

acts by distinct and separate parties. Fox wholly misstates Plaintiff's Amended Complaint ("AC").

Satkar is an Illinois Corporation that owns, operates and manages a Wingate Hotel in Schaumburg, IL. AC at 6. Satkar is owned and operated by Sharad Dani and Harish Dani, the other named Plaintiffs. AC at 7. The Fox Defendants own and operate a TV station and a website that disseminate news related to Cook County. AC 12-18, especially 16. While a TV station's reach is usually local, a website can be viewed anywhere with a connection to the Internet. (See Astronauts Open Earth to Earthlings Via Photos, <http://www.foxnews.com/scitech/2010/11/22/astronauts-open-earth-earthlings-photos>).

From May through July of 2009, and for several months thereafter, Fox Defendants ran a story on Fox Chicago News (still accessible by Internet). AC at 27. Fox Defendants have attached several of the news stories at issue to their motion. Ex. A to Fox Motion. Those stories centered around an alleged lack of accountability at the Cook County Board of Review ("BOR" and "Board"). Specifically, they alleged that the BOR (or agents thereof) had engaged in influence peddling in collusion with Illinois State Representative Paul Froehlich. AC at 27. The only basis upon which some of the claims were made was the word of a disgruntled, ex-Froehlich employee with an axe to grind. AC at 28. Without any evidence or reasonable belief, the Fox Defendants ran a story (still accessible on the Internet) claiming that Froehlich agreed to arrange a successful appeal of the Plaintiffs' property taxes in exchange for large campaign contributions. AC at 29. They claimed that Plaintiffs had engaged in criminal bribery of Froehlich to cheat the system. AC at 29.

First Fox video (Fox Exhibit A-1) opens with a female voiceover stating, "A State lawmaker going door to door; what he was offering constituents," and the voice concludes ominously, "and what they gave in return." From there, the video goes on to state that a Cook

County States' Attorneys investigation had been launched into transactions between state lawmaker Paul Froehlich, and some of his constituents. Among those constituents, the video identifies the Dani family, and their corporation, the Satkar corporation. At approximately 4 minutes, the voice of Dane Placko asks viewers to "check out this handwritten note," and alleges that Paul Froehlich "calculates his own cut from the Wingate tax appeal." The next image seen is a check, cut from Satkar's bank account, and signed by an individual named Dani. Placko explains that this check was in return for doing the Wingate (Satkar's hotel) tax appeal. Then, the Fox News broadcast shows an uncomfortable interview between Dane Placko, playing the Grand Inquisitor, and Bhavik Dani, identified as a "spokesman" for the Wingate Inn (one wonders whether he was told of his newly acquired title before Placko went public with the tabloid interview). Placko continues to explain that the Dani family, through the Satkar corporation, doing business as the Wingate hotel, "picked up the tab" to the tune of over \$8,000.00 in hotel space for the Froehlich campaign. At close to 4:30, Placko switches gears to allege a conspiracy between Froehlich and the BOR through Joseph Berrios, the Cook County Democratic Party Chairman, and also a Commissioner of the BOR. Immediately thereafter, Placko states that there are several citizens for whom Froehlich was able to secure a successful appeal of their taxes (and the Danis, through their corporation Satkar, has already been identified as soundly being in that camp). Placko closes by stating that the Cook County States' Attorneys office is conducting an investigation and that subpoenas connected with that investigation have been issued.

The second video opens by specifically targeting the Dani family, and the Satkar corporation. (Approx. 7 min. into the A-1). The video proceeds to rehash some of the same aforementioned allegations. At 9:20, only two minutes after indicating the Dani family's

complicity, Placko claims that the matter could become a criminal case, and that the case, “has some legs.”

At 14:00, Dane gives an “update,” two months later, about how the BOR rescinded the Dani’s taxes, claiming that the “reductions were not deserved,” because of the relationship between Froehlich and Satkar. Dane ends up at 15:00, advertising foxchicago.com, and claiming that all of the earlier videos can be found there.

As a result of the initial stories, the BOR sought to give the appearance that it was investigating and combating corruption. AC at 33. However, no meaningful investigation was actually conducted. AC at 38-43. Instead, Plaintiffs were brought before the BOR ostensibly to discuss their property taxes. AC at 39. Plaintiffs presented un-rebutted expert witness testimony suggesting that their property taxes prior to the reduction were too high, and that the taxes ought to have been lowered to reflect the value of the hotel, and the business, in light of the economic downturn. AC at 45. The Board was not interested in hearing evidence of the property’s value, however. AC at 40-46. Instead, they were brought before the BOR and forced to answer question about Rep. Froehlich (though they were never asked whether they had given Froehlich money or other consideration in return for property tax deductions). AC at 41. The Board did this largely for their main audience, Fox News, the only media outlet allowed inside the closed-door hearings. AC at 44.

Eventually, and despite the evidence, the Board arbitrarily rescinded the reduction in property taxes that it itself had previously granted. AC at 46. Defendant Guetzow explained the Board’s decision by claiming that there was “a larger issue between the relationship between the people involved” (in other words, a relationship between Plaintiffs and Rep. Froehlich). AC at 47. Plaintiffs were punished for their relationship with Rep. Froehlich, and for no other reason. AC at 48-50.

Fox News ran stories about decision, including some of those attached to Fox News' Motion as A-2 and A-3. The video attaches as A-2 opens by claiming that Satkar, through the Dani family, was called back before the Board, despite winning a reduction in their property taxes, because "something was fishy" with their files. Once again, Dane Placko claimed that the States' Attorney had begun an investigation, and had empanelled a grand jury. Placko brings the story together claiming that property taxes will go up for honest citizens if someone on the inside "has their thumb on the scale" ostensibly, referring to Danis, who were already accused of colluding with Froehlich to get undeserved tax breaks.

II. ARGUMENT

A. The Court has Supplemental Jurisdiction

For supplemental jurisdiction to exist, the Federal and state claims "must derive from a common nucleus of operative fact" such that a plaintiff "would ordinarily be expected to try them all in one judicial proceeding." Angsten v. Blameuser, No. 05-cv-4254, 2005 WL 3095513 (Nov. 16, 2005); quoting UMWA v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138 (1966). Although "a loose factual connection" may be sufficient to confer supplemental jurisdiction, the facts at issue must be both common and operative. Ammerman v. Sween, 54 F.3d 423, 424 (7th Cir. 1995).

The purpose of Rule 13(a) is "to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters." K&K Iron Works, Inc. v. Am. Ralinings Sys., No. 07-cv-1832, 2008 WL 597607, quoting Southern Const. Co. v. Pickard, 371 U.S. 57, 60 (1962). Therefore, the Seventh Circuit has adopted a "logical relationship" test, construing the phrase "transaction or occurrence" liberally to include a series of many logically related, if not temporally close, occurrences. Warshawsky & Co. v. Arcata Nat'l Corp., 552 F.2d 1257 (7 Cir. 1977). A court must consider if the "totality of the claims, including the nature of

the claims, the legal basis for recovery, the law involved, and the respective factual backgrounds” suggest that the claims are logically related.” Burlington Northern R.R. Co. v. Strong, 907 F.2d 707 (7 Cir. 1990).

Fox cites K&K Iron Works, Inc. v. Am. Ralnings Sys., No. 07-cv-1832, 2008 WL 597607, for the claim that, “If the evidence needed to prove or defend the one claim is different from that needed to prove the other, so that the trial of the [Federal] claim would be completely unaffected if [the supplemental claim] were dismissed,” a Court should decline to exercise jurisdiction. However, quite opposite the instant matter, K&K Iron Works had to do with two different contracts that had nothing to do with one another. Therefore, “duplication of evidence is unlikely if the claims are tried separately.” This is not the case in the instant matter, in which it is likely that some of the exact same testimony to be elicited in the case against the BOR (or in the defense thereof, for that matter) will be elicited in the case against Fox. Unlike K&K, which was a case about “two contracts and [...] two disputes,” *Id.*, the events of this case form a single story, in which all defendants acted simultaneously, in unison, *and likely in concert*, over a period of months to harm Plaintiffs.

Finally, Fox’s citation to Ruhnke v. Pipe Fitters’ Welfare Fund, No. 05-cv-1395, 2005 WL 1869740 (N.D. Ill. Aug. 4, 2005) is inapposite. In Ruhnke, the Court determined that since the facts underlying the claim brought properly under Federal question jurisdiction were different from the facts underlying the state law claim, the Court did not have jurisdiction to hear the claim. This is not the case here. The same facts in controversy apply to all the Defendants.

The state and Federal claims share a common nucleus of operative fact because the state law claims rely on the same facts as the Federal claims. In this case, most of the same witnesses will testify about the very same matters in both the 42 U.S.C. 1983 case against the BOR Defendants, and the Fox News Defendants. The evidence in both cases is identical. The main

questions of fact are precisely the same: Did the Satkar corporation, or the Dani family, cheat the system or assist in the arrangement of bribes of any elected officials of the BOR? Were any bribes arranged, or did anyone participate in any fraudulent behavior, for Satkar's benefit? Finally, did the Board, any of its Individual Defendants, Fox News, or the other media Defendants, have any reason, or any good faith basis whatsoever, to believe that Plaintiffs were involved in any scheme to defraud the taxpayers of Cook County?

After the initial story broke, the Board acted in lockstep with Fox News. The Board acted and announced all its actions through Fox News. The BOR acted through Fox News by using it as its mouthpiece for announcing suspicions regarding the Satkar properties (and other properties), announcing the Board's alleged "investigation" of Plaintiffs' files and those of some other Schaumburg residents and businesses, and the raising of taxes on Satkar and at least two other properties (also in the name of preventing corruption)-all through Fox News (See Exhibit A-3).

Fox News was the Board's *de facto* public relations department. While the Fox story began by reporting alleged corruption at the Board of Review, Fox News and Dane Placko apparently believed that they would get the most information for further (likely lucrative, and publicity inducing) news stories by teaming up with the Board: completely agreeing to be the Board's mouthpiece in exchange for prefabricated "investigative" stories implicating Satkar, and others.

Ironically, it was the BOR defendants who were apparently being investigated by the State's Attorneys' Office and used Fox as a pigeon to divert attention away from themselves-effectively creating a smokescreen. The BOR defendants have asked for outside counsel as defense lawyers because, as they state in court documents (Case # 09 CH 39547), the State's Attorney's Office has an actual conflict of interest and cannot both prosecute and defend the

same parties. One of the Fox news defendants admitted that their sole source for information about any Grand Jury investigation of anyone was from three separate BOR defendants and no further questioning or actual investigation was done. Fox was eager to comply in exchange for being handed a sensationalized, albeit planted, “investigative” story.

The witnesses and the evidence are the same for the trial against the BOR, as for the trial against Fox. Whether Fox’s actions in reporting that Satkar had arranged to receive unfairly favorable treatment at the BOR constitute defamation will turn, in large part, on whether there was any reason to suspect that Rep. Froehlich was actually arranging tax appeals. Similarly, whether the Board violated Satkar’s constitutional rights by arbitrarily rescinding Satkar’s reductions will also turn, in part, on whether there was any reason to suspect that Rep. Froehlich was actually arranging tax appeals for Satkar’s benefit. Therefore, whether those representations were in good faith, or constituted malicious defamation, will hinge on whether the Board conducted any meaningful investigation, and whether they reported on such to Fox News (since it is clear that they reported to Fox News).

The same evidence that will be necessary to determine whether the BOR Defendants’ actions towards Plaintiffs constituted willful violations of Plaintiffs’ due process and equal protection rights will be necessary to determine if Fox’s claims about Plaintiffs were defamatory.

A finding that the Court does not have supplemental jurisdiction over Plaintiffs’ claim against the Fox Defendants would require Plaintiffs to conduct two identical trials: one against the Board, and another against members of the media who acted in partnership with the Board. The facts relevant to both the claims against the BOR and against Fox took place over the same period of time, and involved the same people. Without Fox’s involvement, none of the actions taken by the Board would have been taken against Plaintiffs. Without the Board’s involvement, Fox would not have run its defamatory stories.

B. The Court should exercise its discretion to assert jurisdiction over the Fox Defendants;

As Defendants, claim, District Courts may decline to exercise supplemental jurisdiction over a claim if “1) the claim raises a novel or complex issue of state law, or [...] 4.) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.” 28 U.S.C. § 1367(c). Beyond that, Defendants do not cite any decision, or case, compelling dismissal on those grounds. Though they invoke the “exceptional circumstances” factor, they offer no analysis of that factor, and ultimately do not ask for the case to be dismissed due to “exceptional circumstances.” None exist.

Instead, they claim that they anticipate raising a defense under the Illinois Citizen Participation Act (“ILCPA”), which they claim is a novel issue of state law. As much as Plaintiffs’ counsel would welcome the opportunity to answer such a motion, Fox’s putative claim is simply not evidence. The statute does not claim that a Court properly declines jurisdiction when a *defense to a claim* involves a matter of state law. To be clear, the statute states that the Court properly declines jurisdiction when a **claim** involves a novel matter of state law.

District Courts should exercise jurisdiction over state law claims when “considerations of judicial economy, convenience and fairness to litigants” demand it. United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966); Hansen v. Board of Trustees of Hamilton, 551 F.3d 599 (7th Cir., 2008).

In this case, considerations of judicial economy, convenience and fairness to litigants favor keeping the Fox defendants in Federal Court. The ILCPA states that: “On the filing of any motion [under the act], a hearing and decision on the motion must occur within 90 days after notice of the motion is given to the respondent.” 735 ILCS 110/20(a). In other words, the procedural requirements of the act demand the Court’s involvement with the ILCPA end within 90 days of the Motion’s filing. This is not a matter that will haunt this Court through the

duration of the case. According to the statute itself, the activities of Defendant Fox either are privileged, or not. If Fox wishes to bring a motion under the ILCPA (the last time this Act was invoked by Fox's counsel on behalf of the very same media defendants, Fox's ILCPA motion was dismissed in Ryan v. Fox Television Stations, Inc., 2010 WL 4626003), their doing so now would not require this matter to be remanded to state court. Fox wants to require all parties to participate in two different trials based on a common nucleus of operative facts. Information crucial to Plaintiffs' claims against each Defendant will likely be sought from all Defendants, such that if Fox is not a Defendant here, it will nonetheless be the subject of subpoenas for information, and for deposition testimony relevant to the claims against the Board. Similarly, even if Fox is not a Defendant here, it will still be required to subpoena information from the Board in defending itself – just as Plaintiffs will have to subpoena the Board for information relevant to its would-be state Court claim against Defendant Fox. Two separate trials on identical evidence, for events that took place during the same time, involving the same matters in controversy and the same parties would not only be unnecessary, it would severely offend notions of “judicial economy, convenience and fairness to litigants.”

C. The Complaint adequately states a cause of action against the Fox Defendants.

Fox Defendants also move to dismiss the claim against them under Federal Rule of Civil Procedure (“F.R.C.P.”) § 12(b)(6). F.R.C.P. § 12(b)(6) states that “a party may assert the following defenses by motion: (6) failure to state a claim upon which relief can be granted.” A complaint or part of a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957); Strasburger v. Board of Educ., 143 F.3d 351, 359 (7th Cir.1998). So long as a Defendant is put on sufficient notice about the nature of the alleged defamatory statements, a

complaint should not be dismissed for lack of specificity. Hanania v. Loren-Maltese, 56 F.Supp.2d 1010, 1019 (N.D.Ill.1999); Fidelity Nat'l Title Insurance Co. of NY v. Intercountry Nat'l Title Ins. Co., 161 F.Supp.2d 876, 882 (2001).

The Court of Appeals has put to rest any notion that notice pleading under the F.R.C.P. 8 has been abandoned, or that there is in general a heightened pleading standard in all cases, “Bell Atlantic must not be overread.” The Court denied that it was “requir[ing] heightened fact pleading of specifics,” 127 S.Ct. at 1974; “a complaint...does not need detailed factual allegations.” Id. at 1964. Within weeks after deciding Bell Atlantic, the Court reversed a Tenth Circuit decision that required fact pleading. Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam). Limestone Development Corp. v. Village of Lemont, Ill. 520 F.3d 797, 803. C.A.7 (Ill.), 2008.

In this case, Fox News, “should have no difficulty in responding to those claims.” Hanania v. Loren-Maltese, 56 F.Supp.2d 1010, 1019 (N.D.Ill.1999). Fox News attached three CDs (Exhibit A) with news reports on them (each less than 15 minutes), a transcript of those CDs (Exhibit C), and printouts of the online news reports (Exhibit B) to their motion, that they themselves identify as the allegedly defamatory material. Defendants cannot claim not to know what the allegedly defamatory content is on one hand, and then attach the very defamatory statements at issue to their motion (with claims that it is not defamatory) on the other-although this is precisely their posture.

An action for defamation *per se* requires that the words used are in and of themselves so obviously and naturally harmful that proof of special damages is unnecessary. Fried v. Jacobson, 99 Ill.2d 24, 27 (Ill., 1983). Four classes of words, if falsely communicated, give rise to a cause of action for defamation without a showing of special damages. They are: 1. Those imputing the

commission of a criminal offense; [...] 3. Those imputing inability to perform or want of integrity in the discharge of duties of office or employment; [...]" *Id.*

Fox News does not claim that the AC does not adequately allege Defamation. Instead, Fox News claims that the AC "stripped of [...] inaccurate, misleading summaries of the WFLD Reports" fails to allege specific false and defamatory statements. But the AC was far from inaccurate. The AC alleges that Fox News accused Plaintiffs of engaging in bribery-the commission of a criminal offense, which imputes Plaintiffs' honesty. Fox News objects to the characterization of their defamatory allegations as a bribe, claiming that such a term was not contained in their reports. This argument, though apparently sincere, is at best specious. A person commits bribery when, "with intent to influence the performance of any act related to the employment or function of any public officer, public employee, juror or witness, he promises or tenders to that person any property or personal advantage which he is not authorized by law to accept." 720 ILCS 5/33-1. That is exactly what Fox alleged: that Plaintiffs gave campaign contributions to Froehlich in exchange for Froehlich securing undeserved property tax reductions.

The AC states that Fox News accused Plaintiffs of conspiring with State Rep. Paul Froehlich to defraud the taxpayers of Cook County by manufacturing an artificially high property tax reduction for Plaintiffs' property. As part of this alleged plan, Plaintiffs gave large campaign contributions to Froehlich in exchange for the artificially high property tax reduction. As a result of the alleged illegal goings on between Froehlich, Plaintiffs, and the BOR, the States' Attorneys Office had convened a Grand Jury. That is how the AC characterizes the defamatory statements about Plaintiff, and what Defendants' submissions corroborate. In other words, Fox accused Plaintiffs of organizing a bribe; and while the transcripts supplied by Fox News do not

contain the phrase, “Plaintiffs were engaged in criminal conduct and the subject of a grand jury subpoena,” they do contain allegations that a Grand Jury had been convened to look into Plaintiffs’ behavior.

Fox’s reports initially claim that of the many appeals handled by Paul Froehlich’s office “nearly everyone won their appeal... How did he do it? That’s now the subject of a Cook County state’s attorney’s investigation.” Exhibit C, page 3 at 1:18. The report then identifies two “major campaign contributors” who were awarded “big tax reductions, more than \$413,000,” as part of a *quid pro quo*. Exhibit C, page 3 at 2:41; page 4, at 3:30. All through this report, the screen shows pictures of the Wingate Hotel, checks and other documents with Satkar and Dani written on them clearly. The screen then cuts to Bhavik Dani, identified as a spokesperson for Satkar. Exhibit A-1. The report then alleges that “someone from inside” likely was helping Froehlich win such large reductions, because “ninety-four percent [success rate] is pretty much unheard of.” Exhibit C, page 5, at 5:57. The report claims that “subpoenas may have been issued,” Exhibit C, page 5, at 6:20, and that “the Cook County state’s attorney is looking into whether Froehlich demanded campaign cash and favors in return” for the lower assessments.” Exhibit C, page 6, at 6:34.

The report further claims that Froehlich’s activity “push[es] the envelope of legality.” Exhibit C, page 7, at 8:15, and that a criminal case “has some legs.” Exhibit C, page 7, at 9:08. Later reports claim specifically that Sharad Dani appealed his business’s property taxes but “something s not quite right” with Dani’s appeal. Exhibit C, page 8 at :33. The report then alleges that there likely is “undue influence” because somebody on the inside (ostensibly working at Dani’s behest) “has their thumb on the scale.” Exhibit C, page 8, at 1:19. Froehlich had been helping Dani, a specific reference to Satkar and the Dani family, win hundreds of thousands of dollars in property tax appeals, in return for thousands of dollars in campaign contributions and

free rooms for political workers. Exhibit C, page 8 at 2:06. Based on these allegations, the Cook County State's Attorneys Office continues to look at the allegations." Exhibit C, page 9, at 4:35. These allegations are the subject of "an internal investigation at the board and a grand jury investigation by the Cook County State's Attorney." Exhibit C, page 10, at 10:00. These statements, broadcast over the television and Internet media, defame the character of the Dani family in alleging that they violated Illinois law, and therefore are the subject of a Grand Jury investigation.

Fox's argument is puzzling because it does not claim that there is an innocent construction to the allegations against Plaintiffs. Instead, Fox claims that the AC's allegations are inaccurate. Yet, by Fox's admission of its own exhibits, that claim makes no sense. F.R.C.P. §12(b)(6) allows dismissal only if the Amended Complaint fails to state a claim. Claims that the AC is inaccurate can be made after full discovery in a motion for summary judgment under F.R.C.P. § 56. The AC states a cause of action under F.R.C.P. § 12(b)(6). At best, Fox wants Plaintiff to plead the AC with greater specificity. Yet by attaching Exhibits A-C to the AC, Fox demonstrates exactly how unnecessary it is for Plaintiffs to do so.

Wherefore, Plaintiffs respectfully request that this Honorable Court deny the Fox News Defendants' Motion to Dismiss Pursuant to F.R.C.P. 12(b)(1) and 12(b)(6).

Respectfully submitted,
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