

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

BYD COMPANY LTD.,

*Plaintiff,*

v.

ALLIANCE FOR AMERICAN  
MANUFACTURING, *et al.*,

*Defendants.*

Civ. Action No. 20-cv-03458-TNM

**DEFENDANTS' MOTION TO DISMISS**

Defendants Alliance for American Manufacturing, Scott Norman Paul, Cathalijne Adams, and Matthew McMullan (collectively, "AAM") file this Motion to Dismiss Plaintiff BYD Company Ltd.'s Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), or, in the alternate, pursuant to Code of the District of Columbia § 16-5501, *et seq.*

As explained more fully in the accompanying Memorandum, filed with this Motion and incorporated herein by reference, the Court should dismiss Plaintiff's Complaint as it lacks subject matter jurisdiction over Plaintiff's defamation claims. Corporations such as Plaintiff are not entitled to "reputation" damages for defamation claims and Plaintiff does not, because it cannot, allege any actual lost profits or monetary damages. Plaintiff has failed to allege any cognizable damages, let alone the minimum amount in controversy to invoke this Court's diversity jurisdiction. On this basis alone, the Court should dismiss Plaintiff's complaint.

In any event, the Complaint does not state a claim for which the Court can grant relief, mandating dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff, a public

figure, has failed to adequately plead actual malice. Further, the three allegedly defamatory statements that are the subject of Plaintiff's Complaint are based on public, reliable sources confirming, as a matter of law, that BYD has not validly asserted actual malice. As such, and for additional reasons elaborated on in the Memorandum submitted herewith, Plaintiff has failed to state a claim for defamation. As such, the Court should dismiss Plaintiff's Complaint with prejudice.

Finally, the Court should dismiss Plaintiff's Complaint pursuant to the D.C. Anti-SLAPP Statute, D.C. Code § 16-5501, *et seq.* That statute was enacted precisely to prevent against frivolous lawsuits such as the one filed by Plaintiff here. Without a penalty for filing its meritless Complaint, Plaintiff will continue its rampage against free speech. Dismissal pursuant to the D.C. Anti-SLAPP Statute, and the award of reasonable attorneys' fees, is appropriate.

DATED: February 1, 2021

Respectfully submitted,

/s/ Bezalel A. Stern  
Bezalel A. Stern (D.C. Bar # 1025745)  
KELLEY DRYE & WARREN LLP  
3050 K Street N.W., Suite 400  
Washington, D.C. 20007  
Tel.: (202) 342-8422  
bstern@kelleydrye.com

Lauri A. Mazzuchetti (admission pending)  
Paul A. Rosenthal (admission pending)  
KELLEY DRYE & WARREN LLP  
One Jefferson Road  
Parsippany, NJ 07054  
Tel.: (973) 503-5900  
lmazzuchetti@kelleydrye.com  
paulrosenthal@kelleydrye.com

*Counsel for Defendants*