

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL

DOCKETED  
JAN 23 2019

R. POSTELL  
COMMERCE PROGRAM

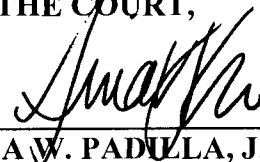
MATTHEW MEYERS and EMILY MEYERS, : December Term 2016  
INVESTMENT GRADE BOOKS, LLC, :  
Plaintiffs, : No. 1182  
v. :  
CERTIFIED GUARANTY COMPANY, LLC, : COMMERCE PROGRAM  
CLASSIC COLLECTIBLE SERVICES, LLC, :  
MATTHEW A. NELSON, and HERITAGE : Control Nos. 180625/18062477  
AUCTIONEERS & GALLERIES, INC., :  
Defendants. :

**ORDER**

**AND NOW**, this 22<sup>nd</sup> day of January 2019, upon consideration of Defendants Certified Guaranty Company, LLC, Classic Collectible Services, LLC, and Matthew A. Nelson's Motion for Summary Judgment and Plaintiffs' response in opposition and Defendant Heritage Auctioneers & Galleries, Inc.'s Motion for Summary Judgment and Plaintiffs' response in opposition and the attached Opinion, it hereby is **ORDERED** as follows:

1. Defendants Certified Guaranty Company, LLC, Classic Collectible Services, LLC, and Matthew A. Nelson's Motion for Summary Judgment is **GRANTED** and judgment is entered in favor of Defendants against Plaintiffs on the claims set forth in Plaintiffs' complaint.
2. Defendant Heritage Auctioneers & Galleries, Inc.'s Motion for Summary Judgment is **GRANTED** and judgment is entered in favor of Defendant Heritage Auctioneers & Galleries, Inc. and against Plaintiffs on the claims set forth in Plaintiffs' complaint.

BY THE COURT,



NINA W. PADULLA, J.

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INVESTMENT GRADE BOOKS, LLC,	:	
Plaintiffs,	:	No. 1182
v.	:	
CERTIFIED GUARANTY COMPANY, LLC,	:	COMMERCE PROGRAM
CLASSIC COLLECTIBLE SERVICES, LLC,	:	
MATTHEW A. NELSON, and HERITAGE	:	Control Nos. 18062511/18062477
AUCTIONEERS & GALLERIES, INC.,	:	
Defendants.	:	

**OPINION**

Plaintiffs Mathew Meyers, Emily Meyers and Investment Grade Books, LLC (“collectively referred to as “Plaintiffs”) filed this action against defendant Certified Guaranty Company, LLC, Classic Collectible Services, LLC and Matthew A. Nelson (collectively referred to as the “CGC”) and defendant Heritage Auctioneers & Galleries, Inc.’s (“Heritage”) alleging claims for defamation and false light on behalf of the individual plaintiffs, claims for tortious interference with existing and prospective contract on behalf of the business plaintiff and conspiracy on behalf of all plaintiffs. Presently pending before the court are the defendants respective motions for summary judgment. For the reasons discussed below, the motions for summary judgment are granted.

**The Parties**

Plaintiffs Mathew and Emily Meyers, husband and wife, are the sole principals of Investment Grade Books, LLC (IGB).<sup>1</sup> Plaintiffs are in the business of restoring and reselling comic books. Restoration typically involves the addition of non-original material for aesthetic enhancement of the comic book. The most common restoration techniques include color touch,

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<sup>1</sup> CGC’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶ 1.

piece replacement, tear seals, cleaning or replacing staples, re-glossing and cover cleaning. Professional restorers use techniques, methods and materials that are generally reversible. Trimming, the practice of trimming the original edges of the comic book to remove tears or straighten out the edges, is another method of restoring comic books which is frowned upon by collectors and negatively affects the value of the books.<sup>2</sup>

Defendant Certified Guaranty Company, LLC (“CGC”) grades and certifies collectible comic books and is considered the leading grading company of collectible comic books. CGC is also the owner or sister corporation of defendant Classic Collectible Services, LLC (“CCS”) which also provides restoration and pressing services<sup>3</sup> to owners of collectible comic books.<sup>4</sup> CGC uses a grading scale of .5 to 10.0, with .5 being poor and 10.0 being mint condition to grade comic books. CGC also grades comic books on a quality scale (A, B, or C), determined by the materials used and the visual quality of the work, and a quantity scale (1 to 5) determined primarily by the extent of piece fill and color touch.<sup>5</sup> Once graded, the comic book is encapsulated in a holder for long-term preservation and a label is placed in the interior of the holder to display the title, issue number, and grade of the comic book. Additionally, comments are also displayed for key comic book issues. Defendant Matthew Nelson (“Nelson”) is the primary grader of comic book restorations for CGC. Nelson also served as President of CCS.<sup>6</sup> In

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<sup>2</sup> CGC’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶¶ 6, 7, 8.

<sup>3</sup> Pressing comics is the process of flattening the books to remove imperfections, such as bends and dents. The grade of the book may be improved and its value increased. Plaintiffs response in opposition to defendant CGC’s motion for summary judgment ¶ 4.

<sup>4</sup>Nelson deposition p. 44-45, attached hereto as Exhibit “ “ to plaintiffs’ response to CGC’s motion for summary.

<sup>5</sup> CGC’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶¶ 3, 14.

<sup>6</sup> CGC’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶ 4.

addition to grading and certifying comic books, CGC also operates an online chat or message board at [www.egcomics.com/boards](http://www.egcomics.com/boards) which provides the comic book community a forum to voice opinions and discuss issues impacting the hobby of collectible comic books.<sup>7</sup>

Defendant Heritage Auctioneers & Galleries, Inc. (“Heritage”) is an auction house that auctions and sells collectibles, such as fine art, illustrations, and memorabilia. Heritage is the largest auction house in the United States for comic books and comic art and conducts both live and internet only auctions. James Halperin (“Halperin”) was a co-founder of Heritage and currently serves as co-chairman. Halperin was also a co-founder of CGC. In addition to Halperin, Steve Ivy is another co-founder and officer of Heritage and CGC.<sup>8</sup> Other relevant individuals in this matter are Heritage employees Barry Sandoval, director of operations in the Comic Book Department, James “Lon” Allen, managing Director of the Comic Book Department and a consignment director for comic books and comic art, Aaron White, consignment director of the Comic Book Department at Heritage, and Gerald Stephan, comic book grader and consignment director in the Comic Book Department.<sup>9</sup> The principal responsibility of the consignment directors is to solicit consignments of comic books and comic art for auctions. The main source of consignments are dealers, collectors, and estate heirs. The “Whale Group” refers to the team of specialist and consignment directors in the Heritage Comic Book Department.<sup>10</sup> The Whale Group was made up of Halpin, Sandoval, White, Allen and others.

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<sup>7</sup> CGC’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶ 3, 14.

<sup>8</sup> Heritage’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶ 3, 17, 18.

<sup>9</sup> Id. ¶¶ 4-7.

<sup>10</sup> Heritage’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶ 8, 9.

## **Plaintiffs and CGC**

Plaintiffs began restoring comic books in 2013. Plaintiffs' early restored comic books had thick covers and an unnatural feel to them. Some of the material used was not reversible. Plaintiffs used a glossing agent which made the covers feel thick and sticky and gave them an unnatural feel. Additionally, plaintiffs also used the trimming technique in restoring comic books. Over time plaintiffs' technique improved and their comic books began to receive high grades. Plaintiffs also developed an expertise in pressing comic books.<sup>11</sup>

In January 2015, plaintiffs and Nelson met face to face for the first time at CGC headquarters in Sarasota, Florida. Nelson complimented plaintiffs' work and offered plaintiffs insight on comic restoration.<sup>12</sup> Specifically, Nelson offered plaintiffs advice on how to improve the CGC grade on a Batman #1 and Amazing Fantasy #15 which had been restored by plaintiffs. Plaintiffs decided to restore Batman #1 themselves but left the Amazing Fantasy #15 with Nelson to press in order to correct a warp in the spine. In March, 2015, Nelson informed plaintiffs that he removed the warp from the spine of Amazing Fantasy #15 but he inadvertently damaged the lower right hand corner of the comic in the pressing process.<sup>13</sup> Nelson mended the comic and sent the comic back to plaintiffs.<sup>14</sup>

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<sup>11</sup> CGC's Motion for Summary Judgment and Plaintiffs' response in opposition ¶¶ 10, 11.

<sup>12</sup> Id. ¶ 18.

<sup>13</sup> CGC's Motion for Summary Judgment and Plaintiffs' response in opposition ¶ 21.

<sup>14</sup> Plaintiffs believe that Nelson kept Amazing Fantasy #15 longer than necessary to study plaintiffs' restoration work on the comic and learn more about their technique because Nelson was concerned that collectors would come to view plaintiffs' technique of restoring as more superior to CGC's. (Plaintiffs' response to CGC's motion for summary judgment ¶ 22).

In late March, 2015, plaintiffs re submitted for grading Batman #1, Amazing Fantasy #15 and Action Comics #7 to Nelson and CGC for grading. Despite adopting Nelson's suggestions for Batman #1 and Amazing Fantasy #15, the books were returned to plaintiffs with the same grades received prior to the additional restoration suggested by Nelson. Plaintiffs requested the grading notes from Nelson but the notes were not provided. Instead, plaintiffs were told that the comics had a smell and that they were too heavy. As for Action Comics #7, Nelson was reluctant to grade this comic because of the excessive amount of color touch and the gloss over the book's entire cover that made it thick and gave it an unnatural feel making it impossible to detect whether it was fake. In this meeting, Nelson asked Paul Litch, CGC's Primary Grader, to join in on the discussion. Plaintiffs assured Nelson and Litch that the cover was not fake and explained that complications arose during the restoration process in implementing a process recommended by Nelson. Despite their initial reluctance to grade the comic book, Nelson and Litch graded the book an 8.0 C-5. Plaintiffs continued to submit their restored comic books to CGC for grading, including a Pep #22 which Nelson said was gorgeous.<sup>15</sup>

In June 2015, plaintiffs submitted to CGC a Detective Comics #29 which they purchased on EBay. The comic was previously restored by CGC and was graded a 6.5 by CGC.<sup>16</sup> After plaintiffs' restoration, CGC graded the book an 8.0 B-5 on the ground that the book was re-glossed and because of a crease of considerable length that was visible on the inside cover.<sup>17</sup> Unhappy with the grade, plaintiffs took the book to another company, Comic Book Certification

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<sup>15</sup> CGC's Motion for Summary Judgment and Plaintiffs' response in opposition ¶¶23, 25, 27.

<sup>16</sup>CGC's Motion for Summary Judgment and Plaintiffs' response in opposition ¶ 28.

<sup>17</sup> Id. ¶ 29.

Service (CBCS) for a second opinion.<sup>18</sup> The comic was graded a 9.0. As a result, plaintiffs stopped using CGC because of an alleged conflict of interest, since CSC also response comic books, with CGC and because of CGC's failure to grade the comic properly.<sup>19</sup>

In December 2015, a thread was started on CGC's online chat board regarding a restored Detective Comic #33 that was being offered for sale. Plaintiffs claim a false rumor was being circulated on the thread that CGC was refusing to grade plaintiffs' books as genuine restorations because plaintiffs had not actually restored damaged or worn pages and covers of the books but only recreated them by removing the damaged or worn ones and substituting photocopies of good versions.<sup>20</sup> Plaintiff Emily Meyers joined the conversation, explained their restoration process, CGC's position on the books and the reason why plaintiffs relationship with CGC terminated.<sup>21</sup> Nelson responded to Emily Myers' postings on December 30, 2015 and January 3, 2016. Plaintiffs allege that Nelson's posts are defamatory. In addition to the posts, plaintiffs allege that Nelson defamed their work directly to a buyer of a restored comic book, made disparaging remarks about their work at comic book conventions held in Philadelphia and San Diego and that individuals associated or affiliated CGC and CCS made certain statements and comments that were also defamatory.

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<sup>18</sup> The president of CBCS is Steve Borock, a former head grader for CGC.

<sup>19</sup> CGC's Motion for Summary Judgment and Plaintiffs' response in opposition ¶¶ 30-31.

<sup>20</sup> Plaintiffs' response to defendant CGC's motion for summary judgment ¶ 32.

<sup>21</sup> Exhibit "11" to CGC's Motion for Summary Judgment, December 2015 and January 2016 thread on CGC's chat.

## **Plaintiffs and Heritage**

Plaintiffs discussed with Heritage the possibility of consigning some of their restored comic books to Heritage for sale or auction, but have never submitted a comic book to Heritage for auction.<sup>22</sup> Heritage consignment directors viewed comic books restored by plaintiffs at the Chicago Comic Convention in 2016. Sandoval, one of the viewers, believed the books to have been heavily restored and the covers photocopied.<sup>23</sup>

In July, 2016, Mr. Meyers contacted Aaron White (“White”) to let him know that he was soliciting offers to handle the sale of a Detective Comics #27 with a CBCS grade of 9.6. White sent an email describing the offer to the Whale Group at Heritage. White said that Meyers had a new way of restoring comic books that was a combination of leaf casting, bleaching, and reprinting the book. White also informed the group that CGC was no longer certifying Mr. Meyers’ comics but the books are now being certified by CBCS. Sandoval replied to White and the Whale Group: “For those not familiar with the name: Mr. Meyers has a technique where he somehow prints out a new cover and puts it on top of the comic. CGC refuses to grade these books.” Halperin requested to see the images of the book and to see exactly what was written on the label on the holder. At or about the same time that Myers was shopping the restored Detective Comics #27, Sandoval informed the others that Heritage was offering for auction Amazing Fantasy #15 that had been restored by Meyers which was consigned to Heritage by a dealer. Ed Jaster, Senior Vice President at Heritage, said he was against offering books restored by Meyers, as was most of Heritage. Allen and Sandoval were also against offering Meyers

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<sup>22</sup> Heritage’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶ 21.

<sup>23</sup> Heritage’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶ 22, 27.



books without making it clear to bidders that “this is a different animal than a regular restored book.”<sup>24</sup>

On August 2, 2016, Allen advised Halperin that the Amazing Fantasy #15 was trimmed on three sides, but the label on the CBCS holder did not mention it. Heritage made the decision to withdraw the book from the auction because of the label discrepancy. On August 8, 2016, White sent Halpern pictures of the book in the holder with some valuations that Myers provided from an online coin and comic book price guide. Halperin decided not to get involved with making an offer to sell the book. Halperin told White that he should be frank with Meyers regarding their decision not to sell his restored books.<sup>25</sup>

On November 29, 2016, Meyers wrote to Halperin asking about Heritage’s policy regarding consignment of IGB restored books and also said that White was confused about CGC not certifying the Meyers restored books and asked for clarification.<sup>26</sup> In response, Halperin stated as follows:

Obviously we respect CGC’s opinion, but I don’t consider their policy to be a factor in this matter. Our concern is that our clients could overpay for books at our auctions and later blame us.

To be clear, to offer books restored with your process, we would need to make a clear distinction between those books and conventionally restored ones, be it a different label color on the part of either of the grading services we recognize (CGC or CBCS), or some sort of strong, bold-faced dis claimer in our catalog descriptions that you would accept and that we feel would properly alert our clients.

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<sup>24</sup> Heritage’s Motion for Summary Judgment and Plaintiffs’ response in opposition ¶ 30, 31, 33, 34-35.

<sup>25</sup>Id. ¶¶ 40, 41, 42, 44.

<sup>26</sup> Id. ¶ 51.

We like doing business with you, and we're always open to creative suggestions.<sup>27</sup>

Mr. Meyers then wrote to Halperin again and asked what his understanding of CGC's policy on grading their books and whether he would sell their books if they were in a CGC holder. Halperin replied that the policy was not based on which service encapsulated the restored books. Halperin explained that if either CBCS or CGC used a different color insert exclusively for IGB restored books or other similarly aggressive restoration, Heritage would reconsider its decision. A dealer subsequently sought to consign a Meyers' restore book to Heritage for auction. While Heritage and the dealer discussed a description for the book for the Heritage catalog, the dealer withdrew the book after Meyers advised him that there was an error on the cover that required repair. The book was never resubmitted to Heritage for auction.<sup>28</sup>

In February 2018, Heritage included a Detective Comic #31, graded a 9.6 by CBCS, restored by Meyers in its auction which was consigned by a dealer. The catalog description was approved by Halperin.<sup>29</sup>

### **Procedural History**

Plaintiffs instituted this action in December 2016 against defendants alleging claims for defamation, false light, tortious interference with existing and prospective contract and conspiracy. On February 17, 2017, defendants CGC's preliminary objections to plaintiffs' compliant was dismissed. On March 28, 2017, the court granted the defendants joint notice of management program dispute and transferred the action to the Commerce Program. On February

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<sup>27</sup> Heritage's Motion for Summary Judgment and Plaintiffs' response in opposition ¶ 53; Exhibit "F" to Heritage's Motion for Summary Judgment.

<sup>28</sup> Heritage's Motion for Summary Judgment and Plaintiffs' response in opposition ¶¶ 54-55.

<sup>29</sup> Id. ¶ 56.

5, 2018, the court denied defendant CGC's petition to transfer based on forum non conveniens. Presently, before court are defendants respective motions for summary judgment which are ripe for disposition.

## DISCUSSION

### **I. The claim for defamation fails against defendant CGC since the statements are opinions, true and not capable of defamatory meaning. The claim for defamation also fails against defendant Heritage since there is no evidence of publication.**

Defamation is a communication which tends to harm an individual's reputation so as to lower him or her in the estimation of the community or deter third persons from associating or dealing with him or her.<sup>30</sup> A plaintiff in a defamation action has the burden of proving: (1) the defamatory character of the communication, (2) its publication by the defendant, (3) its application to the plaintiff, (4) the understanding by the recipient of its defamatory meaning, (5) the understanding by the recipient of it as intended to be applied to the plaintiff, (6) special harm resulting to the plaintiff from its publication, and (7) abuse of a conditionally privileged occasion.<sup>31</sup> It is within the trial court's province to determine whether the challenged statements are capable of defamatory meaning. In the case at hand, the record evidence fails to satisfy the elements of defamation and supports the decision that the statements at issue are opinion or are true.

#### **A. The CGC defendants.**

Plaintiffs argue that Nelson's posts in the chat room supported by CGC are capable of defamatory meaning, i.e. that plaintiffs were incompetent and lacked integrity in the conduct of

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<sup>30</sup> *Moore v. Cobb-Nettleton*, 889 A.2d 1262, 1267 (Pa. Super. 2005), citing *Elia v. Erie Ins. Exchange*, 430 Pa. Super. 384, 634 A.2d 657, 660 (1993).

<sup>31</sup> See, 42 Pa. C. S. A. § 8343 (a).

their business. The court however does not agree. Plaintiffs allege the following statements in the posts are defamatory:

**December 2015 post-**

1. "...Up to the point we stopped receiving submissions there were issues with the work, reflected in our assigning either B or C classifications. A decision was going to be made whether to stop taking books that exhibited questionable work, but submissions ceased...The point of professional restoration is to return a book back to as close to its original state as possible using reversible materials. When work becomes so extensive that it becomes hard to tell what is real and what is recreated, it is impossible to accurately and fairly represent a grade to the market. (Complaint ¶ 44 a).

**January 2016 post-**

2. "...Besides the few books submitted to us the first half of this year, we have not been able to evaluate any potential evolution in the Meyers' work..." (Complaint ¶ 44 b).
3. "... There are two particular aspects I hope have been resolved. They were present on the books we graded (hence the B and C notations we gave) which were subsequently cross graded by CBCS, who gave them professional designations and usually a higher grade. One was the large amount of color touch being applied to the covers, and the other was the material used as a glossing agent over that color touch." (Complaint ¶ 44 c).
4. "...I believe [Matt and Emily] used a product called Golden Gel, which is irreversible...To achieve all of these 9.6's and 9.8's (according to CBCS), either these flaws must be masked with a glossing agent, or only very high grade copies are chosen for restoration. Based on the information I've seen, I don't believe that you are restoring books that were previously unrestored high grade copies. And I don't think there are enough "perfect" candidates out there to produce the large number of ultra high grade books that have entered the market in only the past few months." (Complaint ¶ 44 d).<sup>32</sup>

Nelson's posts, as described above, viewed as a whole and read in context, are statements of opinion. Only statements of fact, not expressions of opinion, can support an action

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<sup>32</sup> Exhibit "11" to CGC's Motion for Summary Judgment- December 2015 and January 2016 thread on CGC's chat.

in defamation.<sup>33</sup> Whether a particular statement or writing constitutes fact or opinion is a question of law for the court to determine in the first instance. A statement in the form of an opinion is actionable only if it may reasonably be understood to imply the existence of *undisclosed* defamatory facts justifying the opinion. A simple expression of opinion based on disclosed facts is not itself sufficient for defamation.<sup>34</sup>

Here, Nelson's posts are made in response to Emily Meyers' statements regarding plaintiffs' techniques in restoring comic books, the agents used by plaintiffs in restoring comic books and plaintiffs' decision to stop submitting restored comic books to CGC for grading. Nelson's posts are his opinions based on firsthand knowledge of his review of plaintiffs' work and are fully supported by disclosed facts that inform the visitor of the facts used to support his opinions. Hence, any subsequent visitor to the chat room may, after reading the thread, discern the factual basis for Nelson's opinions and independently decide whether to agree or disagree with Nelson's opinions on plaintiffs restored comic books. While Nelson's posts may have embarrassed or offended plaintiffs for their chosen technique and tools in restoring comic books, the posts are not defamatory. Plaintiffs conceded in the thread that plaintiffs' first covers of its restored comic book were thick and had an unnatural feel to them. Emily Meyers stated in her January 1, 2016 post that "initially Steve Borock made it clear that our books could improve regarding (natural) feel, flexibility, thickness ...light-handedness, etc..."<sup>35</sup> It is important to note that Nelson never stated in his posts that he refused to grade any of the pieces submitted by

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<sup>33</sup> *Moore v. Cobb-Nettleton*, 889 A.2d 1262, 1267 (Pa. Super. 2005).

<sup>34</sup> *Braig v. Field Communications*, 310 Pa.Super. 569, 456 A.2d 1366 (1983).

<sup>35</sup> Exhibit 11 to CGC's Motion for Summary Judgment -Emily Meyers post dated January 1, 2016.

plaintiffs and or that plaintiffs' covers are fake.<sup>36</sup> Nelson further posted that he could not comment on the state of plaintiffs' work at the time of Emily Meyer's posts since he had not reviewed their work. Nelson's opinions were based on fully disclosed facts in the thread which could be accepted or rejected by any subsequent visitor based on the visitor's assessment of the thread. As such, Nelson's posts are statements of opinion and not subject to a claim for defamation.<sup>37</sup>

In addition to Nelson posts, plaintiffs also allege that the following statements by Nelson and a CGC employee to third parties are defamatory:

1. Nelson's statement to a buyer in June 2015, identified as Cyrus who purchased Detective Comics # 29 graded 9.0 extensive professional grade for \$29,000 from the Meyers that the book he purchased was not a 9 but an 8 and the work was not professional.
2. Nelson's statement in July 2015 at the San Diego Comic Con to Mercado, a broker, and Cyrus, that Meyer's books were stiff and thick and felt like cardboard and were more "recreations" than restorations.

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<sup>36</sup> Plaintiffs argue that Nelson's posts support a cause of action for defamation by innuendo for the rumor which circulated among the comic community that CGC refused to grade plaintiffs books. While Pennsylvania recognizes a cause of action for defamation by innuendo, reading the posts in their entirety and in context, it is clear that Nelson's posts clearly demonstrate that the posts do not support such an innuendo since it was clear in the post that CGC graded all books submitted to it for review and that plaintiffs voluntarily decided to stop using CGC for grading.

Additionally, Kenny Sanderson's post in August 2016 which stated that Detective # 27, graded by CGC as a 6.5 B-5 and subsequently restored by plaintiffs and graded by CGCS as a 9, was trimmed is not defamatory. Sanderson's post is an opinion based on disclosed facts. The thread where the post was made by Sanderson compares images of the books, the 6.5 and the 9.6, and includes a discussion among certain members of the chat room comparing and discussing the restored comic book. Hence, any subsequent visitor may review the thread regarding Detective # 27 and reach his or her own decision regarding whether the book was trimmed. Exhibit "O" to Plaintiffs' response to CGC's Motion for Summary Judgment.

<sup>37</sup> Since the court finds that the Nelson's posts in the forum are not defamatory, there is no need to address whether CGC itself is immune from tort liability under the Communication Decency Act ("CDA"), 47 U.S.C. § 230.

3. Nelson statement to James Lonergan Allen (“Allen”), the Managing Director for the Comic Book Department of Heritage, that plaintiffs’ books were thick and unnatural feeling.
4. Paul Litch, CGC’s primary grader’s statements in an email dated October 7, 2014 to Allen at Heritage stating “we caught a fake cover on one” of the Myers books.

These statements are not actionable as defamatory. Truth is an absolute defense to defamation in Pennsylvania.<sup>38</sup> The pertinent inquiry becomes whether, in viewing the evidence relevant to a motion for summary judgment most favorably toward the non-moving party, there exists a genuine issue of material fact as to the substantial truth of the stories reported.<sup>39</sup> As it pertains to Nelson’s statement to third parties, there are no issues of fact regarding the substantial truth of the statements made.

Nelson’s statements to a buyer of one of plaintiffs’ restored comic books, his statements to a broker at various comic book conferences and his statement to Allen are true and not capable of defamatory meaning. CGC did grade the Detective Comic Book #29 an 8.0 and Nelson did tell plaintiffs that their early restoration work in the 2014-2015 time frame was thick, heavy and had an unnatural feel and felt like cardboard which is acknowledged by plaintiffs. Consequently, the statements is not subject to a claim for defamation.<sup>40</sup>

As for the statement made by Paul Litch to a Heritage employee in a private email that “he caught a fake cover”, reading the statement in context, the court finds that it is not capable of

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<sup>38</sup> *Bobb v. Kraybill*, 354 Pa. Super. 361, 364, 511 A.2d 1379, 1380–81, (Pa.Super.1986) citing *Hepps v. Philadelphia Newspaper, Inc.*, 506 Pa. 304, 485 A.2d 374 (1984), reversed and remanded on other grounds, 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986); 42 Pa.C.S. § 8342.

<sup>39</sup> *Bobb v. Kraybill*, 354 Pa.Super. 361, 364, 511 A.2d 1379, 1380–81, (Pa.Super. 1986).

<sup>40</sup> The Meyers admitted that that the comic book purchased by Cyrus was graded an 8 by CGC. Exhibit “11” attached to CGC’s motion for summary judgment-December 2015- January 2016 posts.

defamatory meaning, did not harm plaintiffs reputation in the community nor did it deter third parties from associating or dealing with them. The particular email at issue originated at the beginning of plaintiffs foray into the comic book restoration. While Litch did make the statement about catching a fake cover, Allen responded in the email thread as follows: “Actually I think a restored X-Men #1 in 9.6 would sell for pretty good money. And Avengers #4 in 9.8 for that matter.”<sup>41</sup> From this statement, it is clear that Allen, despite Litch’s statement, was interested in selling the two comic books restored by plaintiffs and graded by CBCS.<sup>42</sup> There is no evidence that Litch’s statement was viewed by Allen as defamatory or was published. Pennsylvania case law holds that the nature of the audience is a critical factor in determining whether the communication is defamatory. In *Rybas v. Wapner*,<sup>43</sup> the court stated that audience was a critical factor and since the statement was made only to a fellow attorney, the intended publication was extremely limited. The court further held because the audience was limited it would not harm the reputation of the plaintiff in the community.<sup>44</sup> Here the statement was not intended for a large audience; therefore, there was no harm to plaintiffs’ reputation in the comic book community. Plaintiffs place great weight on the fact that the Litch’s statement that a fake cover was caught was false. While Litch admitted that he never did catch a fake cover, it is clear from the record that this statement did not cause plaintiffs any harm since notwithstanding

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<sup>41</sup> Exhibit “S” to plaintiffs’ response in opposition to CGC’s motion for summary judgment.

<sup>42</sup> According to Heritage, it is willing to consider comic books graded by CBCS but not PXG. Allen expressed an interest in the comic books graded by CBCS.

<sup>43</sup> 311 Pa.Super. 50, 56, 457 A.2d 108, 111 (1983).

<sup>44</sup> *Id.* See also, *Beckman v. Dunn*, 276 Pa.Super. 527, 419 A.2d 583 (1980) (statements communicated to a limited audience not capable of defamatory meaning).



Litch's statement, Allen found plaintiffs work to be valuable and expressed an interest in selling the books.

Notwithstanding the fact that Nelson's posts are opinions and that the statements to third parties are the truth or not capable of defamatory meaning, the claim for defamation also fails because plaintiffs have failed to produce any evidence of reputational harm within the comic book community. A necessary element to a claim for defamation is special harm resulting to the plaintiff from publication of defamatory statements. Pecuniary loss is not the only, or even the most significant harm resulting from defamation. Injury to reputation, impairment of standing in the community, personal humiliation and mental anguish are types of actual harm compensable for defamation.<sup>45</sup> In order to show injury to reputation, more is required than a bald assertion that the defamatory statements harmed a plaintiff's reputation "in the social, civil, professional and political community."<sup>46</sup> Here, plaintiffs have not come forward with any evidence, outside of their self-serving deposition testimony, that their reputations have suffered as a result of defendant CGC's statements. Based on the foregoing, the claim for defamation as it pertains to statements to third parties fails.

### **B. Heritage**

As it pertains to Heritage, the claim for defamation also fails. "An essential element of a defamation action is publication."<sup>47</sup> In order to be published, the communication must be

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<sup>45</sup> *Pilchesky v. Gatelli*, 12 A.3d 430, 444 (Pa.Super. 2011) citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974).

<sup>46</sup> *Id.* at 12 A.3d 430, 444 (Pa.Super.2011).

<sup>47</sup> *Reed v. Brown*, 166 A.3d 570, 575 (Pa.Cmwlt. 2017) citing *Flaxman v. Burnett*, 393 Pa.Super. 520, 574 A.2d 1061, 1066 (1990); see 42 Pa. C.S. § 8343(a).

expressed to a third party.<sup>48</sup> In the case *sub judice*, there is no record evidence that Heritage published any statements regarding its decision not to auction plaintiffs' comic books without a specific disclaimer to third parties. The evidence shows that any statements regarding plaintiffs and their comic book restorations were internal communications by email among the Heritage personnel concerning whether to accept plaintiffs' comic books for auction. There is no evidence that such communications were made public to third parties outside the Heritage community. Heritage made a business decision not to sell/auction plaintiffs comic books. This decision is privileged and not subject to judicial review.<sup>49</sup> As such, the Heritage internal communications are not subject to a claim for defamation.<sup>50</sup>

**II. The claim for false light fails as a matter of since there is no evidence of publicity.**

In addition to the claim for defamation, individual plaintiffs also bring a claim for false light against all the defendants. The tort of false light invasion of privacy is defined in the

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<sup>48</sup> See *Elia v. Erie Ins. Exchange*, 430 Pa.Super. 384, 634 A.2d 657, 660 (1993). In fact, the record shows that plaintiffs' reputation was not harmed. See Exhibit "A" to plaintiffs' response to CGC's motion for summary judgment Matthew Meyers deposition p. 399 ("...He said that he was surprised, he didn't think they were going to be as nice as they were and still, he is still not a restore guy. We actually were able to foster a relationship with him after. And, I believe, he referred business to us, based on how impressed he was with our work.") See also, Exhibit "P" to plaintiffs' response to CGC's motion for summary judgment Text Messages between Mercados and Matt Meyers "...I think its had an impact, but not where they won't buy anything. I have one of them that's sitting and waiting for the Action 1...Hey do you think you could do anything to upgrade that Tec 33.").

<sup>49</sup> In the past, Heritage decided not to auction books graded by PGX, Jason Euwart and also rejected items graded by CGC. Exhibit QQ, pg. 24; Exhibit RR, SS p. 38 and TT p. 22 attached to Heritage's reply to plaintiffs' response to Heritage's motion for summary judgment.

<sup>50</sup> Plaintiffs direct the court to a comment made by Mr. Allen to a third party comic book dealer wherein Allen commented that the cover looked fake and statements made by Sandoval to the Meyers at the 2016 Chicago Comics Convention. These statements may not be the basis for defamation. First the comic book dealer did not believe Mr. Allen and therefore the statement is not actionable. Secondly, there was no publication of Sandoval's statements since there were no third parties present. Exhibit "S" to plaintiffs' response to CGC's Motion for Summary Judgment.

Restatement of Torts § 652 as “... publicity to a matter concerning another that places the other before the public in a false light [ ... ].” To adequately establish a false light invasion of privacy action a plaintiff must prove: “(1) the false light in which the other was placed would be highly offensive to a reasonable person and, (2) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.”<sup>51</sup> The elements of this claim are publicity, given to private facts, which would be highly offensive to a reasonable person and not of legitimate concern to the public.<sup>52</sup>

Here, individual plaintiffs have failed to present any evidence of publicity. In order to sustain a claim for false light, the element of publicity must be satisfied by widespread dissemination of the material.<sup>53</sup> Here, as it pertains to CGC, there is no evidence that the communications identified by plaintiffs which were allegedly made by Nelson to a third party were widely publicized. The only evidence presented by plaintiffs is that the statements were made to a broker, the broker’s client, Cyrus, and an email sent to Allen at Heritage. This evidence does not show widespread publication that would cause plaintiffs harm. As for Nelson’s posts on the CGC chat room, while blogging may satisfy the element of widespread publicity, this court finds that in this instance, Nelson’s response to Emily Meyers’ posts should not be the basis of the claim for false light. Emily Meyers assumed the risk with her posts that responses would be forthcoming. Subjecting Nelson’s posts to a claim of false light would chill

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<sup>51</sup> Restatement of Torts § 652E, *See also Strickland v. University of Scranton*, 1997 Pa.Super. LEXIS 2894, 700 A.2d 979 (1997).

<sup>52</sup> *Strickland v. University of Scranton*, 700 A.2d 979, 987 (1997).

<sup>53</sup> *Weinstein v. Bullick*, 827 F. Supp. 1193, 1202 (E.D. Pa. 1993).

his ability to respond to Emily Meyers statements. Based on the foregoing the claim for false light fails as to CGC.

As for defendant Heritage, the claim for false light also fails as a matter of law since, as discussed supra, there is no evidence of publicity. As such the essential element of widespread publication is non-existent and the claim for false light fails as a matter of law.

**III. The claim for tortious interference with contract (existing and prospective) also fails because the interference was not improper and there is no evidence of an existing contract or prospective contract with which to interfere.**

Corporate plaintiff IGB also brings a claim for tortious interference with existing and prospective contract against all defendants. A party is liable for pecuniary loss due to tortious interference with an existing or prospective contractual relationship when the party intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing the third person not to perform the contract.<sup>54</sup> The elements necessary to state such a claim are as follows:

(1) [T]he existence of a contractual or prospective relationship between the complainant and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual damage as a result of defendant's conduct.<sup>55</sup>

Significantly, it is not improper interference if the defendant is merely giving the third person:

“(a) truthful information, or (b) honest advice within the scope of a request for the advice.”<sup>56</sup>

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<sup>54</sup> *Walnut St. Assoc., Inc. v. Brokerage Concepts, Inc.*, 610 Pa. 371, 20 A.3d 468 (2011).

<sup>55</sup> *Id.* See also, *Phillips v. Selig*, 959 A.2d 420 (Pa. Super. 2008), citing *Glenn v. Point Park College*, 441 Pa. 474, 480–81, 272 A.2d 895, 898–99 (1971).

<sup>56</sup> See Section 772 of the Restatement (Second) of Torts. This section was adopted by the Supreme Court in *Walnut Street Associates, Inc. v. Brokerage Concepts, Inc.*, 20 A.3d 468, 478–79 (Pa. 2011).

Plaintiffs argue that defendant Nelson's statements to Cyrus, the buyer of Detective Comics #29, that the book he purchased was not a 9 but an 8 and not professional which lead to Cyrus becoming upset and plaintiffs returning \$3,000 to Cyrus, is evidence of tortious interference with contract. Additionally, plaintiffs argue that Nelson's response in an email to a potential buyer of plaintiffs' comic books is also evidence of improper interference. The court does not agree. As discussed supra, Nelson's statement to Cyrus was truthful. CGC had previously graded the Detective Comics #29 an 8.0 prior to it being re graded a 9 by CBCS. As such, Nelson's truthful statement to Cyrus does not constitute improper interference with contract. Moreover, Nelson's email exchange with a potential buyer of plaintiffs' work on June 8, 2016 does not constitute tortious interference with contract.<sup>57</sup> The potential buyer sought Nelson's advice on plaintiffs restoration work and Nelson provided honest advice based on his opinion.<sup>58</sup>

Plaintiffs further argue that CGC and Heritage improperly interfered with "at least three separate brokers" and "with several resale vendors" by making "false and defamatory statements about plaintiffs" including that CGC would not grade plaintiffs books and Heritage would not sell their books. (Plaintiffs' memorandum of law in opposition to CGC's motion for summary

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<sup>57</sup> Exhibit "Q" to Plaintiffs' response in opposition to CGC's motion for summary judgment. The opening email is dated June 6, 2016 and reads as follows: "Hi Matt, Have you heard of a family doing restoration business named the Meyers? There's been quite a bit of discussion about their books. Curious if you've seen any of their work up close and what your thoughts are. I'm not submitting to them but am considering a book that's for sale and I believe it's their work....".

On June 8, 2016, Nelson responded as follows: "...I'm quite familiar with them. I assumed you read the thread on them a while back in which I commented a few times. I don't have a link, but you should check it out. The header is something about a Detective #33 in 9.4. In a nutshell, there is/was an issue with the amount of work they were putting on the book, and the techniques they were using. When we were grading their books about a year ago, we felt it was too extreme and the books felt and appeared fake. Since then they moved to CBCS and I haven't seen their work up close in a while. But there was speculation that Borack was simply letting it go and giving hem good grades. So I can't tell for certain what their techniques are now, although I have to assume there is an excellent chance they haven't changed much."

<sup>58</sup> Id.

judgment p. 77; Plaintiffs' memorandum of law in opposition to Heritage's motion for summary judgment p. 34). However, an essential element of the claim is missing, that is the existence of a contract or a prospective contract between plaintiffs and the third parties identified. Additionally, even if a contract or prospective contract existed, the second and third elements of the claim for tortious interference is missing.<sup>59</sup> Here, plaintiffs allege the "false and defamatory" statements constituted the improper conduct. However, this court has already determined that those statements are not capable of defamatory meaning, were not published, constitute opinions or are true. As such, the statements attributed to Nelson, CGC or Heritage by plaintiffs, however annoying or embarrassing they might have been to plaintiffs, was not "improper" for purposes of a tortious interference claim.

**IV. The claim for conspiracy fails because there is no predicate cause of action upon which to assert the claim.**

Plaintiffs also allege a claim for civil conspiracy against defendants CGC and Heritage. Plaintiffs allege that defendants engaged in a conspiracy for the purpose of damaging the plaintiffs' reputations and their existing and potential business relations in order to gain complete control of the comic book industry. The essential elements of a claim for civil conspiracy are as follows: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose, (2) an overt act done in pursuance of the common purpose, and (3) actual legal damage.<sup>60</sup> In addition, "absent a civil cause of action for a particular act, there can be no cause of action for civil conspiracy to

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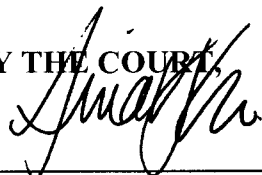
<sup>59</sup> The second and third elements of the tort of intentional interference with contractual relations are closely related. *Glenn v. Point Park College*, 441 Pa. at 482, 272 A.2d at 899.

<sup>60</sup> *Id.*, citing *Goldstein v. Phillip Morris, Inc.*, 854 A.2d 585, 590 (Pa.Super.2004); *McGuire v. Shubert*, 722 A.2d 1087, 1092 (Pa.Super.1998), *appeal denied*, 560 Pa. 707, 743 A.2d 921 (1999).

commit that act.”<sup>61</sup> In the case *sub judice*, plaintiffs’ claim for civil conspiracy is based upon allegations that defendants conspired to interfere with plaintiffs prospective and existing contractual relations. Because the claim for tortious interference with contract (existing and prospective) fails, no predicate cause of action exists upon which plaintiffs may assert a claim for civil conspiracy.<sup>62</sup> Accordingly, plaintiffs’ claim for civil conspiracy fail as a matter of law.

### CONCLUSION

For the foregoing reasons, defendants’ respective motions for summary judgment are granted. Judgment is entered in favor of all defendants and against plaintiffs and the complaint is dismissed.

BY THE COURT,  
  
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NINA W. PADILLA, J.

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<sup>61</sup> *Id.* citing *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655, 660 (Pa.Super.2000) (citing *Pelagatti v. Cohen*, 370 Pa.Super. 422, 536 A.2d 1337, 1342 (1987)).

<sup>62</sup> See, *Phillips v. Selig*, 959 A.2d 420, 437 (Pa.Super. 2008).