*,

Plaintiffs,

v.

Angel Escobedo, *et al.*,

Defendants.

No. 22 CV 6495

Judge Lindsay C. Jenkins

ORDER

Molly Mayfield ("Mayfield") is the owner of Greenflex Financial, PLLC ("Greenfield," collectively, "Plaintiffs.") [Dkt. 26, ¶ 1.] Both Mayfield and Greenflex are Illinois citizens. [*Id.*] This lawsuit alleges four state law causes of action against Angel Escobedo ("Escobedo") and his employer, Hoosier Wrestling, Inc. ("HW," collectively, "Defendants"), who are both citizens of Indiana. [*Id.*] Count One alleges breach of contract; Count Two alleges promissory estoppel; Count Three alleges defamation; and Count Four alleges unjust enrichment.

On May 19, 2023, the Court held a status hearing on Defendant's motion to dismiss the original complaint. The Court granted the motion and dismissed the original complaint without prejudice for lack of subject-matter jurisdiction because Plaintiffs' Complaint failed to satisfy the amount in controversy. Plaintiffs were given leave to file an amended complaint to cure the deficiencies the Court identified. [Dkt. 24, 25.] Plaintiffs filed an amended complaint [Dkt. 26], and Defendants again seek dismissal with prejudice under Rule 12(b)(1) and (b)(6) [Dkt. 27.] For the reasons discussed, the motion is granted.

Background

The Court takes Plaintiffs' well-pleaded factual allegations as true for purposes of ruling on the motion to dismiss. See *Smith v. First Hosp. Lab'ys, Inc.,* 77 F.4th 603, 607 (7th Cir. 2023). Mayfield is Escobedo's sister-in-law. [Dkt. 26 ¶ 32.] In November 2021, Mayfield and Escobedo, on behalf of their respective companies, agreed that Greenflex would provide accounting services to HW. [*Id.* ¶ 4.] According to the terms of the offer, Greenflex agreed to "recruit and work with an accounting professional" to reinstate HW's non-for-profit status at a base fee of $2,500. [*Id.*] Greenflex also offered to provide general accounting services, including preparing and filing HW's tax returns from 2018 through 2021. [*Id.*] The amended complaint alleges that Greenflex's negotiated a fee rate and HW, through Escobedo, agreed to Plaintiffs' terms. [*Id.* ¶ 5.] Plaintiffs allege that after the work was completed, Greenflex generated two invoices to HW totaling $10,189.50, which Plaintiffs attempted to collect unsuccessfully on several occasions. [*Id.* ¶¶ 8-12.] After these efforts proved

fruitless, Mayfield paid Greenflex from HW's account using HW's accounting software, QuickBooks, on November 5, 2022. [*Id.* ¶¶ 13–14.] Plaintiffs allege that "statements that HW representatives had previously made" caused Mayfield to "reasonably believe" she was authorized to initiate payment to Greenflex for the outstanding invoices. [*Id.* ¶ 13.]

Three days after Mayfield paid Greenflex, on November 8, 2022, Escobedo called a woman named Nichole Banks ("Banks"). Plaintiffs allege that Escobedo told Banks "Molly had committed fraud by paying herself the two invoices. Escobedo also suggested that Mayfield's CPA license would be revoked, that he had reported the fraud to Chase bank, and that he would file a police report." [*Id.* ¶ 15.] Plaintiffs maintain that Escobedo's statements to Banks were false and defamatory, and that Escobedo made "similarly false statements to Chase and others." [*Id.* ¶¶ 15–16.] Based on Escobedo's statements to Banks, Mayfield experienced depression, which caused her various harms that would meet the $75,000 jurisdictional threshold, including medical expenses ($50,000), a missed job opportunity ($400,000), and the inability to grow Greenflex ($180,000). [*Id.* ¶¶ 34–36.]

Legal Standard

A motion to dismiss pursuant to Rule 12(b)(1) challenges the Court's subject-matter jurisdiction, while a motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the plaintiff's claims. In both cases, the Court takes the well-pleaded factual allegations as true and draws reasonable inferences in favor of the plaintiff. *Choice v. Kohn L. Firm, S.C.*, 77 F.4th 636, 638 (7th Cir. 2023); *Reardon v. Danley*, 74 F.4th 825, 826–27 (7th Cir. 2023).

Analysis

The amended complaint invokes the Court's diversity-of-citizenship jurisdiction. [Dkt. 26 ¶ 2.] With respect to diversity-of-citizenship jurisdiction, 28 U.S.C. § 1332(a) gives the Court jurisdiction over cases with an amount in controversy of more than $75,000, so long as the plaintiff is a citizen of a different state than every defendant. *Page v. Democratic Nat'l Comm.*, 2 F.4th 630, 633–36 (7th Cir. 2021). The amended complaint raises only state law claims, so the Court has jurisdiction under § 1332(a) only if the amount in controversy exceeds $75,000, exclusive of interest and costs, and only if the parties are diverse. *Id.*

Defendants argue for dismissal on two related grounds. First, they argue that the injuries Mayfield allegedly suffered as a result of her depression (which was caused by Escobedo's defamatory statement to Banks) are too speculative to count towards the amount-in-controversy requirement, so the Court does not have subject-matter jurisdiction under Rule 12(b)(1). Second, they urge dismissal of Count Three, the defamation claim, pursuant to Rule 12(b)(6), because the alleged defamatory statements made by Escobedo are constitutionally protected opinion. As a consequence, Defendants say, the amended complaint fails to satisfy the amount-in-

controversy necessary to establish diversity jurisdiction. [Dkt. 27.] Because the Court concludes that Plaintiffs' defamation claim fails on the merits, it need not consider whether Mayfield's alleged damages stemming from Escobedo's statement are too speculative to satisfy § 1332(a)'s $75,000 threshold.

Defendants are correct that only Count Three provides a plausible basis for satisfying the amount in controversy. That count seeks "damages, including punitive damages, in excess of $100,000." [Dkt. 26 at 7.] Counts One, Two and Four all arise from Defendants' alleged failure to remit payment for Greenflex's accounting services in an amount totaling about $10,189. [Dkt. 26.] Plaintiffs do not argue that these three counts could possibly satisfy the amount in controversy requirement together or individually (they are premised on the same transactions), so the Court evaluates whether Count Three states a viable defamation claim under Illinois law.[1]

In Illinois, a "statement is considered defamatory if it tends to cause such harm to the reputation of another that it lowers the person in the eyes of the community or deters third persons from associating with her." *Bryson v. News Am. Publ'ns, Inc.*, 672 N.E.2d 1207, 1214 (Ill. 1996). A "plaintiff must present facts showing that the defendant made a false statement about the plaintiff, the defendant made an unprivileged publication of that statement to a third party, and that this publication caused damages." *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill.2d 558, 304 Ill.Dec. 369, 852 N.E.2d 825, 839 (2006). There are five categories of statements that are defamatory *per se*, where harm or damages are presumed without specific proof. Those are words imputing to a person: (1) commission of a crime, (2) a "loathsome communicable disease," (3) a person's inability to perform or lack of integrity in performing employment duties, (4) adultery or fornication, and (5) that the person lacks ability in his profession or the words otherwise prejudice the person in his profession. *Id.* If a statement falls into any one of those categories, it is considered defamatory *per se*. Here, as the Court stated at the May 19, 2023 hearing, the statements in question fall under the first category—commission of a crime.

A statement may be defamatory *per se* and still not be actionable if an affirmative defense applies. Illinois law recognizes the expression of an opinion as an affirmative defense. See, *e.g.*, *Solaia Technology*, 304 Ill.Dec. 369, 852 N.E.2d at 839 (a defamatory per se statement "may enjoy constitutional protection as an expression of opinion"). Whether a statement is an opinion or assertion of fact is a question of law. *Moriarty v. Greene*, 315 Ill.App.3d 225, 247 Ill.Dec. 675, 732 N.E.2d 730, 740 (2000), citing *Owen v. Carr*, 113 Ill.2d 273, 100 Ill.Dec. 783, 497 N.E.2d 1145, 1148

[1] The parties' briefs assume that Illinois law applies to the defamation claim. When a federal court sits in diversity, "we look to the choice-of-law rules of the forum state to determine which state's law applies" to the issues. *Heiman v. Bimbo Foods Bakeries Distrib. Co.*, 902 F.3d 715, 718 (7th Cir. 2018). Under Illinois choice-of-law rules, forum law is applied "unless an actual conflict with another state's law is shown, or the parties agree that forum law does not apply." *Gunn v. Cont'l Cas. Co.*, 968 F.3d 802, 808 (7th Cir. 2020) (citation omitted). The Court applies Illinois defamation law.

(1986). Under Illinois law, a statement is constitutionally protected opinion if it cannot reasonably be interpreted as stating actual facts about the plaintiff, when viewed "from the perspective of an ordinary reader." *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill.2d 381, 398, 317 Ill.Dec. 855, 882 N.E.2d 1011, 1022 (2008). To aid in this legal determination, courts ask: (1) whether the statement "has a precise and readily understood meaning;" (2) whether the statement is factually verifiable; and (3) whether the "literary or social context signals that [the statement] has factual content." *Solaia Technology*, 304 Ill.Dec. 369, 852 N.E.2d at 840. "The test is restrictive: a defamatory statement is constitutionally protected only if it cannot be reasonably interpreted as stating actual fact." *Id.*, citing *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill.2d 1, 180 Ill.Dec. 307, 607 N.E.2d 201, 208 (1992).

The amended complaint describes Escobedo's statement as follows: Escobedo told Banks that Mayfield "had committed fraud by paying herself the two invoices. Escobedo also suggested that Mayfield's CPA license would be revoked, that he had reported the fraud to Chase bank, and that he would file a police report." [Dkt. 26 ¶ 15.][2] Defendants urge the Court to conclude that Escobedo's statement is constitutionally protected opinion because it does not have a "precise and readily understood" meaning; because at least part of the statement is true; and because Escobedo's "recitation of his own actions" is neither false nor defamatory. [Dkt. 27 at 13; Dkt. 30 at 8–9.] The Court agrees.

First, Defendants are correct that true statements are not actionable as defamatory. In the amended complaint, Mayfield admits that she paid herself the two invoices. [Dkt. 26, ¶ 14.] Any expression of opinion based on a true statement is not actionable. See *Wynne v. Loyola Univ. of Chicago*, 318 Ill.App.3d 443, 251 Ill.Dec. 782 (2000) ("One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true."); *Harrison v. Addington*, 2011 IL App (3d) 100810, ¶ 39 (true statements cannot support a claim of defamation).

The portion of Escobedo's statement related to Chase bank and to police reports are likewise not actionable. As Defendants note, Escobedo telling Banks about what *he* had done or planned to do in response to Mayfield's payments, that is, a "recitation of his own actions," are not false statements as to Mayfield. [Dkt. 30 at 9.] In addition, Escobedo's predictions about what he thought might happen as a result of Mayfield's "fraud"—her CPA license would be revoked—are not actionable because no ordinary listener could reasonably interpret Escobedo's conjecture that Mayfield might lose her CPA license as stating actual fact.

All that remains in Escobedo's allegedly defamatory statement is that "Mayfield had committed fraud" by paying herself the two invoices. In the defamation context, fraud "is a term often used as hyperbole." *Doctor's Data, Inc. v. Barrett*, 170 F. Supp. 3d 1087, 1123 (N.D. Ill. 2016). The word "fraud" is broad in scope: "to speak

[2] This is identical to the alleged defamatory statement contained in the original complaint. [Compare, Dkt. 1, ¶ 11.]

of something as a 'fraud' may mean it is criminally deceptive, but it may also mean simply that it is not what it purports to be." *Id.* Other courts have concluded that similar terms like 'shady' and 'dishonest,' also do not have a precise meaning, so defamatory statements premised on them generally cannot be verified. *Skolnick v. Corr. Med. Servs., Inc.*, 132 F.Supp.2d 1116, 1127 (N.D. Ill. 2001) (statement describing plaintiff's conduct as "as dishonest, fraudulent and deceitful" to be protected opinion). *Frain Grp., Inc. v. Steve's Frozen Chillers*, 2015 WL 1186131, at *4 (N.D. Ill. Mar. 10, 2015) (statements suggesting that plaintiff "ripped off"" the defendant by selling a "butchered piece of junk" were not objectively verifiable.) The Court agrees that Escobedo's statement that Mayfield "had committed fraud" signals that his words were not factual in nature but rather were rhetorical and hyperbolic.

Plaintiffs argue that Escobedo's words are objectively verifiable from bank statements, and that Mayfield's authority "to pay herself [the] invoices" is verifiable through QuickBooks. [Dkt. 29 at 13.] Recall that the Court evaluates the statements "from the perspective of an ordinary reader." *Imperial Apparel*, 227 Ill.2d at 398. Without additional facts or context, there would be no way for an ordinary listener to know what this dispute was about. Did it concern payment? The quality of the services underlying the payment? Something else? The Court agrees with Defendants that the statement does not contain sufficient facts to render it objectively verifiable such that it does not have a precise and readily understood specific meaning. *Manjarres v. Nalco Co.*, 2010 WL 918072, at *3 (N.D. Ill. Mar. 9, 2010) (allegedly defamatory statements that plaintiff was "unprofessional" and "incompetent" did not include enough facts to render them objectively verifiable); *Law Offs. of David Freydin, P.C. v. Chamara*, 24 F.4th 1122, 1130 (7th Cir. 2022) (social media reviews, including "terrible experience," "awful customer service," and "waste of money," could not be understood to be precise even though the reviews "implied statements of fact").

The final consideration requires the Court to evaluate the overall social context of the statement to determine whether a reader would interpret it as asserting opinions or facts. *Freydin*, 24 F.4th at 1131. The context analysis requires an evaluation of the statement in its entirety—as a whole—to determine whether it expressed a factual assertion or opinion. *Id.* ("We cannot evaluate the defamatory nature of a word or phrase used in a review and determine whether the word or phrase is provably false on its own without considering the entire sentence and review in which it appeared.") Taken in its entirety, Escobedo's statement expressed an opinion about his negative experience with Mayfield. He described steps he had taken as a result of that experience, and he expressed a desire for others, including a bank, the police, and a state licensing board, to take action, too. This larger context signals an expression of opinion, not fact. Count Three fails to state a viable claim for relief under Rule 12(b)(6). Because all the remaining claims relate to a $10,189 payment dispute, the Court dismisses Plaintiffs' Amended Complaint for lack of subject-matter jurisdiction under Rule 12(b)(1).

Leave to Amend

Plaintiffs have requested leave to amend the complaint a second time. On October 23, 2023, the Court directed Plaintiffs to provide a precise recitation of the alleged defamatory statement in its entirety for the Court to consider in connection with the request to amend. [Dkt. 31; citing *Green v. Rogers*, 234 Ill.2d 478, 334 Ill.Dec. 624 (2009) (although a plaintiff is not required to lay out the allegedly defamatory statements verbatim, their substance must be pled "with sufficient precision and particularity so as to permit initial judicial review of [their] defamatory context.") Plaintiffs' supplemental filing states as follows:

> On or about November 8, 2022, Nikki Banks ("Banks") stated to Mayfield that Angel Escobedo ("Escobedo") had stated to her (Banks), Mayfield's mom ("Julie Martens"), Pauli Escobedo, Keli Abdelmassih, and Max Mayfield that, without permission, Mayfield had taken more than $5,000 from Hoosier's bank account, that she (Mayfield) had stolen the money to pay for work that she had not done, and that Angel had reported Mayfield to Chase Bank for committing fraud by initiating an ACH transaction of more than $5,000 without permission for work that she had not done and that he had reported Mayfield's conduct to the State of Illinois, and that the State of Illinois would take Mayfield's license CPA away. Banks also told Mayfield that Escobedo had also told her that he had filed a police report in Indiana regarding Mayfield's conduct and would also file one in Iowa and Illinois.

[Dkt. 32.]

The Court has some misgivings about how the summary reprinted above aligns with Mayfield's prior recitations of the alleged defamatory statement. The statement above contains meaningful inconsistencies with prior iterations of Escobedo's statement and leaves out other notable allegations. For example, in her sworn declaration filed under penalty of perjury, 28 U.S.C. § 1746, Mayfield said that Escobedo relayed his comments during a phone call to Banks [Dkt. 29–2 ¶ 3.] She represented this in both the original and the amended complaint. [Dkt. 1 ¶ 11; Dkt. 26 ¶ 15.] In her earlier filings, Mayfield maintained that Escobedo's defamatory statement referred to the "invoices." [Dkt. 26 ¶ 15; Dkt. 29-2, ¶ 3.] The most recent version of Escobedo's statement, however, never mentions an invoice and says nothing about a phone call. [Dkt. 32.] And Plaintiffs now claim that Escobedo made the statement not just to Banks, but also to Mayfield's mother and three other people.

Setting these concerns aside, the Court accepts Plaintiffs' factual allegations as true. *Choice*, 77 F.4th at 638. It analyzes the newest summary of the statement to determine whether leave to amend would be futile under Rule 15(a)(2). *Life Plans, Inc. v. Sec. Life of Denver Ins. Co.*, 800 F.3d 343, 357–58 (7th Cir. 2015) ("The Supreme Court has interpreted this rule to require a district court to allow amendment unless there is a good reason—futility, undue delay, undue prejudice, or bad faith—for denying leave to amend.")

If it is clear that the speaker is expressing a subjective view or interpretation, such as when the speaker discloses the facts forming the basis for the statement, the statement is not actionable as defamation. *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1227 (7th Cir. 1993), citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 17–21 (1990). When the "facts underlying a statement of opinion are disclosed, readers will understand that they are getting the author's interpretation of those facts." *Hadley v. Doe*, 2014 IL App (2d) 130489, ¶ 48, 382 Ill.Dec. 75, 12 N.E.3d 75, 90–91.

There can be no doubt that the most recent version of Escobedo's statement contains more facts. But even this version of the statement is not actionable because it expressed Escobedo's interpretation of facts he provided. As discussed, it is true that Mayfield transferred "more than $5,000 from Hoosier's bank account." [*Compare* Dkt. 26 ¶ 14.] Escobedo said Mayfield had "stolen the money to pay for work that she had not done," and that the incident had been reported to a bank because the payment was for "work that she had not done." [Dkt. 32.] In isolation, "one might find this statement to be falsifiable and actually false." *Freydin*, 24 F.4th at 1131. But when analyzed in its entirety, Escobedo disclosed the facts forming the basis for his statement: Mayfield had taken more than $5,000 from HW's bank account. Viewed in this way, Escobedo was expressing a subjective view or interpretation of the disclosed facts—that Mayfield had stolen the money for work she had not performed. Listeners would "understand that they are getting the author's interpretation of those facts." *Hadley*, 2014 IL App (2d) 130489, ¶ 48; *Doctor's Data*, 170 F. Supp. 3d at 1113 (statement followed by the factual basis for that assertion made clear that the "misleading" comment was the speaker's interpretation).

The remainder of the statement only underscores this conclusion. Escobedo described steps he had taken as a result of his negative experience with Mayfield, albeit in greater detail. He reported Mayfield to a bank for "committing fraud" by initiating the payment; he reported her to the state licensing board who "would take Mayfield's license CPA away;" and he had filed or intended to file police reports. A reasonable observer who heard Escobedo say, "the State of Illinois would take Mayfield's license CPA away," would understand that they are getting Escobedo's interpretation of events. At best, his words were a prediction about what *might happen*: that Mayfield's transfer of money from HW's bank account would cause other entities to take action against her. The statements are non-actionable because they were an expression of a "subjective view, an interpretation, a theory, conjecture, or surmise." *Republic Tobacco Co., v. North Atlantic Trading Co., Inc.*, 381 F.3d 717, 727 (7th Cir. 2004). Leave to amend is therefore denied.[3]

[3] Because the defamation claim is precluded as a matter of law, no amount of jurisdictional discovery could establish the requisite amount in controversy.

* * * *

For these reasons, the motion to dismiss is granted. [Dkt. 27.] Count Three is dismissed with prejudice. Counts One, Two and Four, which seek no more than $10,000 in damages, are dismissed without prejudice. Because the Court only has subject matter jurisdiction under § 1332(a) if the amount in controversy exceeds $75,000, it lacks jurisdiction over these remaining claims. Leave has already been granted once, (*see* Dkts. 24, 26) and based on Plaintiffs' supplemental filing (*see* Dkt. 32), any further amendment would be futile. *Life Plans, Inc.*, 800 F.3d at 357–58.

Enter: 22-cv-4695
Date: November 14, 2023

Lindsay C. Jenkins
United States District Judge