

CAUSE NO.: 17-8460-431

JESSICA VIDRINE	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	431st JUDICIAL DISTRICT
	§	
DR. RYAN DANIEL	§	
	§	
Defendant.	§	DENTON COUNTY, TEXAS

**DEFENDANT DR. RYAN DANIEL'S ORIGINAL ANSWER, AFFIRMITIVE DEFENSES
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Dr. Ryan Daniel, hereinafter called Defendant, and **SUBJECT TO DEFENDANT'S 1st AMENDED MOTION TO TRANSFER VENUE** files this his Defendant's Original Answer, Affirmative Defenses and Request for Disclosure, and for cause of action shows unto the Court the following:

**I.
GENERAL DENIAL**

1. Pursuant to Texas Rule of Civil Procedure 92, Defendant generally denies each and every allegation set forth in Vidrine's 1st Amended Petition, and demands strict proof by a preponderance of the credible evidence of any and all claims, charges, and allegations which may be urged by Vidrine.

II. AFFIRMITIVE DEFENSES

2. Without admitting liability as to any of Vidrine's causes of action, Defendant asserts the following defenses and other matters:

3. Defendants are not liable to Plaintiff under tortious interference for lack of a "willful and intentional act of interference." *John Paul Mitchell Systems v. Randalls Food Markets, Inc.*, 17 S.W.3d 721 (Tex. App.--Austin 2000, pet. denied). No benefit was derived by Defendant, he was merely involved in showing Dr. Patel of the Plaintiff's own post which itself was the breach of Dr. Patel's employment agreement with the Plaintiff that was the basis of the termination. "Texas courts have held that to satisfy this element of the cause of action for tortious interference, a party must be more than a willing participant; it must knowingly induce one of the contracting parties to breach its obligations. *Id.* (citing *Browning-Ferris, Inc. v. Reyna*, 865 S.W.2d 925, 927 (Tex. 1993). In *Browning-Ferris, Inc. v. Reyna*, the Supreme Court held that a willful act involves more than participation with a breaching party. *Id.* at 730, citing *Brown-Ferris* at 927 (finding no evidence of an essential element of tortious interference with contract).

4. Defendants are not liable to Plaintiffs under the defense of justification to Plaintiff's claims for tortious interference under *Victoria Bank & Trust Co. v. Brady*, 811 S.W.2d 931, 939 (Tex. 1991), (citing *Sterner v. Marathon Oil Co.*, 767 S.W.2d 686-690 (Tex. 1989) (the Supreme Court held that "the privilege of legal justification or excuse in the interference of contractual relations is an affirmative defense upon which the defendant has the burden of proof.) Under the defense of legal justification or excuse, one is privileged to interfere with another's contractual relations (1) if it is done in a bona fide exercise of his own rights, or (2) if he has an equal or

superior right in the subject matter to that of the other party. *Sterner v. Marathon Oil Co.*, 767 S.W.2d at 691; *Sakowitz, Inc. v. Steck*, 669 S.W.2d at 107. One may be "privileged" to assert a claim "even though that claim may be doubtful, so long as it asserted a colorable legal right." *Sakowitz*, at 107 (citing *Hardin v. Majors*, 246 S.W. 100, 102 (Tex. Civ.App.--Amarillo 1923, no writ)). Defendant had not only a bona fide right to alert another dentist in his field of the conduct in a public post made by his employee, but also an equal right to the subject matter as it was a picture posted by Plaintiff on her own social media account in a public forum.

5. Defendant is not liable to Plaintiff because Plaintiff expressly assumed the risk. By her own voluntary dissemination of the "Post" unto her own, public social media accounts, Plaintiff expressly assumed the risk of republication and termination from employment; further, no intrusion on privacy can stand due to her own voluntary and willful dissemination of the information. Assumption of the risk remains viable only in cases involving "a knowing and express oral or written consent to the dangerous activity or condition." *Newman v. Tropical Visions, Inc.*, 891 S.W.2d 713, 718 (Tex. App.—San Antonio 1994)(citing *Farley v. M.M. Cattle Co.*, 529 S.W.2d 751, 758 (Tex. 1975).

6. Defendants are not liable to Plaintiffs under the defense of unclean hands. Unclean hands is an affirmative defense that may bar a party with unclean hands from obtaining equitable relief. *Cantu v. Guerra & Moore, LLP*, 448 S.W.3d 485, 496 (Tex. App.—San Antonio 2014) (citing *Davis v. Grammer*, 750 S.W.2d 766, 768 (Tex. 1988); see also *Truly v. Austin*, 744 S.W.2d 934, 938 (Tex. 1988) ("It is well-settled that a party seeking an equitable remedy must do equity and come to court with clean hands.") Here, Plaintiff has unclean hands as the basis for all her causes of

actions stem from her own voluntary dissemination of the Post in a public forum and equity cannot allow her allegations of damages for her own voluntary conduct.

7. Defendant is not liable to Plaintiff because Plaintiff's own acts or omissions proximately caused or contributed to Plaintiff's injuries under proportionate responsibility/contributory negligence. Vidrine's acts, by the posting of an inappropriate picture on her own public social media accounts, has caused all, if any, damages alleged against Defendant.

8. Defendants are not liable to Plaintiffs under the defense of waiver. *Vessels v. Anschutz Corp.*, 823 S.W.2d 762, 765 (Tex. App.—Texarkana 1992); *Sun Exploration and Production Co. v. Benton*, 728 S.W.2d 35, 37 (Tex. 1987). Vidrine has intentionally relinquished the right to privacy by her voluntarily dissemination of the Post, the right to complain of an employment termination based on her own dissemination of the Post, and the right to allege defamation as her own Post cannot be found as a false statement, and thus has waived the ability to bring suit or claims against Defendant.

9. Defendants are not liable to Plaintiffs under the defense of failure to mitigate damages. *Austin Hill Country Realty, Inc. v. Palisades Plaza, Inc.*, 948 S.W.2d 293, 299 (Tex.1997).

10. Defendants are not liable to Plaintiffs under the defense of ratification. *Motel Enterprises, Inc. v. Nobani*, 784 S.W.2d 545, 547 (Tex.App.-Houston [1st Dist.] 1990, no writ). Plaintiff has approved the online dissemination of the Post by conduct allowing the public access to the information with the full knowledge the Post was available to anyone accessing the social media sites, thus, validating the Post by ratification.

11. Defendant is not liable to Plaintiff because Plaintiff has suffered no compensable damage or injury.

12. Defendant is not liable to Plaintiff because of the defense of truth: a defamation claim cannot lie where there are no falsities in the statement, regardless if it is published to third-parties.

**III.
REQUEST FOR DISCLOSURE**

13. Defendant serves this Defendant's Request For Disclosure To Plaintiff pursuant to TEX. R. CIV. P. 194.

**IV.
DEMAND FOR JURY TRIAL**

14. Defendant demands herein a trial by jury pursuant to TEX. R. CIV. P. 216 and has heretofore tendered the jury fee concurrently with this filing.

PRAYER

WHEREAS, Defendant, Dr. Ryan Daniel, respectfully requests that upon hearing of this cause, that Plaintiff Jessica Vidrine be awarded nothing by her claims, that Defendant be awarded costs of court and that the Court grant such other and further relief to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on December 3, 2017, Plaintiff Jessica Vidrine was served with this Defendant Ryan Daniel's Original Answer, Affirmative Defenses and Request for Disclosure via electronic filing service.

/s/ Lauren A. Harris

Lauren A. Harris