

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

SAGUN TULI, M.D.,
Plaintiff,

v.

GARY M. VOTOUR,
Defendant,

and

Automattic, Inc.,
As Necessary Party.

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
FEB 19 2013
[Signature]
CLERK

13-0607

5756A000002/19/13CIVIL	240.00
5756A000002/19/13BURCHARGE	15.00
5756A000002/19/13FEE	20.00
5756A000002/19/13SUMMONS	10.00

COMPLAINT AND JURY DEMAND

i. Introduction

1. In or about September 2005, defendant Gary M. Votour's ("Votour") wife, Lyn Votour, was diagnosed with an extremely rare form of bone cancer located in her neck. Plaintiff Sagun Tuli, M.D. ("Dr. Tuli"), a neurosurgeon then at Brigham and Women's Hospital, was one of many physicians who medically treated Votour's wife. Unfortunately, Votour's wife ultimately succumbed to her illness and passed away in 2008.

2. In March 2010, Votour started an online blog entitled "Open Letter to Sagun Tuli" ("Blog") to apparently assist in his grieving process. The Blog generally describes the medical treatment that his wife experienced as well as his thoughts on the overall experience. The Blog, however, includes multiple false and defamatory statements of fact concerning Dr. Tuli and her role in the treatment of Votour's wife. Further, these false and defamatory statements were designed and intended to harm Dr. Tuli's personal and professional reputation.

3. Dr. Tuli brings this action to recover damages for the significant harm inflicted upon her by and through Votour's actions in wrongly, publicly and intentionally disparaging her through his Blog entitled "Open Letter to Sagun Tuli". Dr. Tuli brings this action to also permanently remove Votour's Blog in order to stop the continued publication of Votour's false and defamatory statements as they pertain to Dr. Tuli.

ii. Parties

4. The Plaintiff, Sagun Tuli, M.D. ("Dr. Tuli"), is a resident of Chestnut Hill, Massachusetts, Middlesex County. Dr. Tuli is a board-certified and professionally published neurosurgeon. Dr. Tuli was never the subject of any disciplinary or medical malpractice action concerning her treatment of Votour's wife. At all times and for all purposes pertinent hereto, Dr. Tuli is a private figure and entitled to the protections afforded to private individuals under the law.

5. The Defendant, Gary M. Votour ("Votour"), is a resident of Columbia, South Carolina. Votour is the author of the Blog entitled "Open Letter to Sagun Tuli". Prior to moving to South Carolina and at times relevant to this case, Votour resided in Barre, Massachusetts.

6. The Blog is located at the following internet address:
<http://gvotour.wordpress.com/>. Upon information and belief, wordpress.com is owned, operated and/or controlled by Automattic, Inc., which operates in Redwood City, CA. Automattic, Inc. is a necessary party under the Massachusetts Rules of Civil Procedure.

iii. Facts

7. On or about March 2, 2010, Votour created the internet Blog entitled "Open Letter to Sagun Tuli". See Exhibit A.

8. The purpose of Votour's Blog was to apparently "share [his] feelings about Sagun Tuli as a part of [his] recovery after the death of [his] wife, Lyn." *Id.*, p. 27. He wrote: "*This is an open letter to Sagun Tuli, a neurosurgeon at The Brigham and Womans [sic] Hospital in Boston, MA written by Gary Votour.*" *Id.*, p.9 (emphasis in original).

9. The Blog contains actionable statements that stray beyond mere expressions of opinion and that constitute false and defamatory statements of alleged facts. Votour's false, inaccurate and misleading statements concerning Dr. Tuli were made for the purpose of damaging Dr. Tuli's personal and professional reputation, and have indeed damaged Dr. Tuli's personal and professional reputation.

10. Votour's Blog states that, by the time his wife had been discharged from Dr. Tuli's care and had started her rehabilitation process, "several doctors at the Brigham had told us Dr. Tuli was to blame for Lyn's stroke. One neurosurgical resident even told me . . . 'I hope you realize you are bringing home the equivalent of a new pet.'" *Id.*, p. 18. Votour's statements and representations are false, misleading and inaccurate.

11. When discussing his wife's rehabilitation at Spaulding Rehabilitation Hospital, Votour's Blog states: "The doctor's [sic] and staff at Spaulding urged me to consider filing a lawsuit against Dr. Tuli and the Brigham." *Id.*, p.20. Votour's statements and representations are false, misleading and inaccurate.

12. When discussing his wife's subsequent treatment at Massachusetts General Hospital for complications that had developed after Dr. Tuli's surgery, Votour's Blog states: "The surgeon who saved Lyn's life at Mass General Hospital . . . asked me 'Why did you let the Doctor at Brigham do this to your wife?' . . . as if I had a choice. I told him to ask Dr. Tuli why

she had done it to her. I am sure he did not.” *Id.*, p. 20. Votour's statements and representations are false, misleading and inaccurate.

13. When discussing a bruise that appeared on his wife's buttocks after her first surgery performed by Dr. Tuli, Votour's Blog states: "Dr. Tuli said not to worry, it was just a fluid buildup from the first round and it would be ok.” *Id.*, p. 14. Votour's statements and representations are false, misleading and inaccurate.

14. Votour's Blog states: “Test after test ordered by Dr. Tuli failed to show any reason for the strokes other than the surgery itself. It seemed to be her mission to come up with a reason that took the blame from her, although Lyn and I did not blame her. In fact she told Lyn and I that she believed her strokes had been caused by a tear in her heart which had allowed a clot to pass through the brain blood barrier. She told us that any further surgeries would put Lyn at risk of another stroke. This was to have a great impact later... in fact that simple statement almost killed Lyn.” *Id.*, p. 16. Votour's statements and representations are false, misleading and inaccurate.

15. Votour's Blog states: "At the age of 51, I have lost my wife of twenty eight years, not to cancer but to indifference and egotism" (of Dr. Tuli). *Id.*, p. 23. Votour's statements and representations are false, misleading and inaccurate.

16. On or about March 11, 2010, Dr. Tuli's legal counsel sent Votour a letter that respectfully requested him to take down the Blog or, at a minimum, remove the defamatory statements concerning Dr. Tuli. *See Exhibit B*. The letter also requested Votour to remove Dr. Tuli's photograph from the Blog. *Id.*

17. The next day, instead of taking down the Blog or removing the defamatory statements concerning Dr. Tuli, Votour posted a copy of the March 11th letter in his Blog. *See*

Blog, p.7 (attached as Exhibit A). He further stated: "I am not accusing anyone but her [Dr. Tuli] of any wrongdoing during my wife's [sic] stay at the Brigham; *I am simply stating the facts as I saw them, repeating things that were told to Lyn (My Wife), myself and others*, and drawing my own conclusions." *Id.*, p.8 (emphasis added).

18. Also on March 11, 2010, Dr. Tuli's legal counsel sent a letter to Automattic, Inc., which owns, operates and/or controls the website where Votour's Blog is located, that requested it to take down the Blog or remove the defamatory statements concerning Dr. Tuli. See Exhibit C. Automattic, Inc. took no action in response to the March 11th letter.

19. On or about September 29, 2011, Dr. Tuli's legal counsel submitted an internal complaint with wordpress.com through its online Abuse Reporting process. Wordpress.com responded that it would not remove any content from its website until and unless it received a Court Order stating which particular content is defamatory or illegal.

20. Dr. Tuli's damage suffered as a result of Votour's Blog remains ongoing. Among other things, people have published comments on the Blog demonstrating their disdain for Dr. Tuli based on Votour's false and inaccurate statements. One person published the following: "Shame on you Sagun Tuli. Have you no conscience or human compassion or sense of human dignity? You are a doctor? I think not, at least in the sense of 'thou shall do no harm.'" Comments to Blog post "About the author," p.3 (attached as Exhibit D).

21. Another person who had been referred to Dr. Tuli by her primary care doctor chose not to make an appointment with Dr. Tuli because of Votour's false and inaccurate statements: "Mr. Votour, I just read your heart wrenching story and words can not express to you how very sorry I am for the lost [sic] of your wife. I would also like to thank you for writing this letter regarding Sagun Tuli. My primary care doctor just recently recommended that I go see

Dr. Tuli regarding a back problem that I have and the typical woman I am, I have been putting off making the appt and I am so very glad I did. *Thank you for saving my life.*" Comments to Blog post "An open letter to Sagun Tuli," p.20 (emphasis added) (attached as Exhibit E).

COUNT I
Defamation
(Gary M. Votour)

22. Plaintiff realleges and incorporates each of the prior paragraphs as if fully restated herein.

23. As set forth above, Votour published false, inaccurate and misleading statements concerning Dr. Tuli in his Blog. Votour knew these to be false, inaccurate or misleading, or should have known them to be false, inaccurate or misleading in the exercise of reasonable care.

24. By and through his actions, Votour held Dr. Tuli up to public scorn and ridicule, and damaged her good name and reputation. The public has been left with the false impression that Dr. Tuli was responsible for and the cause of Votour's wife's death.

25. As a result, Dr. Tuli's reputation, both personally and professionally, has been damaged.

COUNT II
Injunction
(Automattic, Inc.)

26. Plaintiff realleges and incorporates each of the prior paragraphs as if fully restated herein.

27. As set forth above, Votour published false, inaccurate and misleading statements concerning Dr. Tuli in his Blog. Votour knew these to be false, inaccurate or misleading, or should have known them to be false, inaccurate or misleading in the exercise of reasonable care. Thus, Plaintiff is likely to succeed on the merits of her claims.

28. The Plaintiff will suffer permanent and irreparable harm if these false and defamatory postings, and postings like them remain available for the public to review.

29. Wordpress.com, which is owned, operated and/or controlled by Automattic, Inc., refused to remove the Blog from its website unless and until it received a Court Order ruling that the above-referenced statements to be defamatory or illegal.

30. Upon determination by the Court that Votour published false, inaccurate or misleading statements concerning Dr. Tuli, Plaintiff seeks an order enjoining Automattic, Inc. and/or wordpress.com from publishing the Blog or, at a minimum, the defamatory statements from its website. In addition, Plaintiff seeks an order precluding and enjoining Votour from publishing or disseminating similar false statements as those set forth in the Blog.

WHEREFORE, Sagun Tuli, M.D. respectfully requests that the Court grant him the following relief:

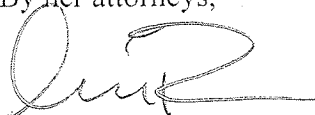
- i. after trial, enter judgment on each Count asserted by Sagun Tuli, M.D. in her favor and award her damages in the amount so assessed by the jury, including fees, costs and interest;
- ii. enter a permanent injunction enjoining Automattic, Inc. and/or wordpress.com from publishing the Blog or, at a minimum, the defamatory statements from its website and as well enter a permanent injunction precluding and enjoining Votour from publishing or disseminating similar false statements as those set forth in the Blog; and
- iii. grant such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Sagun Tuli, M.D. hereby demands a trial by jury on all claims so triable.

SAGUN TULI, M.D.,

By her attorneys,



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Dated: February 15, 2013