

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

WEATHERGUARD CONSTRUCTION)
COMPANY, INC., a Minnesota)
Corporation, and WEATHERGUARD)
CONSTRUCTION COMPANY, INC,)
an Illinois Corporation, and Brett)
MacDonald,)

Plaintiff,)

vs.)

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,)
JOHN DOE 4, JOHN DOE 5, JOHN DOE 6,)
JOHN DOE 7, JOHN DOE 8, JOHN DOE 9,)
JOHN DOE 10, JOHN DOE 11, JOHN DOE 12,)
JOHN DOE 13, JOHN DOE 14, JOHN DOE 15,)
JOHN DOE 16, JOHN DOE 17, and)
JOHN DOE 18,)

Defendants.)

2009L004438
CALENDAR/ROOM I
TIME 00:00
Libel/Slander

No. _____

FILED
JUL 14 2009
CLERK OF COURT
JUDICIAL CENTER
100 N. LAUREL ST.
CHICAGO, IL 60602

PLAINTIFFS' COMPLAINT

Weatherguard Construction Company, Inc., a Minnesota corporation, Weatherguard Construction Company, Inc., an Illinois corporation. (collectively, Weatherguard) and Brett MacDonald, an individual, (Plaintiffs) by and through their attorneys, Mark L. LeFevour of Leahy, Eisenberg & Fraenkel, Ltd., and Richard C. Balough, hereby complains against John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, John Doe 6, John Doe 7, John Doe 8, John Doe 9, John Doe 10, John Doe 11, John Doe 12, John Doe 13, John Doe 14, John Doe 15, John Doe 17, and John Doe 18, (Defendants) as follows:

FACTUAL BACKGROUND

1, Weatherguard is separately incorporated in both Minnesota and Illinois. The Illinois corporation maintains a general office located in Schaumburg, Cook County, Illinois.

2. As part of its business, Weatherguard provides services for residential and commercial customers to repair roofing and siding and to make other weather-related construction repairs after a weather event.

3. Brett MacDonald is an individual who is also an officer and owner of Weatherguard.

4. Defendants are individuals who have posted various comments concerning Plaintiffs on a website with a URL of www.topix.com (Topix.com), owned by Topix, LLC (Topix).

5. Topix.com is accessible by any person with a computer that has access to the Internet, including persons in the State of Illinois and Cook County, Illinois.

6. The Topix.com website is interactive in that persons can both read postings on the site and make new postings through the website from their computers, including computers located in Cook County, Illinois.

7. Part of Topix.com includes "forums" where persons can post items on the Internet through Topix.com. The forums are divided into "threads," which are specific topics that the posts are to address.

8. A person desiring to post on a Topix thread encounters a computer screen that includes a computer generated number intended to block out robots and spiders. The person is required to enter the computer generated number, enter a screen name, and then posts the desired comment. The person is not required to include an email address or pay for the service. However, a person entering the generated number and screen name provides Topix with certain information, including but not limited to "cookies," and an Internet protocol address (IP address).

9. On about May 4, 2007, Topix began hosting a thread entitled "White Bear Lake, MN, WeatherGuard Construction" (Weatherguard Thread).

10. The Weatherguard Thread was not solicited, initiated, authorized, or sponsored by Weatherguard.

11. The Weatherguard Thread purports to contain postings about Weatherguard in general, its personnel and its operations, including its operations in the State of Illinois and Minnesota.

12. The posters on the Topix.com website Weatherguard Thread are identified by the "screen names" the posters provided as a result of the process noted in Paragraph 8 above. The screen names allow the persons to post anonymously since the persons are not required to give their actual names when posting.

13. In addition to each poster's screen name, the Weatherguard Thread lists a city and state for the poster, but there is no way to check the accuracy of the city and state appearing on the Weatherguard Thread.

14. Many of the posts on the Weatherguard Thread are untrue, false and defamatory.

15. Many of the posts contain statements that are defamatory and libelous to Plaintiffs.

16. For example, the postings by Defendants listed below have falsely stated that Plaintiffs "scam homeowners," enter into "illegal contracts," "purposefully damage homes," employ "con artists," and evade "paying taxes."

17. Since learning of the presence of the Weatherguard Thread, Plaintiffs have diligently sought the personal identity of the Defendants.

18 Because each poster to the Weatherguard Thread leaves “cookies,” Plaintiffs have obtained the IP addresses that the Defendants used when the posts were made. Each IP address can be tracked to a specific Internet service provider and, ultimately, to the poster’s computer. Tracing back the IP addresses can take considerable time and effort.

19. In spite of its diligent efforts, Plaintiffs at the present time know the Defendants only by their screen names and addresses and the IP addresses used when the posts were made.

20. While some screen names are different, the IP addresses are the same. For example, John Doe 7, John Doe 8 and John Doe 9 posting under the screen names of Victoria (used on 6/3/2008), James (used on 6/3/3008) and Joyce (used 6/3/2008) all have an identical IP address of 75.72.47.189 (Comcast Cable). This can mean that one poster is using several screen names or that several posters are using the same computer or computer network. .

21. On information and belief, some of the Defendants are residents of Illinois and Cook County.

22. The injury to Plaintiffs as a result of the Defendants’ postings on Topix.com occurred in Cook County, Illinois.

23. The specific statements about Weatherguard and Brett MacDonald include the following posts identified by screen name, post number and date of post:

- a. **John Doe 1:** “Their contracts in Illinois are ore [sic] than likely illegal.” Hailchaserchaser, IP Address 67.174.27.119, April 14, 2008, Post No. 103. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- b. **John Doe 2:** “Bob, I don’t want to sound rude or ignorant, but your [sic] an idiot if you believe WG is any less then [sic] a bunch of crooks. I’ve completed many

jobs behind WG, not only saving on cost, but doing a legitamate [sic] job. WG subs work to the lowest bidder, and 99% of the time the work is junk.” Tim, IP Address 170.202.22.1, April 16, 2008, Post No. 107. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.

- c. **John Doe 3:** “WG has been horrible. Stalked us when we wouldn’t sign their contract and made harassing phonecalls [sic] to bully us when we went with another company. Their company even had two people climb on the roof with our insurance adjuster when we did not give them permission to do so. When asked if they would give us a bid they said no. Beware—these guys are bad news!!!” Sara, IP Address 64.53.191.143, April 25, 2008, Post No. 112. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- d. **John Doe 4:** “I’ve dealt with WG a few times, they seem like a bunch of punks. I’ve seen them try to pick fights with other neighboring contractors, it’s quite pathetic. I don’t know how their business is run, but as far as i know, 9/10 homeowners I’ve talked to whom [sic] used WG as their contractors were not satisfied. That says a lot about a company.” Joseph, IP Address 68.75.180.181, May 14, 2008. Post No. 133. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- e. **John Doe 5:** “Well you were one of the luck [sic] ones, Nancy. WG has screwed over me and alot [sic] of my friends. I wish we could have done something or read this site before. I am sick of getting taken advantage of by big companies like WG!” Mike W., IP Address 4.159.17.185, May 26, 2008, Post No. 146. A

copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.

- f. **John Doe 6:** “Weather guard is a bunch of scammers. They purposely damage people’s home and have the insurance company pay for it, happened to me!” Steve Berkley, IP Address, 68.75.162.79, June 2, 2008, Post No. 151. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- g. **John Doe 7:** “Weatherguard came to my house door to door and created what they thought would appear to be weather damage. Now I am stuck with the damage they created and the insurance adjuster saw what they did and will no [sic] cover it legitimately. What a con artist who wrecked my roof and now I have not a leg to stand on because the Weatherguard guy did the damage to fraud my insurance company and guess what. I am screwed.” Victoria, IP Address 75.72.47.189, June 3, 2008, Post No. 153. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- h. **John Doe 8:** “Jim Walters came to my home and claimed weather damage. He was a frayd [sic] and followed up by wrecking my roof. The insurance adjustor came from my company and made it clear James Walters and Adam Timberlake are rip off artists and cause damage to properties in order to make the money. It is a scam all day long. Hopefully, insurance companies will warn their clients to not allow them on their roof. But one of the problems is if you are not home they will wreck your roof and come back later and claim it is weather. Insurance adjustors are well versed and they will tell you about the scam. It is a crime what

Weatherguard and Jim Walters and Adam Timberlake do for a living.” James, IP Address 75.72.47.189, June 3, 2008, Post No. 154. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.

- i. **John Doe 9:** “If you think WG is on your side you are a gullible fool. WG is only in the business to rip off clients, insurance companies and their new reps.” Joyce, IP Address 75.72.47.189, June 3, 2008, Post No. 156. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- j. **John Doe 10:** “But I can tell you this. They’re more than just scam artists. They’re money launderers, they’re committing insurance fraud, tax fraud, you have no idea. Someday, you will. I assure you. Joyce was right. They are soon to demise. . . . And trust me, guaranteed, there’s a federal agent or two on this website, phishing for information and getting plenty of it. And when it all goes down, and it will, ‘told ya so.’” Told ya So, IP Address 67.40.163.161, June 6, 2008, Post No. 167. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- k. **John Doe 11:** “Just had a former WG employee come by the house. Said that he hasn’t been payed [sic] his commissions for the last 3 months. Also said that they are bein [sic] investigated for Tax fraud among other things. He and all of his fellow associates now no longer works for WG.” Joe, IP Address 76.238.88.169, June 20, 2008, Post No. 179. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- l. **John Doe 12:** “Contractors like Weatherguard who trick homeowners into contracts and put yard signs in yards that have not even decided which contractor

to use, give all storm damage contractors in the area a bad name.” Moc24, IP Address 75.204.119.180, July 7, 2008, Post No. 206. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.

- m. **John Doe 13:** “Wow I have not been on here in a bit and I see why. Have you people not figured out that Weatherguard is screwing over everyone, customers and insurance companies. If anyone is interested in actually doing something about it let me know A.S.A.P.” Mark Syles, IP Address 4.159.17.235, July 8, 2008, Post No. 210. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- n. **John Doe 14:** “What’s the next step to stopping this very corrupt company?” Betty, IP Address 63.231.157.248, July 8, 2008, Post No. 211. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- o. **John Doe 15:** “Crooked, crooked, crooked!” John Hancock, IP Address 209.183.32.42, December 8, 2008, Post No. 291. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- p. **John Doe 16:** “the owner of weatherguard brett macdonald is involved in a insurance fraud scandle.” Weatherguards nightmare, IP Address 24.118.78.11, December 11, 2008, Post No. 292. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.
- q. **John Doe 17:** “Those f---kers damage roof and try to get homeowners insurance company to pay for the damages. Bunch of scammers if you ask me.” josh stevens, IP Address 71.228.44.42, January 2, 2009, Post No. 294. A copy of the

post is included in Exhibit A to this complaint and incorporated by reference herein.

- r. **John Doe 18:** “You’ll soon see Weatherguard is out for a quick dollar and has no ethics.” Kellie, IP Address 173.8.106.89, January 20, 2009, Post No. 297. A copy of the post is included in Exhibit A to this complaint and incorporated by reference herein.

COUNT I.
DEFAMATION

24. Plaintiffs reallege paragraphs 1-23 above as and for Paragraph 24 of Count I as if fully set forth herein.

25. The above listed posts by Defendants on the Weatherguard Thread are libel per se. They impute that Plaintiffs engaged in the commission of crimes, impute an inability or want of integrity in the discharge of their business, and impute the lack of ability of Plaintiffs in their business.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court find:

- That the posts by Defendants on the Weatherguard Thread are libel per se.
- That the Court assess monetary damages against the Defendants.
- That the Court assess monetary damages against Defendants in an amount in excess of the jurisdictional minimum of this court’s jurisdiction.
- That the Court enter a finding that the postings were done intentionally and with malice and that Plaintiffs are entitled to an award of punitive damages and a finding by the Court that due to the intentional nature of the Defendants’ actions,

that any judgment entered against the Defendants is non-dischargeable in bankruptcy.

- That the Court award Plaintiffs their costs and award any other relief that the Court deems appropriate.

COUNT II.
TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONSHIPS.

26 Plaintiffs reallege paragraphs 1-23 above as and for Paragraph 25 of County II as if fully set forth herein.

27. The posts on the Weatherguard Thread by Defendants are intended to interfere with Weatherguard's prospective business relationships with Weatherguard's customers and to interfere with Weatherguard's potential customers.

28. Several posters to the Weatherguard Thread have indicated that as a result of posts on the Weatherguard Thread they are no longer using Weatherguard. The posts, which are included in Exhibit B attached hereto and incorporated by reference herein, include:

- a. "I signed the paperwork but now have decided to get other bids." Julie in HL, Post No. 135, May 15, 2008.
- b. "Thanks for the information here. I was going to call my insurance company today after speaking to Weatherguard sales rep . . . I did sign a 'contract' yet after viewing this website, I will not be doing business with them. . . . Now I need to tell a dear neighbor who is going to have work done this week." Lynn near Chicago, Post No. 143, May 19, 2008.
- c. "An truly ugly way to do business. Then came into our neighborhood and I was interested. I pulled them up on the web and found this site." Al Miller, Post No. 160, June 6, 2008.

- d. "A couple happy customers and thousands who have been hurt and badly treated. I will look at a local roofer. Thank for the website ,. . . good info" Organ, Post No. 227, July 11, 2008.
- e. "Ed. I am proud to say we did not sign with them. (but we are about the only one in the neighborhood who didn't) Call it intuition, but that's why we started to attempt further investigation. We will check those sites you referred to. Thanks for the insite.[sic]" Lynners, Post No. 267, Sept. 16, 2008.

29. Defendants knew that Weatherguard was seeking work from prospective customers.

30. Weatherguard's expectation of a business relationship with prospective customers was reasonable.

31. Defendants' posts intentionally interfered with Plaintiff's reasonable expectancy to obtain the work.

32. Defendants' posts prevented Plaintiff's legitimate expectancy to develop into a valid business relationship.

33. Defendants' interference resulted in injury to Plaintiffs.

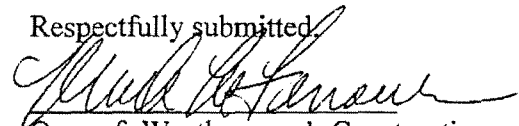
PRAYER FOR RELIEF

Wherefore, Weatherguard requests that this Court find:

- That the postings by Defendants on the Weatherguard Thread are libel per se.
- That the Court assess monetary damages against the Defendants.
- That the Court find that Defendants' posts on the Weatherguard Thread have intentionally interfered with Weatherguard's potential customers.

- That the Court assess monetary damages against Defendants in an amount in excess of the jurisdictional minimum of this court's jurisdiction.
- That the Court enter a finding that the postings were done intentionally and with malice and that the Plaintiffs are entitled to an award of punitive damages and a finding by the Court that due to the intentional nature of the Defendants' actions, that any judgment entered against the Defendants is non-dischargeable in bankruptcy.
- That the court award Plaintiffs their costs and award any other relief that the Court deems appropriate.

Respectfully submitted,



One of Weatherguard Construction
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