

**FILED**

MAR 21 2016

4TH DISTRICT  
STATE OF UTAH  
MILLARD COUNTY

**IN THE FOURTH JUDICIAL DISTRICT COURT  
MILLARD COUNTY, STATE OF UTAH**

<p>INTERNATIONAL AUTOMATED SYSTEMS, INC., Et. al.,</p> <p>Plaintiffs,</p> <p>v.</p> <p>MILLARD COUNTY, Et. al.,</p> <p>Defendants.</p>	<p><b>RULING RE: Motion for Clarification</b></p>    <p>Case No. 140700016 Judge Jennifer A. Brown</p>
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The matter before the Court is Defendant Millard County's ("Millard") Motion for Clarification filed on December 2, 2015. Plaintiffs filed a Memorandum in Opposition on January 8, 2016. Millard filed a Reply Memorandum along with a Request to Submit on January 21, 2016. Upon review of the pleadings, relevant case law, and being fully advised, the Court rules as follows:

**BACKGROUND**

On November 13, 2015, this Court issued a Memorandum Decision and Order partially granting and partially denying Millard County's Motion to Dismiss. The Court dismissed Plaintiffs' Amended Complaint, but declined to dismiss Plaintiffs' original Complaint. Millard subsequently filed the instant motion requesting the Court to rule on the issue of immunity and/or provide further clarification for arguments raised in the Motion to Dismiss.

**DISCUSSION**

**I. Waiver of Immunity**

The Utah Governmental Immunity Act ("UGIA") requires a three-step analysis to

determine if a governmental entity is immune from liability. *Van de Grift v. State*, 2013 UT 11, ¶ 8, 299 P.3d 1043. This immunity also includes the entity’s employees and elected officials. The first step is to consider whether the UGIA affords immunity to the governmental conduct. Utah Code Ann. § 63G-7-201(1). The second step, if the UGIA affords immunity, is whether that immunity is waived depending on the particular circumstance at issue. Utah Code Ann. § 63G-7-301(1) to (4). Finally, if a waiver does apply, the Court considers whether the governmental action qualifies as an exception to the waiver of immunity.

In the Complaint, Plaintiffs allege four causes of action: Count I, Negligence (for publishing defamatory statements); Count II, Defamation;; Count III, Tortious Interference; and Count IV, Intentional Infliction of Emotional Distress.

Utah Code Annotated § 63G-7-301(4) & (5) states in pertinent part:

(4) Immunity from suit of each governmental entity is waived as to any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment.

(5) Immunity from suit of each governmental entity is not waived under Subsections (3) and (4) if the injury arises out of, in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

...

(f) a misrepresentation by an employee whether or not it is negligent or intentional;<sup>1</sup>

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<sup>1</sup> Millard notes that subsection f preserves immunity for an employee’s misrepresentation, but fails to identify how this subsection applies to Plaintiffs’ claims

UCA § 63G-7-301(5)(b) preserves governmental immunity for negligent acts and omissions as to libel and slander, but does not preserve immunity as to intentional, fraudulent, and malicious acts. Accordingly, Plaintiffs' claims for intentional, fraudulent or malicious libel, slander, interference with contractual rights, and infliction of mental anguish are viable.

However, in addition to failing to indicate in their original notice of claim that they intended to pursue a negligence claim, immunity has not been waived as to Plaintiffs' negligence claim. Therefore, Plaintiffs' first cause of action is hereby dismissed.

## **II. Defamation Claims**

Rule 12(b)(6) of the Utah Rules of Civil Procedure governs motions to dismiss for failure to state a claim upon which relief can be granted. “[I]n ruling on a motion to dismiss for failure to state a claim, the court must construe the claim in the light most favorable to the plaintiff and indulge all reasonable inferences in his favor.” *Mounteer v. Utah Power & Light Co.*, 823 P.2d 1055, 1058 (Utah 1991) (citations omitted). In addition, dismissal under Rule 12(b)(6) is only proper “if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of [his] claim.” *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990). “The courts are a forum for settling controversies, and if there is any doubt about whether a claim should be dismissed for the lack of a factual basis, the issue should be resolved in favor of giving the party an opportunity to present its proof.” *Id.*

Millard argues that Plaintiffs' cause of action for defamation fails to state a claim for which relief can be granted under Utah R. Civ. P. 12(b)(6). In the context of defamation, “[a]n allegation of ‘certain derogatory and libelous statements’ is insufficient; a complaint for defamation must set forth ‘the language complained of . . . in words or words to that effect[.]’”

*Zoumadakis v. Uintah Basin Medical Center*, 2005 UT App 325, ¶ 3, 122 P.3d 891 (citations omitted). Millard argues that Plaintiffs did not include any statements upon which they assert their defamation cause of action except for general conclusory allegations. Millard claims there is no specific language or “words to that effect” set forth by Plaintiffs in either their notice of claim or the Complaint.

“Rule 8(a)(1) of the Rules of Civil Procedure ... requires that a pleading set forth ‘a short and plain statement of the claim showing that the pleader is entitled to relief[.]’ ” *Williams v. State Farm Ins. Co.*, 656 P.2d 966, 970 (Utah 1982) (quoting Utah R. Civ. P. 8(a)(1)).

[T]he fundamental purpose of our liberalized pleading rules is to afford parties “the privilege of presenting whatever legitimate contentions they have pertaining to their dispute,” subject only to the requirement that their adversary have “fair notice of the nature and basis or grounds of the claim and a general indication of the type of litigation involved.”

*Id.* at 971 (citations omitted). “As a result, ‘these principles are applied with great liberality in sustaining the sufficiency of allegations stating a cause of action or an affirmative defense.’ ” *Zounaadakis*, 2005 UT at ¶ 2 (quoting *Id.*).

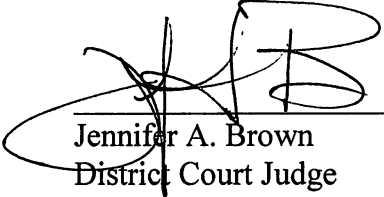
As this Court previously held, Plaintiffs provided Millard with a general notice of an intent to sue alleging that Millard County employees, including the County Attorney, published false and fabricated statements regarding the status of Plaintiffs’ construction permits for a solar energy facility where they, and entities they are associated with, conduct business. The Court finds that Plaintiffs’ defamation claims complied with Rule 8 and Rule 12(b)(6) of the Utah Rules of Civil Procedure. A claim for defamation does not have to inform “when, where, and to whom the statements were made.” *Id.* Plaintiffs adequately identified the effect of the defamatory statements.

**CONCLUSION**

Plaintiffs' first cause of action for negligence is hereby dismissed. This ruling constitutes the final order of the Court on this issue. No further order is necessary to effectuate the Court's decision.

DATED this 21<sup>st</sup> day of March, 2016.

BY THE COURT

  
\_\_\_\_\_  
Jennifer A. Brown  
District Court Judge

Case No. 140700016

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 140700016 by the method and on the date specified.

MANUAL EMAIL: ROBERT D DAHLE bobdahle@aol.com

MANUAL EMAIL: SUSAN BLACK DUNN sblack@dunndunn.com

MANUAL EMAIL: KATHLEEN M LIUZZI kliuzzi@dunndunn.com

MANUAL EMAIL: J DAVID NELSON nsdpnelson@aol.com

03/21/2016  
Date: \_\_\_\_\_

/s/ IRENE SCOTT  
\_\_\_\_\_

Deputy Court Clerk