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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-L-4063-19

STEPHEN CHAGARES, M.D.,

Plaintiff,

v.

MONMOUTH MEDICAL CENTER, MONMOUTH MEDICAL CENTER FACULTY PRACTICE PLAN, INC., BARNABAS HEALTH, RWJ BARNABAS HEALTH, BILL ARNOLD, BARBARA MICHELIC, DR. TOM HELEOTIS, ERIC CARNEY, DR. MANPREET KOHLI, DR. NEGIN GRIFFITH, JOHN DOES 1-100, and ABC COMPANIES 1-100,

Defendants.

MONMOUTH MEDICAL CENTER, BARNABAS HEALTH, RWJ BARNABAS HEALTH, BILL ARNOLD, BARBARA MICHELIC, DR. THOMAS HELEOTIS, ERIC CARNEY, and DR. MANPREET KOHLI,

Defendants/Third Party
Plaintiffs,

v.

THE PLASTIC SURGERY CENTER, THE INSTITUTE FOR ADVANCED RECONSTRUCTION AT THE PLASTIC SURGERY CENTER SHREWSBURY, ANDREW ELKWOOD, M.D., DR. ANTONIO TOESCA, MARIANNE MAGGS, NICHOLAS FOTOPOULOS, KRISTIE ROSSI, JOHN DOES A-C, and JOHN DOES D-F,

Third-Party Defendants.

OPINION

Decided May 22, 2025.

Macnow & Papaleo (Russell Macnow, Esq., appearing), attorneys for plaintiff.

Connell Foley LLP (John P. Lacey, Esq., and Lauren F. Iannaccone, Esq., appearing), attorneys for defendants/third-party plaintiffs Monmouth Medical Center, Barnabas Health, RWJ Barnabas Health, Bill Arnold, Barbara Mihelic, Dr. Thomas Heleotis, Eric Carney, and Dr. Manpreet Kohli.

Webber McGill LLC (James K. Webber, Esq., appearing), attorneys for defendant Dr. Negin Griffith.

Maggs, McDermott & DiCicco, LLC (Stephanie L. DeLuca, Esq., appearing), attorneys for third-party defendants The Plastic Surgery Center Institute for Advanced Reconstruction at the Plastic Surgery Center Shrewsbury, Andrew Elkwood, M.D., Kristie Rossi, Marianne Maggs, and Nicholas Fotopoulos.

FISHER, P.J.A.D. (t/a, retired on recall).

"Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." Gertz v. Welch, 418 U.S. 339-40 (1974). In large measure, that sentiment – embodied in this State's defamation jurisprudence – provides the impetus for the summary judgment that will be entered in favor of all defendants in this multi-faceted, nearly six-year-old lawsuit, which has as its linchpin what plaintiff claims are defamatory statements defendants either made or for which they should be held responsible.

Plaintiff Stephen Chagares is a physician and surgeon employed by The Plastic Surgery Center in Shrewsbury. In this action for damages, plaintiff alleges, among other things, that defendants defamed him and tortiously interfered with his business interests and prospects by making statements about his utilization of a robotic surgical procedure. Specifically, plaintiff alleges –

and the court assumes as true under the Brill standard[1] – that Dr. Negin Griffith and Dr. Manpreet Kohli, for malicious or reckless reasons, conspired to cause damage to plaintiff's practice and reputation; the court also assumes they carried out this malicious or reckless plan by providing information to a reporter who then crafted an article that appeared in a publication entitled The Cancer Letter. Plaintiff alleges this article defamed him and cast him in a false light.

With a trial date on the near horizon, three summary judgment motions were filed and are now before the court for disposition. These motions were filed by: defendants Monmouth Medical Center, Monmouth Medical Faculty Practice Plan, Inc., Barnabas Health, RWJ Barnabas Health, Bill Arnold, Eric Carney, and Manpreet Kohli, M.D. (collectively referred to at times as "the hospital defendants"[2]); defendant Dr. Negin Griffith; and third-party defendants The Plastic Surgery Center Institute for Advanced Reconstruction at the Plastic Surgery Center Shrewsbury, Andrew Elkwood, M.D., Kristie Rossi, Marianne Maggs, and Nicholas Fotopoulos (collectively referred to as the third-party defendants). Voluminous moving, opposing and reply papers have been

[1] Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995).

[2] This group of hospital defendants originally included defendants Barbara Mihelic and Dr. Thomas Heleotis; plaintiff voluntarily dismissed his claims against those defendants on July 31, 2024. At the same time, plaintiff voluntarily dismissed all his claims against defendants Bill Arnold and Eric Carney except for his claim that they negligently or intentionally inflicted emotional distress.

submitted and considered. The court also heard more than three hours of oral argument on May 14, 2025. The motions of the hospital defendants and Griffith will be granted for the reasons that follow, determinations that render moot any need to rule on the third-party defendants' motion for summary judgment.[3]

In granting the summary judgment motions of the hospital defendants and defendant Griffith, without reaching the third-party defendants' motion, the court will, in the following order, discuss: (1) the defamation claims; (2) the claims of negligent and intentional infliction of emotional distress; (3) the tortious interference claims; and (4) the disposition of the remainder of plaintiff's claims.

I

To put the arguments presented in these motions in their context, the court starts by observing that the events giving rise to the defamation claims began in 2018 when plaintiff performed a new surgical procedure referred to as robotic nipple-sparing mastectomy (hereafter "robotic mastectomy" or "RNSM"), something that wasn't commonly occurring in the United States and for which plaintiff traveled to Italy to learn from a leader in the field. Plaintiff testified at

[3] The omnibus motions of the hospital defendants and Griffith sought summary judgment on those counts of plaintiff's third amended complaint that alleged violations of the New Jersey Antitrust Act, N.J.S.A. 56:9-1 to -19, and the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to -14. Plaintiff does not oppose the motions in those regards.

his deposition that this surgery is similar to an open mastectomy except for the location of the incision and the use of a robot to hold certain instruments. See Webber Certification, Exhibit D.[4]

Defendant Monmouth Medical Center authorized plaintiff to perform robotic mastectomies in August 2018. His first such surgery was on a female patient (Y.Z., who will be referred to by the fictitious name of Yasmine) to remove a tumor in her right breast. Of some relevance here is the fact that the excised piece removed from Yasmine during the surgery was "fragmented," a result that isn't ideal because the surgeon's goal is to remove the excised portion in a single piece.[5] Soon after, plaintiff performed a robotic mastectomy on a male patient (B.T., who will be referred to as Ben, also a fictitious name[6]).

Plaintiff engaged in a publicity campaign to tout and promote his position as a pioneer in these types of surgeries. In a press release concerning Ben's

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[4] Many of the items referred to in this opinion may be found in more than one party's submissions. No significance should be attributed to the fact that in any particular instance the court has referred to one party's submission rather than another's.

[5] There seems no dispute that the danger of breaking up a tumor during surgery poses an increased risk that a cavity will be seeded and thereby increase the risk of recurrence.

[6] Even though the pleadings, the parties' submissions, The Cancer Letter's article, and other parts of the record refer to Yasmine and Ben by their real names, out of respect for their privacy the court will only use fictitious names.

surgery, plaintiff asserted that he had "performed the first robotic nipple-sparing mastectomy on a male in the world." Webber Certification, Exhibit E. He also promoted the robotic mastectomies he had performed on a website he created, as well as on Facebook and Instagram. Plaintiff gave interviews to the Asbury Park Press, see Webber Certification, Exhibit P, and a local television channel.

Not all in the local medical community were so positive about these procedures. Both the chair of Monmouth Medical Center's OB/GYN Department and the then-chair of the hospital's Oncology Department advised defendant Thomas Heleotis, the hospital's Chief Medical Officer, of their concerns. Plaintiff presented Yasmine's case to the Multidisciplinary Tumor Board for Monmouth Medical Center's Jacqueline M. Wilentz Breast Center (the tumor board), a weekly conference of medical professionals for the purpose of discussing such matters for educational and quality control purposes. While, at the conference, plaintiff asserted that Yasmine's tumorous breast was removed in three pieces, Dr. Wendy Shertz presented her pathology report and asserted that Yasmine's tumorous breast was removed in as many as 18 to 20 pieces. See Weber Certification, Exhibit G.

In his deposition testimony, plaintiff acknowledged that numerous questions were posed during the tumor board conference, but he has not claimed any defamatory statement was then made. His suit instead focuses on an April

5, 2019 article appearing in an online publication known as The Cancer Letter and three specific statements made in that article. At the heart of the defense summary judgment motions is whether any of those statements are defamatory.

A

In considering the sufficiency of plaintiff's claims, the court first recognizes that summary judgment is a favored remedy in defamation matters because of the First Amendment implications and the chilling effect for the particular defendants at hand as well as others who might be disinclined to exercise their First Amendment rights absent a policy that favors the early dismissal of non-meritorious defamation suits. See G.D. v. Kenny, 205 N.J. 275, 304-05 (2011) (recognizing that despite the usual caution with which summary judgment motions should be greeted, "a timely grant of summary judgment in a defamation action has the salutary effect of discouraging frivolous lawsuits that might chill the exercise of free speech on matters of public concern"); DeAngelis v. Hill, 180 N.J. 1, 12 (2004) (holding that summary judgment "is encouraged in libel and defamation actions" because of the threat of chilling "criticism and comment upon public figures and public affairs"); Dairy Stores, Inc. v. Sentinel Pub. Co., 104 N.J. 125, 157 (1986) (recognizing that "summary judgment practice is particularly well-suited for the determination of libel actions, the fear of which can inhibit comment on matters of public concern"); Maressa v. New

Jersey Monthly, 89 N.J. 176, 196 (1982) (encouraging "trial courts . . . not [to] hesitate to use summary judgment procedures where appropriate to bring [meritless defamation] actions to a speedy end").

B

To that end, the question of whether a statement "is reasonably susceptible of a defamatory meaning . . . is one to be decided first by the court." Romaine v. Kallinger, 109 N.J. 282, 290 (1988). The trial court stands as a gatekeeper in such matters, as plaintiff agrees. See Pltf Br. at 99. In fulfilling that role, the court "must evaluate the language in question 'according to the fair and natural meaning which will be given it by reasonable persons of ordinary intelligence.'" Ibid. (quoting Herrmann v. Newark Morning Ledger Co., 48 N.J. Super. 420, 431 (App. Div. 1958)); see also Petro-Lubricant Testing Labs., Inc. v. Adelman, 233 N.J. 236, 253 (2018). This is a principle of ancient origin. See Cole v. Grant, 18 N.J.L. 327, 331 (Sup. Ct. 1841), where the court cited even older authorities that instructed the alleged defamatory words are to be understood "according to their plain and natural import; according to the ideas they are calculated to convey to those to whom they are addressed."[7] Only after determining whether

[7] Cole's holding that the reasonable reader is one of those "to whom [the statements] were addressed," suggests that the defamatory sting of The Cancer Letter's article should be viewed from the standpoint of its average reader – likely someone with a medical education or background – rather than your average Joe.

the statement is capable of bearing a defamatory meaning should the court allow the case to go to trial where the trier of fact would determine whether the defamatory meaning was in fact conveyed. See, generally, Restatement of Torts (Second), § 614.

It is the defamation-plaintiff's burden to demonstrate the complained-of statements were "not substantially accurate and therefore false." G.D., 205 N.J. at 304; Costello v. Ocean County Observer, 136 N.J. 594, 625 (1994). This is not always to be taken literally. The Supreme Court has held that a statement is not substantially accurate when its "'substance,' 'gist,' and 'sting' cannot be justified." G.D., 205 N.J. at 304 (citing Masson v. New Yorker Magazine, 501 U.S. 496, 517 (1991)). And, in concentrating on whether a statement conveys "substantial truth," the law of defamation "overlooks minor inaccuracies." Masson, 501 U.S. at 516. A defamatory statement is one that is "false and 'injurious to the reputation of another' or exposes another person to 'hatred, contempt or ridicule' or subjects another person 'to a loss of the good will and confidence' in which [the person] is held by others." Romaine, 109 N.J. at 289 (quoting Leers v. Green, 24 N.J. 239, 251 (1957)).

C

Before considering the particular statements in The Cancer Letter that have provoked this suit, the court must consider two other concepts that inform

the reach of the tort of defamation in this setting: whether plaintiff is a public figure, and whether any defendant contributed to the alleged false statements contained in the publication. The first is undoubtedly true; as for this second consideration, the court will assume, as the Brill standard counsels, that one or more defendants contributed – and all other defendants bear responsibility for vicarious or other reasons – the statements provided to the author of the article that turned into the alleged defamatory statements in The Cancer Letter article. The court will explain.

First, plaintiff must be held to the standard imposed on a public figure, requiring that he provide "clear and convincing proof" that the alleged false statement or statements were made "with knowledge of [their] falsity or with reckless disregard for the truth." Gertz, 418 U.S. at 342; New York Times v. Sullivan, 376 U.S. 254, 279 (1964). At times it may matter whether a plaintiff is a public figure for "all purposes" or only for "a limited purpose." As explained in Gertz v. Welch, all-purpose public figures are those who have achieved "pervasive fame or notoriety," making them public figures "for all purposes and in all contexts," while limited-purpose public figures are those who "voluntarily inject[] [themselves] or [are] drawn into a particular public controversy." 418 U.S. at 351.

That the question is put by way of summary judgment doesn't preclude the court from drawing a conclusion about plaintiff's status. There can be no legitimate debate, or at least the question is so one-sided as to allow a firm conclusion for the motion's purposes, that plaintiff is at least a limited-purpose public figure. He touted himself as a pioneer in this form of surgery and issued press releases and gave interviews to media outlets on this subject. He freely "thrust [him]sel[f] to the forefront" of robotic breast surgery. Gertz, 418 U.S. at 345.

Second, as noted above, the court will assume there is a sufficient nexus between all moving defendants and whoever might have been the source for the alleged defamatory statements appearing in The Cancer Letter. Plaintiff's theory is that Dr. Kohli of Monmouth Medical Center's breast institute and Dr. Griffith had some animus toward him. This animus – at least for summary-judgment purposes – can be found in text messages exchanged by these two doctors that referred to plaintiff as "gross," "a scumbag," "greedy," deserving of "a special place in hell," "an idiot," and more. See Webber Certification, Exhibit S. In those messages, Kohli and Griffith spoke about a need to "shut [plaintiff] down" and that plaintiff "should [be] kick[ed] [o]ut of [MMC's breast center]." These messages also provided evidence of how they would going to go about grinding their ax; these defendants stated to each other that they would make plaintiff

"feel pinched on social media." They spoke about their "contacts at FDA, CDC, NYTimes, WSJ, the cancer letter, Boston [G]lobe etc" and how Griffith would "use them if I have to." Ibid. (emphasis added).

Brill requires that the court assume that Kohli and Griffith put this plan into action. And Kohli's position with the breast center would, arguably, provide a nexus to Monmouth Medical Center and its responsibility for her actions. For present purposes and in application of the Brill standard, the court will assume that this nexus would also envelop the other moving defendants, although the relationship of the alleged actions and statements of Kohli and Griffith to the others is, at least on what is presented in these motion papers, thin indeed.[8]

With these acknowledgements and assumptions, the court turns to the alleged defamatory statements themselves and considers whether they are true or, if not substantially true, whether they can be said to be injurious by exposing plaintiff to "contempt or ridicule," or to have harmed his "reputation by lowering the community's estimation of him," or by "deterring others from wanting to associate or deal with him." Durando v. Nutley Sun, 209 N.J. 235, 248-49

[8] The hospital defendants argue there is something amiss with this lawsuit because the conveyors of the alleged defamatory statements – whether that be The Cancer Letter, its publisher, or the article's author – are not named as defendants. For present purposes, the court will assume that plaintiff was not required to join these parties and assume as well that a source – particularly an unnamed source – for an article may be every bit as liable for the harm done by a publication as the publisher itself.

(2012); G.D., 205 N.J. at 293; Romaine, 109 N.J. at 289. Plaintiff must similarly sustain the same actual malice burden of showing that the false light in which he was placed by the speaker "would be highly offensive to a reasonable person." Durando, 209 N.J. at 249; Romaine, 109 N.J. at 294.

D

Plaintiff has referred to three statements in the April 5, 2019 edition of The Cancer Letter[9] that plaintiff identified in paragraph 63 of his third amended complaint:

- "Chagares's plans ran into opposition from the outset"
- "Multiple sources with direct knowledge of the situation [RNSM clinical trial at MMC] who spoke on condition that their names would not be used said that Chagares, who reportedly did not propose a clinical trial protocol, didn't receive an okay from FDA to us[e] the da Vinci robot on [his patients] in an investigational setting"[10]
- The patients did not receive proper informed consent

[9] Webber Certification, Exhibit X.

[10] For the sake of accuracy, the court has quoted this material exactly as it appears in paragraph 63 of the third amended complaint with the exception that the second bracketed material – changing "us" to "us[e]" – is the court's correction of an obvious typo in the third amended complaint. The first bracketed item in paragraph 63 ("[RNSM clinical trial at MMC]") does not appear in the portion of The Cancer Letter article that plaintiff was quoting; moreover, it should be noted that this bracketed material does not supplant anything else appearing in the cited article, that is, it is an addition made by plaintiff, not a replacement. Plaintiff's third bracketed item ("[the patients]") constituted his replacement of Yasmine's and Ben's actual surnames.

The parties all argue that context is important in understanding whether statements in a publication may be considered defamatory; that is, whether the statement has the required "sting," or whether the light cast on the plaintiff is false, must be determined from a consideration of the entire article. See Petro-Lubricant Testing, 233 N.J. at 254 (holding that in determining whether a statement is reasonably susceptible to a defamatory meaning is to be determined "in the context of the whole publication"); Romaine, 109 N.J. at 290 (directing that "the court must view the publication as a whole and consider particularly the context in which the statement appears"). For that reason, the court will provide the following broad description of the article to place the three alleged statements in their proper settings.

To be sure, the article in question provides a summary of what its author and publisher believed to be a controversy of public interest and it is fair to conclude that the article is critical of plaintiff. Its headline blares: "Using a Robot to Perform Mastectomies, a New Jersey Surgeon Sets Off a Firestorm Over Surgical Outcomes." And the tagline to the headline rhetorically asks: "How much rigor should be required when surgeons innovate," adding further that an FDA advisory "asks for long-term cancer-related data." The first – and only – sentence of the article that appears on the story's cover page amplifies the fact that the article is reporting on a controversy about robotic mastectomies:

"Last August, Stephen A. Chagares, a breast surgeon, made an announcement that startled some of his colleagues at New Jersey's Monmouth Medical Center."

The first stage of the article goes immediately to what plaintiff himself trumpeted in his press release about the robotic surgery – that he was "proud and honored to lead the first program of its kind in the United States" and that this surgery "opens the door to a new era of mastectomy and a new outlook for patients, offering a modern approach to an operation which has been so physically, emotionally, and psychologically scarring until now."[11] The article follows that statement with the fact that plaintiff's Monmouth Medical Center colleagues "started to raise questions" about the safety of the robotic system and whether plaintiff was "proposing a solution in search of a problem." This stage of the article then concludes with a declaration about the need to "ask the right questions and design studies to answer those questions," while observing – accurately – that at Monmouth Medical Center "Chagares didn't propose to perform robotic mastectomies under a surgical trial protocol, insiders say."

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[11] As much as anything, and as mentioned above, plaintiff's quoted press release reveals that he freely and willingly put on the garb of a public figure, albeit for this limited purpose. Plaintiff certainly understood this. He testified at his deposition that he "wanted people to know we were getting this going" and how he "ended up getting inquiries from throughout the country once that got out there," and his wife, third-party defendant Marianne Maggs, who was involved in marketing this robotic procedure, reported that 120 "news organizations on the wire ran with the story regarding [plaintiff's] patient." See MMC Br. at 11-12.

The article's next stage provides a lengthy quote from Yasmine about her satisfaction with the procedure, while the article further notes that plaintiff declined to comment because of patient confidentiality. And this stage of the article ends with an observation that Monmouth Medical Center had "halted the use of minimally invasive robotic mastectomy in all surgical indications, issuing a statement that cited safety concerns"; it further noted that the hospital "declined to discuss its rationale for signing off on the surgeries and ultimately halting them." Plaintiff does not argue there was anything defamatory or untrue about these statements. Indeed, if anything, the final point made at this stage seems more critical of Monmouth Medical Center than plaintiff, conveying a sense of the hospital's recklessness or uncertainty – or fear of bad publicity – by having first "sign[ed] off" and then "halt[ed]" these surgeries without an explanation.

The next stage generally discusses the nature of the robotic procedure and the importance of "containing cancer" rather than breaking up malignancies that poses a risk of disseminating cancer cells. This stage of the article further observes that plaintiff was not alone in performing these surgeries – that they have been performed in at least one other medical institution in this country – and that "[t]here is no consensus on the procedure." In fact, the article here noted the "fundamental[] disagree[ment]" between two leading institutions, stating

that MD Anderson Cancer Center had "plans to study robotic mastectomies in surgical trials" but that Memorial Sloan Kettering Cancer Center had not such plans. If anything, this stage of the article would suggest to the reader there was no settled view on the advisability of robotic mastectomies.

Moving on, the article's next stage proceeds under a subtitle "FDA sounds a note of caution" and contains statements from a breast surgical oncologist that emphasized that Sloan Kettering doesn't do robotic mastectomies because it does "not believe the safety of this procedure . . . has been demonstrated and do[es] not think it should be performed outside of an IRB approved protocol with appropriate informed consent." This physician also stated that it's "very hard to adopt a new procedure that hasn't been really tested, when the one we have is so good, and we know is safe."

To further reveal that the advisability of robotic mastectomies was at a flex point, the article moves on to declare that the "FDA's stance on this controversy has just changed in recent weeks." According to the article, the FDA provided a safety advisory and expressed the need to "study long-term oncologic endpoints in surgical trials 'for time periods much longer than 30 days.'" The article reported that plaintiff "appears to have read this communication as encouragement from [the FDA] to expand the use of the technology," and the article quoted a statement plaintiff made on Facebook that he "was even more

pleased to see [that] the FDA clearly 'encourages . . . use of robotically-assisted surgical devices for all uses, including the prevention and treatment of cancer.'"

The portions of the article discussed immediately above ended with a statement about the FDA's recent stance on robotic mastectomies and comes to the point where the first statement that plaintiff alleges to be defamatory appears:

> Though Chagares's plans ran into opposition from the outset, he did initially receive approval from the hospital's Institutional Review Board to perform bilateral robotic nipple-sparing mastectomies on at least two patients, [Yasmine and Ben.]
>
> [Webber Certification, Exhibit X (emphasis added).[12]]

It is only the emphasized portion of the quote immediately above that plaintiff claims is defamatory.

The court finds nothing defamatory about this statement. That someone touting himself as a pioneer and a vocal proponent of this process "ran into opposition" is hardly defamatory. That a critic or naysayer expresses disagreement does not cause another's reputation to suffer to the degree that will turn the statement actionable. The Gershwins enshrined this concept in "They

[12] That part emphasized is that which plaintiff claims is defamatory, not the rest, which has been included for contextual reasons.

All Laughed."[13] That there exists opposition, or that opposition has been expressed alone, is information that simply doesn't impact a person's reputation, at least without some greater explanation. Anyone who ever saw farther than others and came up with a better way of doing things has faced opposition and, at times, vehement opposition. Truth comes, as Schopenhauer recognized, in three stages: "first, it is ridiculed; second, it is violently opposed; and third, it is accepted as self-evident." This can be seen in all important endeavors. Justice Harlan was opposed by all other Court members when he said in his dissenting opinion in Plessy v. Ferguson, 163 U.S. 537 (1896), that the so-called "separate but equal" doctrine would "in time, prove to be quite as pernicious as the decision made by this tribunal in the Dred Scott case," id. at 559; he was proven correct many years later in Brown v. Board of Education, 347 U.S. 483 (1954). Does the fact that Justice Harlan's view was opposed say anything about his reputation? Of course not. Our jurisprudence does not suggest that a statement that an idea or someone's pioneering approach has been opposed carries a defamatory sting. Indeed, if the law recognized that type of statement as actionable, there would be an endless parade of litigants filing lawsuits in our courts.

[13] "They all laughed at Christopher Columbus when he said the world was round, . . . but ho ho ho who's got the last laugh now."

Even if this weren't so, the writer repeatedly observed throughout his article that there were differences of opinion in the community without ridiculing plaintiff's position about robotic mastectomies. Neither the statement that there had been opposition as isolated from the rest of the article, or that statement when viewed with the rest of the article, questions plaintiff's reputation; the article merely reports, more or less evenly, on the controversy that plaintiff's surgeries had generated.[14]

The Cancer Letter article then went on to describe the surgery on Ben, quoted plaintiff's press release that he was "proud and honored to offer this surgery to his patients of any gender identity," and provided a link to plaintiff's press release. After that, the article contains the second statement that plaintiff claims is defamatory:

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[14] Although not necessary to the court's decision, it should be further recognized that even if this first statement, reporting that plaintiff faced opposition from the outset, could be viewed as defamatory, it was merely reporting on something that was privileged. This statement conveys that there were differences of opinion within the hospital about robotic mastectomies that would be privileged. N.J.S.A. 2A:84A-22.10. That further suggests that the communications – whether made before the tumor board or elsewhere between or among physicians – related to a subject about the quality of care provided to hospital patients that would further imply the bona fides of the statements. Calling back to what the Court said in Gertz v. Welch, quoted at the outset of this opinion, constitutional precepts and important public policies prefer the unfettered competition of ideas rather than the imposition of limitations on free speech that might be caused by "the conscience of judges and juries." 418 U.S. at 339. If doctors thought there were reasons to question robotic mastectomies, public policy favors the voicing of those opinions, whether accurate or not.

> Multiple sources with direct knowledge of the situation who spoke on condition that their names would not be used said that Chagares, who reportedly did not propose a clinical trial protocol, didn't receive an okay from FDA to use the da Vinci robot on [Ben and Yasmine] in an investigational setting.

For starters, every statement of substance presented there has been shown to be true. Plaintiff "did not propose a clinical trial protocol" and plaintiff "didn't receive an okay from FDA" for the surgeries on Ben and Yasmine.

First, it is true that, as the articles states, plaintiff had not proposed a "clinical trial protocol" when he performed the robotic mastectomy on Ben. The observational study that the hospital's IRB approved did not encompass surgeries on men; whatever approval was given was only for surgery on women. The statement is also true with respect to the surgery on Yasmine since the IRB approved an observational study, not a clinical study because plaintiff had only sought approval for an observational study. See MMC Br. at 8-12, 27-29.[15] Plaintiff's contention in this regard, at its best, suggests this part of the article

[15] By citing the hospital defendants' brief the court is not relying on the legal argument contained therein for the factual material for the fact that approval was for an observational, not clinical, study, but to the citations to the record contained on those pages of the hospital defendants' brief. Those citations to the factual record conclusively demonstrates that plaintiff himself understood it was only an observational study he had proposed and, thus, the statement in the article that plaintiff did not "propose a clinical study protocol" is demonstrably true. For example, when the IRB liaison sent an email to plaintiff stating that only an observational study had been approved, plaintiff responded "[e]verything in your email is correct." MMC Br. at 28.

put him in a false light by failing to state that he had been approved for an observational study.

This is where the point the hospital defendants made about the absence of the publisher or author of the The Cancer Letter article becomes relevant. See n.8, above. As mentioned earlier, defendants may be liable for the statements they made to The Cancer Letter or to its personnel that made their way into the article and were attributed to "an unnamed source" or otherwise, but they cannot be held liable for any alleged skewed manner in which The Cancer Letter presented the information it had gathered from them and others. These defendants cannot be held liable for what this publication put in, what it withheld, or how it arranged the information it alone deemed fit to print. The Cancer Letter quoted information from plaintiff, from at least one of his patients, from the FDA, from a Sloan Kettering doctor, and from others. Any false-light claim – generated not by what was said but by what wasn't said – arises from the overall content, the order or juxtaposition in which the information is provided, and the way in which it was presented, emphasizing one thing, de-emphasizing another, expressing one thing first, another thing much later, etc.[16]

[16] For example, plaintiff alludes to a photograph in the article that depicts plaintiff sitting on a hospital bed next to Yasmine with his hand on her knee. The photograph didn't come from any defendant; it was taken by The Cancer Letter from plaintiff's Facebook account. So, to the extent anyone may be held liable or responsible for how this photograph may hold plaintiff up to ridicule,

This seems to be plaintiff's contention about why the true statement that plaintiff had not proposed a clinical trial protocol, without mentioning he had proposed an observational study, is injurious and that would appear to be the basis for The Cancer Letter's follow-up article[17]; that at the moment in the article when this particular information was presented, or the way it was stated, might suggest to a reasonable reader that plaintiff was acting inappropriately and without authorization. Assuming that this literally true statement can be actionable because its placement in the article or the way it was stated puts plaintiff in a

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it would not be any of these defendants. The photograph was something plaintiff disseminated. And to the extent The Cancer Letter's inclusion of the photograph somehow caused plaintiff, or the surgeries in question, to be held up to ridicule is something that would only generate liability for The Cancer Letter, not the moving defendants.

[17] Concluding that its article may not have been fair after a "miffed" plaintiff objected and responded, The Cancer Letter published a second article soon after, with the publisher expressing that in 40 years in the business he had never "encounter[ed] a situation where a source to whom I offered confidentiality used this protection to tell me something that wasn't true"; what he was stating was untrue was that plaintiff had "performed robotic mastectomy without a protocol." Webber Certification, Exhibit Y at 17. This doesn't make defamatory the statements alleged in the complaint. As stated in the first alleged defamatory statement, The Cancer Letter's first article conveyed that plaintiff "did initially receive approval from [the IRB]." And the second alleged defamatory statement accurately disclosed that there was no "clinical trial protocol," which is also true or at least substantially true. That the second article may have been apologizing for a false light the publisher may have believed was cast on plaintiff, it was only the publication that cast that light. As explained elsewhere, the only statements in the first article that arguably may have come from any of these defendants have been shown to be true or substantially true.

false light, that is not something for which the alleged sources of information can be held liable. They can be held liable for the actual statements they made to the reporter that ended up in or formed the information provided in the article but they cannot be held liable for how the article's particular presentation may have slanted information and put plaintiff in a false light. So, the court concludes that even if there may arguably be an actionable false-light claim due to an alleged skewed way in which truthful information was provided, these defendants cannot be held liable or responsible for the casting of that alleged false light on plaintiff. But, insofar as any defendant provided a statement to The Cancer Letter that plaintiff "did not propose a clinical trial protocol" for the surgeries on Yasmine and Ben, the statement was true or substantially true and, therefore, not defamatory.

Second, insofar as plaintiff complains of that part of the statement that contains the allegation that plaintiff "didn't receive an okay from FDA" that too is undoubtedly true whether considered alone or in context. The article immediately thereafter explains there is nothing untoward about the absence of FDA approval because "it's legal to use a drug or device in an indication that has not been cleared or approved by FDA, because the agency doesn't regulate the practice of medicine." And in the following two paragraphs the article's author goes on, in quoting statements made by the FDA to The Cancer Letter,

that "[h]ealth care professionals generally may legally prescribe or use approved/cleared medical products for unapproved uses when they judge that the unapproved use is medically appropriate for their individual patients." So, if there was a sting to the assertion that plaintiff "didn't receive an okay from the FDA" it would immediately thereafter evaporate in light of the paragraphs that followed that suggested FDA approval wasn't necessarily required. Moreover, there is no evidence at all to suggest that any defendant stated to The Cancer Letter anything about FDA approval.

The article then goes on over the remaining few pages to discuss how plaintiff viewed his first robotic mastectomy – that which was performed on Yasmine – as "his best day ever in surgery," how Monmouth Medical Center "is a member of the RWJ Barnabas Health system and a teaching affiliate of the Rutgers Robert Wood Johnson Medical School," and so the hospital's "suspension of robotic mastectomies" had "national implications in the ongoing debate over whether the procedure is safe, necessary, and cost-effective." The article also observes that plaintiff stated on his website that he "obtained specialty training in breast surgery at Memorial Sloan Kettering Cancer Center in New York City and is a board certified breast surgery," while Sloan Kettering officials expressed they were "unclear what Chagares means by 'specialty training in breast surgery," although Sloan Kettering did acknowledge that

plaintiff had been "a non-employee rotating Surgery Resident from Monmouth Medical Center" and that it was "reviewing the matter and his claims." And, to show the other side, the article observed that plaintiff "disputed [Sloan Kettering's] statement." To the extent there may be a defamatory sting in all this, plaintiff does not attribute it to defendants and these statements in the article, either individually or collectively, do not form a basis for plaintiff's defamation claim.

In fact, nothing else in the article is alleged to be defamatory. Yet, plaintiff has asserted there was a third defamatory statement in it. Plaintiff claimed in paragraph 63 of his third amended complaint, as noted earlier, that "`the patients," presumably referring to Yasmine and Ben, "did not receive proper informed consent." This statement – either in those words[18] or in substance – simply does not appear or is even suggested in The Cancer Letter article, so the claim for defamation for such a statement must be dismissed out of hand.

E

Because the alleged defamatory statements are not, in fact, defamatory as a matter of law, either because they are true, substantially true, or carry no sting,

[18] Paragraph 63 of the third amended complaint puts in quotes the other two statements on which the claim is based, but this statement about informed consent is not in quotes, thus further demonstrating, as is otherwise obvious from a reading of the article, that the article does not contain that allegedly defamatory statement.

plaintiff's defamation claims against the hospital defendants and Griffith must be dismissed. This includes the false-light claim as well as plaintiff's trade libel claim, which is also dependent on proof of falsity in any statements or aspersions defendants were alleged to have cast on plaintiff's business interests.[19]

Additionally, because the court has held that the statements plaintiff claims are defamatory are not, in fact, defamatory, the court need not consider Griffith's argument that plaintiff's claims that she defamed or cast plaintiff in a false light, both of which are governed by N.J.S.A. 2A:14-3's one-year statute of limitations, see Swan v. Boardwalk Regency Corp., 407 N.J. Super. 108, 121-22 (App. Div. 2009), are time-barred as having been asserted against her more than one year from their publication.[20]

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[19] Plaintiff's trade libel count depends on proof that defendants made statements that cast aspersions on plaintiff's business. As has been shown, the harmful statements that were alleged are not false or defamatory, and to the extent any statements could be viewed as casting false aspersions, they were, at best, only statements or suggestions of opinions – at least when interpreted broadly in the light most favorable to plaintiff – that are not actionable. As the Court explained in Lynch v. N.J. Educ. Ass'n, 161 N.J. 152, 168 (1999), while statements of opinion "do not enjoy 'a wholesale defamation exemption,' opinion statements do not trigger liability unless they imply false underlying objective facts" (quoting Milkovich v. Lorain Journal Co., 497 U.S. 1, 18 (1990)). See also Patel v. Soriano, 369 N.J. Super. 192, 249 (App. Div. 2004).

[20] Griffith correctly asserts that the earliest this claim could be viewed as having been asserted against her was July 27, 2021, when plaintiff moved for leave to file his second amended complaint naming her as a defendant. Griffith contends that not one of the alleged statements attributed to her that were identified in the second amended complaint or the later third amended complaint was made

Griffith is also entitled to summary judgment on the defamation and false-light claims against her insofar as they relate to her text messages to Kohli. Many are expletive-laced slurs that won't be repeated here and merely state opinions that aren't actionable. See Ward v. Zelikovsky, 136 N.J. 516, 529-31 (1994) (holding that "obscenities, vulgarities, insults, epithets, name-calling, and other verbal abuse" are not statements of fact and thus not susceptible to a defamatory meaning). Taking an adult view of these texts would suggest only that any bad light cast managed to hit, at least in the eyes of this impartial viewer, only the speaker.

But there are some statements among those texts that would go to plaintiff's reputation, i.e.,

- "I HATE bad doctors"
- "I find it so interesting that none of the good doctors want to do [robotic mastectomies] and the shitty ones with low volume do"
- "He should not be allowed to operate on women!"

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within one year of July 27, 2021, because the tumor board meeting in question took place on October 24, 2018, the last of her text messages to Kohli was May 3, 2019, and The Cancer Letter article was published on April 5, 2019. In light of this holding, the court need not determine whether the claims asserted against Griffith might "relate back" to the date of the filing of the original complaint.

These statements convey Griffith's belief that plaintiff was a bad doctor, and, while only an opinion, it is directed toward his reputation. Griffith also made statements in these text messages about plaintiff "violating [s]tandard of care," about "morcellation," and about plaintiff having "pulverized the tumor," the last likely referring to Yasmine's surgery and the alleged removal of the tumor in pieces.[21]

The texted comments about plaintiff being a "bad" doctor and that plaintiff should not be allowed to operate on women might be viewed as going to his reputation and having a defamatory sting. And, in applying the Brill standard, the court will assume these views of plaintiff's capabilities are false even though there is a legitimate argument to be made that these are just opinions that would not be actionable. But it doesn't matter either way because these statements were made in private text messages between Griffith and Kohli and

[21] Similar statements about the pulverization or morcellation of Yasmine's tumor were made before the tumor board, but those statements would be privileged. See N.J.S.A. 2A:84A-22.10(b). Indeed, although under the Brill standard the court should view a statement that plaintiff "pulverized," "morcellated" or "chopped" Yasmine's tumor as something more reputational than the apparent true fact that the excised material was removed in pieces – because the quoted words suggest an intention to cause an undesirable break-up of the tumor rather than just a bad result that can come at the hands of the best of surgeons. See Schueler v. Strelinger, 43 N.J. 330, 344 (1964) (holding that the law: "recognizes that medicine is not an exact science"; doesn't make a physician "a guarantor of the cure of his [or her] patient"; and incorporates the concept that "good treatment will not necessarily prevent a poor result").

weren't shared with others. They weren't published to a third party who possessed a positive or even neutral view of plaintiff's reputation and, thus, aren't actionable. See DeAngelis v. Hill, 180 N.J. 1, 13 (2004) (noting that the tort of defamation requires "publication" of the defamatory statement "to a third party"). Stated another way, Griffith could not cause damage to plaintiff's reputation by disseminating these statements or thoughts to Kohli because Kohli already shared Griffith's views.[22] Thus, these text messages are not actionable.[23]

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[22] Plaintiff makes and emphasizes this point in his opposing brief's preliminary statement, viewing Kohli and Griffith as having "conspired to terminate" robotic mastectomies at Monmouth Medical Center because of "their personal animus towards plaintiff." Pltf Br. at 97 (emphasis added).

[23] For reasons already provided about other communications, plaintiff's claim that Kohli's October 11, 2018 email to Michele Blackwood, the Director of Breast Surgery for the RWJ Barnabas Health System, see MMC Br. at 17, in which Kohli stated that the surgery on Yasmine "was performed with a loose IRB based on patient satisfaction, with the guise that it was a prophylactic case," and noted further that "the cancerous specimen was retrieved in piecemeal," Lacey Certification, Exhibit 31, is not actionable because it was a communication solely between these two physicians for the betterment of caring for patients and in furtherance of an interest within the hospital of "forming a breast safety 'task force' to vet out newer procedures so that we can ensure that our quality of care is not compromised while trialing any new approaches." Ibid. See N.J.S.A. 2A:84A-22.10. And, although unclear to the court, to the extent plaintiff is contending that a recorded telephone conversation, see Pltf's Exhibit 46, he had with defendant Carney – Monmouth Medical Center's COO – on the telephone, about The Cancer Letter article, contained defamatory statements, see Pltf. Br. at 100-01, there is no evidence that what Carney said to plaintiff – that nowhere appears to be defamatory because Carney stated in response to plaintiff that he "could not agree with [plaintiff] more" – there is no evidence that these statements were published or disseminated to others, a critical element of any defamation claim. See DeAngelis, 180 N.J. at 13.

For all these reasons, the court concludes that the defamation, false light, and trade libel claims asserted by plaintiff against any of these defendants are not sustainable as a matter of law and must be dismissed.

II

The court is also satisfied that, because the defamation claims cannot go forward, the negligent and intentional infliction of emotional distress claims must also be dismissed. Clearly, after nearly six years of litigation, these emotional distress claims against the alleged conspirators – Griffith and Kohli – and against the hospital defendants, collectively or separately, are based and dependent on the sufficiency of the defamation claims.

Paragraph 123 of the third amended complaint asserts that "[d]efendants, and each of them, negligently and/or[24] intentionally inflicted emotional distress on plaintiff by causing the defamatory statements to be published about him in

[24] The phrase "and/or" is inherently confusing and ambiguous. Other than Schrödinger's cat, who could theoretically be both dead and alive at the same time, in legal circles two things cannot be both applicable and inapplicable at the same time. See State v. Gonzalez, 444 N.J. Super. 62, 71-72 (App. Div. 2016). Unlike in other instances where the use of "and/or" can cause troublesome results, see In re Estate of Massey, 317 N.J. Super. 302, 303 (Ch. Div. 1998) (considering a Will that devised property to "A and/or B"), the court assumes what the pleader might have intended: a claim based on conduct that intentionally caused emotional distress, or on conduct that negligently caused emotional distress, or that there was some negligent conduct that caused some emotional distress and some other conduct that intentionally caused emotional distress. In any event, these claims cannot stand.

[t]he [f]irst [a]rticle of The Cancer Letter and by refusing to correct the said defamatory statements once they became known." No other acts or omissions than the alleged defamatory statements are cited in support of this pleaded cause of action as inflicting emotional distress.

Moreover, given the opportunity to provide further substance to this cause of action in his opposition to the summary judgment motions, plaintiff has only asserted in the sixth point of his brief – with no specificity and without a reference to anything other than the alleged defamatory statements in question – that there is a factual framework for the infliction-of-emotional-distress claims other than the alleged defamatory statements. But he has not disclosed what that other factual framework might be; such non-specific, unsworn arguments cannot be the cause for a denial of summary judgment.

In short, we are well beyond the pleading stage. The question is not whether the court may glean either from the pleading or the broad statements in plaintiff's opposing brief, a fundament of a cause of action. If that were the right question, the court would deny the motion. But the motion requires the court to apply the Brill standard and the motion follows a very lengthy period of discovery. Clearly, what was pleaded was only a claim that defendants' alleged defamatory statements either negligently or intentionally inflicted emotional

distress. Nothing else has been provided in the fashion required by Brill to suggest there are other factual underpinnings for this emotional-distress claim.

III

Unlike the above comments about the emotional-distress claim, it is not so clear that the tortious-interference claim is dependent on the alleged defamatory statements. The focus of these motions hasn't been directed at that particular question – most of the fight has been about the alleged defamatory statements discussed in section I – but in looking at what's before the court, there is plaintiff's claim that the hospital defendants – perhaps triggered by the alleged Kholi-Griffith conspiracy – wrongfully shut down plaintiff's, or anyone else's, ability to conduct robotic mastectomies that has unreasonably interfered with plaintiff's practice.

In other words, plaintiff appears to contend that the termination of robotic mastectomies was not only the result of the conspiracy to damage his reputation through false statements, which the court has found wanting in section I of this opinion, but also for other unexplained or unjustified reasons that have caused him harm. In his opposing brief, plaintiff argues:

> Why was the RNSM study at Monmouth [Medical Center] terminated? To this day, plaintiff has no idea why. The only reason given by defendants was "safety concerns." However, unbelievably, plaintiff who was the "investigator" of the study was never told the reason for the termination. He was actually told in

writing by text message that he was not entitled to an explanation. Rather, plaintiff found out about the ostensible, albeit vague, reason for termination in an Asbury Park Press article. Why didn't defendants communicate the reason for the termination to plaintiff? Both plaintiff and his patients had the right to know if there were any legitimate safety concerns and their nature. The real reason is self-evident to plaintiff – there were no legitimate "safety concerns" warranting termination of the study. In addition, Dr. Blackwood[25] in conjunction with administration apparently concocted a "script" as the factual basis for RNSM. The "script" was that RNSM was terminated because it was off label. However, Dr. Blackwood was unaware that MMC employees were aware in June 2018, three months before the surgery, that the use of the robot for RNSM was off label.

The evidence suggests that RNSM was terminated because it posed a genuine financial threat to the hospital and defendant Kohli, the director of the hospital's breast center, who unbelievably was promoted to that position on November 1, 2018, the same day RNSM was terminated, was not robotically trained. RNSM at [Monmouth Medical Center] would have significantly impacted the revenue stream derived from traditional mastectomy and Dr. Kohli's "Hidden Scar" from the Breast Center and defendant Kohli. [Monmouth Medical Center's] COO, Eric Carney, testified that the hospital has been employing more physicians rather than using private practice physicians who are only used to fill "clinical gaps or network gaps." He confirmed that when a hospital[-]employed physician, such as Dr. Kohli, performs [a] procedure at the hospital, [RWJ Barnabas] collects both the facility and professional fee whereas [RWJ Barnabas] only collects a facility charge when a private practicing

[25] Referring to Michele Blackwood, M.D., the Director of Breast Surgery for the RWJ Barnabas Health System. See MMC Br. at 17.

> physician such as Dr. Chagares performs a procedure at the hospital.
>
> [Pltf Br. at 127.]

To be sure, there is a suggestion in the overall thrust of plaintiff's allegations that these steps taken by the hospital defendants were motivated or triggered by what have now been held to be non-defamatory statements, there is also the aspect of plaintiff's claim, summarized in the quoted material above, that the robotic procedures were ended for financial reasons that benefited others but discriminated against him that, he claims, have caused this injury.

The hospital could, of course, as a general matter, legitimately impose a moratorium or bring an end to the surgeries in question. Our courts recognize that hospital administrators have "'broad discretionary powers' in making administrative decisions related to healthcare" to which courts "generally defer" considering "'the intrinsic complexities that abound in the area of institutional public health care.'" Comprehensive Neurosurgical, P.C. v. Valley Hosp., 257 N.J. 33, 67 (2024) (quoting Desai v. St. Barnabas Med. Ctr., 103 N.J. 79, 90 (1986) and Berman v. Valley Hosp., 103 N.J. 100, 107 (1986)). The very way the Court has expressed that discretion, however, allows for an area in which hospital administrators may not act. See, e.g., Desai, 103 N.J. at 90-92.[26] That

[26] For example, the Desai Court stated that hospitals are expected to utilize their broad powers "reasonably for the public good and must genuinely serve public-

is, while courts will defer to the discretion of hospital administrators in making decisions about public health care, courts need not necessarily defer when those decisions are based on other grounds such as argued by plaintiff here: that the hospital unreasonably acted with an intent to injure his practice by financially benefiting others.

So, unlike the claims discussed in sections I and II of this opinion, plaintiff's tortious-interference claim does not fall simply because the defamation claims fell. Nevertheless, the tortious-interference claim falls because plaintiff cannot demonstrate the presence of all that tort's elements.

To sustain a tortious-interference claim, a plaintiff must show: (1) a "reasonable expectation of economic advantage," Harris v. Perl, 41 N.J. 455, 462 (1964); (2) an intentional and malicious interference with that economic advantage, Louis Kamm, Inc. v. Flink, 113 N.J.L. 582, 588 (E. & A. 1934); (3) the interference caused the loss of the prospective gain, i.e., "if there had been no interference[,] there was a reasonable probability that the victim of the

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health objectives." Id. at 90-91. And, so, hospital decisions must have a "factual foundation" that is tethered to "the nature of the decision, the context in which it is made, the purposes to be effectuated by it, and the parties, persons and general interests that are directly or indirectly affected by it," and the hospital must further pursue "all reasonable means to inform itself and to draw from a wide array of sources to reach an informed decision." Id. at 92. In so describing the Court was also proscribing the hospital's powers and discretion, and left open, in appropriate cases, the pursuit of tortious-interference claims when a hospital acts outside those parameters.

interference would have received the anticipated economic benefits," Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 185-86 (App. Div. 1978); and (4) the injury caused damage to the plaintiff, Norwood Easthill Assocs. v. Norwood Easthill Watch, 222 N.J. Super. 378, 384 (App. Div. 1988). See generally Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 751-52 (1989).

The court's determination that defendants are entitled to summary judgment on this claim rests on the tort's fourth element. That is, the court may assume there is sufficient evidence to support the purpose of the claim on the other three elements – even without the defamatory grounds on which the claim may have partially rested. And the court may even assume that this claim caused damage. But what is indisputable is that any damage – other than the alleged reputational damage that falls with the fall of the defamation claims – to prospective economic advantages does not belong to plaintiff, it belongs to The Plastic Surgery Center, as plaintiff's employment contract with that entity so declares. Whatever income plaintiff obtains through his surgical endeavors is, as the contract declares, the property of The Plastic Surgery Center. If there is a meritorious tortious-interference claim alleged in plaintiff's third amended complaint, it belongs to his employer, not him.

IV

As observed in the first three sections of this opinion, defendants are entitled to summary judgment dismissing plaintiffs': (1) defamation claims, which include count three (defamation), count four (false light), and count twelve (trade libel); (2) infliction of emotional distress (count nine); and (3) tortious interference (count ten). The court also previously alluded to the fact that there is no opposition to motions insofar as they seek the dismissal of the claimed violation of the New Jersey Antitrust Act (count two) and the CEPA claim (count seven); the alleged violation of the Sherman Antitrust Act, 15 U.S.C. § 1 (count one), was dismissed following the removal of the action to federal court when this suit was then pending in that jurisdiction.

With those dispositions there is still left to consider plaintiff's claims of: a civil conspiracy (count five); vicarious liability (count six); bad faith (count eight); and fictitious parties (count eleven). These four other counts may be quickly disposed of because they are dependent on the sustainability of the dismissed claims, moot, or without some other meritorious factual foundation.

First, a civil conspiracy – like a criminal conspiracy – requires an overt act. There is here no alleged or sustainable underlying wrongful act that two or more conspired to commit. So, the civil conspiracy claim, which is dependent on a viable substantive claim, Middlesex Concrete Prods. & Excavating Corp.

v. Carteret Indus. Assoc., 37 N.J. 507, 516 (1962); see also Eli Lilly & Co. v. Roussel Corp., 23 F. Supp. 2d 460, 496-97 (D.N.J. 1998), cannot be sustained.

Second, the same can be said for the count alleging vicarious liability by some defendants for the conduct of others. The court has assumed, for summary judgment purposes, that there is substance to plaintiff's theory of vicarious liability as applied to some of the defnedants, but now that it has been shown that there is no substantive claim for which any defendant may be held liable, there is no point to considering further this count, which merely alleges a theory of law that would render one defendant liable for the wrongful acts or omissions of another.

Third, while entitled "bad faith," plaintiff's count eight (contained in ¶s 119-120 of the third amended complaint) alleges a breach by defendants Monmouth Medical Center and RWJ Barnabas of the implied covenant of good faith and fair dealing contained in plaintiff's employment contract with Monmouth Medical Center. On closer examination, this count merely realleges those things contained in the defamation and tortious-interference counts and must fall just as those other claims have fallen.

Fourth, the count entitled "fictitious parties" makes allegations against John Does 1-100 and ABC Companies 1-100, claiming in paragraph 128 of the third amended complaint that these fictitious parties are entities "whose

identities are presently unknown who may be liable to the plaintiff." After nearly six years of litigation, and on the eve of trial, it is clear that plaintiff has had a full and fair opportunity to discover the identity of any such other actors; the time has come – and gone – for this claim to possess any further vitality or purpose in this lawsuit. Moreover, paragraph 128 alleges that the fictitious parties' liability is based on "the same reasons and to the same extent as the other defendants." Since the claims against the other identified defendants are lacking in merit, so too are these other potential claims against unknown parties without merit.

* * *

For all these reasons, plaintiffs' third amended complaint will be dismissed, and the hospital defendants' third-party complaint will be dismissed as moot. An appropriate order has been entered.