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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

BAHMAN GUYURON, M.D., ET AL.
Plaintiff

Case No: CV-15-850082

Judge: ROBERT C MCCLELLAND

MARISA USER, FKA MARISA WIENER
Defendant

JOURNAL ENTRY

RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT. O.S.J.

O.S.J.

Judge Signature

Date

FILED

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CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

BAHMAN GUYURON, et al.,)	
)	CASE NO.: CV-15-850082
Plaintiffs,)	
)	JUDGE ROBERT C. MCCLELLAND
vs)	
)	
MARISA USER,)	<u>RULING ON CROSS MOTIONS FOR</u>
)	<u>SUMMARY JUDGMENT</u>
Defendants.)	

The parties have, in essence, filed cross-motions for summary judgment. Plaintiff filed a motion for summary judgment on the issue of liability only and the defendant filed a motion for summary judgment. For the reasons which follow, both motions are denied.

The internet has brought a wealth of information, new means of shopping, new avenues of marketing, and many more innovations. However, it has also brought massive amounts of misinformation, schemes to steal identities and wealth, and a sounding board for the most wide spread and sometimes vicious commentary on any and every subject. Much of the vitriol comes in the form of anonymous bloggers able to hide behind their anonymity.

As shown by the hundreds of pages of exhibits presented to this Court and the parties' motions, there are disputed issues of material fact on all the essential elements of this case. The plaintiff markets his professional services on the internet raising a question of whether he qualifies as a "public figure" even in a limited way. That determination will have a great impact on whether the defendant's internet statements and critiques are protected speech consistent with the First Amendment of the Constitution.

If the plaintiff is not a public figure, there are factual issues concerning his claims of defamation. Truth is a complete defense to a claim of defamation and the defendant will need to present competent medical testimony to support her claims of a less than successful outcome to her procedures. This also meant that both parties will have all of these allegations and evidence fully presented in open court on the record for anyone to hear.

In addition to the "truth" defense, the defendant may also assert as a defense that her statements were not made with "actual malice". The plaintiff must prove actual malice by clear and convincing evidence. As can be seen on all the websites that either invite or accept comments or criticism (i.e. Yelp) the comments appear to include honest accolades or criticism, nasty critiques, revenge critiques, and promotional critiques to support and enhance the purveyor of the product of service. Instead of letters to the editor or complaints to the Better Business Bureau, the internet has opened up this avenue for immediate response and comment in a public forum accessible to anyone with a cell phone, tablet, or computer.

Multiple questions are raised by this action, nearly all of which were set forth in the parties' opposing motions. As is obvious by the simple fact that both sides are asserting directly opposing positions on the factual bases from the claims and defenses, there are genuine issues of material fact in dispute. Until evidence is fully presented in open court, it is impossible to resolve the currently disputed issues.

In the play, *Inherit The Wind*, a dramatization of the Scopes "Monkey Trial" in the 1930's concerning the teaching of evolution in schools, Henry Drummond, the attorney for the accused school teacher, presented this monologue to the jury about progress:

Progress has never been a bargain, you have to pay for it. Sometimes I think there is a man who sits behind a counter and says, "alright, you can have a telephone but may lose your privacy and the charm of distance. Madam, you may vote, but at a price. You lose the right to retreat behind your powder puff or your petticoat. Mister, you may conquer the air but the birds will lose their wonder and the clouds will smell of gasoline."

The internet is yet another form of progress with an element of give and take. You can have access to a much larger audience but by doing so, you open yourself up to responses from that audience and they may not all be favorable. Defamation is still a viable cause of action and it is subject to the traditional defenses of truth and actual malice all of which must be considered against the backdrop of the pluses and minuses brought by the internet.

There being all of these issues of fact in dispute, both of the parties' motions are denied.

IT IS SO ORDERED.



JUDGE ROBERT C. MCCLELLAND

Date: _____

4/17/17

SERVICE

A copy of the foregoing Order was sent on the 18th day of April, 2017 by regular U.S. mail, postage pre-paid to:

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