

A New Level of Competency: Effective Case Pleading for Online Torts

Lawyers are charged with a duty of competency to their clients, which require the “legal knowledge, skill, thoroughness and preparation reasonably necessary” for the representation.¹ This duty takes a new spin when it comes to drafting pleadings in cases arising from online torts.

Leser v. Karenkooper.com, 2008 NY Slip Op 50135U (N.Y. Sup. Ct. 2008) highlights the challenges lawyers now face in traditional pleading with cyber-tortfeasings. In *Leser*, the plaintiff maintained an online store and sued another online store for false claims made online about the Plaintiff. The allegations included using the Plaintiff’s name, photo and e-mail address on the internet, as well as a pornographic website, in order to cast plaintiff in a negative light.²

Plaintiff’s facts sound like the case you want to take: A woman being wronged, including her image appearing on an adult website, for sinister corporate warfare. *Leser* ends with most of the Plaintiff’s causes of action being dismissed. What went wrong?

The Amended Complaint contained the following Causes of Action:

- First: statutory identity theft pursuant;
- Second: intentional infliction of economic damage;
- Third: tortious interference with prospective economic advantage;
- Fourth: libel and casting plaintiff in a false light;
- Fifth: conversion and misappropriation;
- Sixth: fraud; and
- Seventh: breach of plaintiff’s right to privacy and right to seclusion.

The Defendants moved to dismiss the Amended Complaint with prejudice for failure to state a cause of action. The libel cause of action survived only in part.

The Court went through each entity sued and cause of action with a fine legal comb. First, the dot com entity sued (Karenkooper.com) was dismissed as a trade name with “no jural existence” that could not be sued independently of its owner. Next, the first cause of action sought a claim under a statute that did not apply to the parties and was accordingly dismissed. The second cause of action was dismissed for a failure to plead special damages and intent. This goes on for each cause of action.

The libel cause of action survived on principles of libel per se, because posting photos of a woman on an adult site would impute unchastity to plaintiff. However, the other libel cause of action failed to state, “the particular words complained of” and was also dismissed. One wonders if the plaintiff had been a man if this would have survived, since libel per se’s unchastity provision only applies to women.

The Amended Complaint in *Leser* failed because the lawyers were in new territory: They knew there was a wrong done unto their client online, but didn’t have the experience to apply the law to cyber-facts. A lawyer’s duty of competency should require them to understand the “virtual” facts and technology at work, which statutes and common law claims apply to those facts and plead their case to effectively represent their clients. Cases such as *Leser* will be more common place and lawyers need to be ready to vindicate their client’s rights.

¹ ABA Model Rule 1.1, which is followed in most states.

² *Leser v. Karenkooper.com*, 2008 NY Slip Op 50135U (N.Y. Sup. Ct. 2008)