**IN THE DISTRICT COURT**

**TEXARKANA**

|  |  |  |
| --- | --- | --- |
| \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\* | | |
| **BETTY BOOP**  *Plaintiff*  v.  **JOHN SMITH.**  *Defendant* | **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)** | Case No.: 15-5545  Before the Honorable Judge Pollex  **MOTION TO DISMISS**  Joe Doe  585 Main St  Texarkana, 45854  Telephone: (485)879-5555  Attorney for Defendant |
| \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\* | | |

**DEFENDANT’S MOTION TO DISMISS**

Now comes Defendant, John Smith, by and through undersigned counsel, and hereby moves this Court to Dismiss Plaintiff’s Complaint for the reasons that appear in the following memorandum.

Respectfully Submitted,

/s/ Joe Doe\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joe Doe

585 Main St

Texarkana, 45854

Telephone: (485)879-5555

Attorney for Defendant

**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS**

**I. STATEMENT OF THE FACTS**

ON July 10

**II. STANDARD OF REVIEW**

A motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), questions the sufficiency of the pleadings. *Dotson v. Wilkinson*, 477 F.Supp. 2d 838, 844 (N.D. Ohio 2007). Under Fed. R. Civ. P. 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” As the Supreme Court held in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the pleading standard Rule 8 announces does not require “detailed factual allegations. “To survive a motion to dismiss, a complaint must contain ‘sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (*citing Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). Heightened fact pleading of specifics is not required. *Twombly*, 550 U.S. at 570. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S. Ct. at 1949. Plaintiff has not fulfilled her obligation to set forth sufficient factual allegations, which when taken as true, establish the essential elements of the aforementioned claims.

**III. LAW AND ARGUMENT**

The Plaintiff has the burden of proof by clear and convincing evidence. *Barnett v. Denver Publishing Co*., 36 P.3d 145, 147 (Colo. App. 2001). To state a claim for defamation under Colorado law, a plaintiff must allege: (i) a defamatory statement; (ii) published to a third party; (iii) the existence of special damages or actionability absent special damages; and (iv) actual malice. *Card v. \_\_\_\_\_\_\_\_*, 937 P.2d 846, 850 (Colo. App. 1996); Barnett, 36 P.3d at 147.

Four elements are necessary to establish a defamation action, whether for slander or libel, to wit: (1) defamatory language; (2) about the plaintiff; (3) which is published; and (4) which causes injury to reputation.” *McBrearty v. Kentucky Community and Technical College System*, 262 S.W.3d \_\_\_, 213 (Ky.App. 2008). Notwithstanding, Texarkana adheres to the legal principle that the truth is an absolute defense for an action of slander regardless of the intent of the publishers. *Bell v. Courier-Journal & Louisville Times Co.*, 402 S.W.2d 84, 87 (Ky. 1966). In this case, Plaintiff stated she took $500 from the cash register at her place of work, with the intention of returning the money the next day. She admits in her Complaint that she was having difficulty coming up with money too by the complete series of her favorite television show, MacGuyver, and was viewing the money as a loan. She also admits she was arrested, but the charges were dropped when she returned the money.

The Plaintiff has not alleged that the statement was made to a third party. He stated that the statement was a conversation between husband and wife, but makes no mention of it being spread any further than that. Thus, even when taken as true, the alleged publication of the statement to Ms. Smith is insufficient to state a claim for defamation. Further, the Plaintiff has not alleged facts showing that the statement was made with actual malice or caused damage.

IV. CONCLUSION

For the foregoing reasons the Defendants’ Motion to Dismiss should be granted and the complaint dismissed in its entirety.

Respectfully submitted,

/s/ Joe Doe\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joe Doe

585 Main St

Texarkana, 45854

Telephone: (485)879-5555

Attorney for Defendant