

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

LARRY KLAYMAN,
Plaintiff

v.

JOSEPH ROBINETTE BIDEN, JR., et al
Defendant.

Case Number: 50-2019-CA-013457-MB

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' JOSEPH ROBINETTE BIDEN JR.,
KATE BEDDINGFIELD, AND BIDEN FOR PRESIDENT'S AMENDED MOTION TO
DISMISS COMPLAINT**

Plaintiff Larry Klayman ("Mr. Klayman") hereby submits the following in response to Defendants Joseph Robinette Biden Jr. ("Defendant Biden"), Kate Beddingfield ("Defendant Beddingfield"), and Biden for President's ("Defendant Campaign") Motion to Dismiss.

I. LEGAL STANDARD

"For . . . purposes of a motion to dismiss for failure to state a cause of action, allegations of the complaint are *assumed to be true* and *all reasonable inferences arising therefrom are allowed in favor of the plaintiff.*" *Swope Rodante, P.A. v. Harmon*, 85 So. 3d 508, 509 (Fla. Dist. Ct. App. 2012) (emphasis in original). "When considering a motion to dismiss, the trial court is limited to consideration of the allegations contained within the four corners of the complaint." *Id.*

Furthermore, "[a] motion to strike matter as redundant, immaterial or scandalous should only be granted if the material is wholly irrelevant, can have no bearing on the equities and no influence on the decision." *McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss*, 704 So. 2d 214, 216 (Fla. Dist. Ct. App. 1998).

II. LEGAL ARGUMENT

A. Plaintiff Klayman Has Properly Alleged a Claim for Tortious Interference

“The elements of a cause of action based on tortious interference with a business relationship are (1) the existence of a business relationship, (2) the defendant's knowledge of the relationship, (3) the defendant's intentional and unjustified interference with the relationship and (4) damage to the plaintiff as a result of the breach of the relationship.” *Walters v. Blankenship*, 931 So. 2d 137, 139 (Fla. Dist. Ct. App. 2006). Mr. Klayman has adequately pled these elements.

“Plaintiff Klayman...maintains a channel on YouTube named Freedom Watch TV, which is widely broadcast and disseminated in this jurisdiction in Palm Beach County and Florida.” Comp. ¶ 9. “On October 1, 2019, this YouTube channel was suspended and all of its contents were removed over a span of many years.” Comp. ¶ 11. “This was done by YouTube as a result of undue and illegal political and other pressure and veiled threats from and exerted by Defendants, each and every one of them, working together in concert, jointly and severally.” Comp. ¶ 12. “Plaintiff Klayman has been harmed and damaged as set forth above by Defendants tortious interference.” Comp. ¶ 30.

1. Plaintiff Klayman’s Business Relationship is Properly Alleged

In their motion, Defendants falsely assert that Mr. Klayman did not allege the existence of proper legal or contractual rights under which to bring a claim for tortious interference. This assertion rests on the fact that the contract with Google/YouTube is “at will.” However, when interference with an “at will” relationship is “direct and unjustified,” such interference is actionable. *Ferris v. S. Fla. Stadium Corp.*, 926 So. 2d 399, 402 (Fla. Dist. Ct. App. 2006). This is exactly what Mr. Klayman has alleged.

It is indisputable that Mr. Klayman has alleged “direct” interference by Defendants. “Defendants intentionally interfered with the business relationship between YouTube and

Freedom Watch by unduly and illegally pressuring and threatening YouTube into suspending the YouTube account as a result of Mr. Klayman's criticism and stated intention to seek the indictment of the Bidens before a Freedom Watch's citizens grand jury." Comp. ¶ 28. Thus, direct action, in the form of undue pressure and illegal threats is alleged. Furthermore, this interference is wholly unjustified. The Complaint alleges that Defendants asserted this pressure and made these threats in order to try to eliminate unfavorable coverage of Defendant Biden in his presidential campaign: "[i]t is clear that Defendants were simply trying to threaten and exert undue and illegal political and other pressure on The New York Times into giving what they deemed as favorable coverage of Joe Biden and his efforts to be elected as President in 2020." Comp. ¶ 21. This unethical, improper, and illegal conduct cannot serve as the basis for a justifiable interference into the business relationship between Mr. Klayman and Google/YouTube.

2. The Complaint Alleges Defendants' Knowledge of Plaintiff's Business Relationship

As set forth above, the Complaint alleges that Defendants "intentionally interfered with the business relationship between YouTube and Freedom Watch by unduly and illegally pressuring and threatening YouTube into suspending the YouTube account as a result of Mr. Klayman criticism and stated intention to seek the indictment of the Bidens before a Freedom Watch's citizens grand jury." Comp. ¶ 28. Taking this factual allegation as true, which is required under the Florida Rules of Civil Procedure, *see supra* section I, it is impossible for Defendants to plausibly argue that they lacked knowledge of this business relationship. How can one threaten something that they do not know exists? Indeed, evidence of this knowledge will be further uncovered in discovery.

3. The Complaint Alleges Intentional and Unjustified Interference

As set forth in the Complaint, and above, Defendants “unduly and illegally pressur[ed] and threaten[ed] YouTube into suspending the YouTube account as a result of Mr. Klayman’s criticism,” Comp. ¶ 28, in order to try to extort favorable coverage for Defendant Biden in his presidential campaign. This is both intentional and unjustified.

Defendants’ argument here is simply that Mr. Klayman has not made sufficient “factual allegations” that such intentional and unjustified interference had occurred. This is simply not true. Indeed, the Complaint alleges that Mr. Klayman immediately understood that his removal from YouTube was caused by Defendants:

In an email to counsel for YouTube, Plaintiff Klayman correctly asserted that the suspension of his channel was due to "criticism on [his] weekly radio show, 'Special Prosecutor with Larry Klayman,' of former Vice President Biden and his son Hunter Biden, regarding their apparent Ukrainian bribery scandal. During this broadcast on Radio America on or about September 29, 2019, [Plaintiff Klayman] stated and broadcast on Radio America to about 55 stations throughout the United States and throughout the nation and internationally on a podcast disseminated on Facebook, Twitter, Roku, Amazon Fire and by email, and which is also posted on Freedom Watch's and Radio America's websites, that the Bidens would be brought before a citizens grand jury and [he] would seek their indictment. Comp. ¶ 13.

Tellingly, this email led to the reinstatement of Mr. Klayman’s channel only a few days later, with no denial from YouTube regarding the allegations against Defendants. Comp. ¶ 14. At this pleading stage, this is enough to advance the case to discovery. Defendants are currently in a position where they are able to suppress evidence of their wrongdoing, as discovery has not yet begun. Mr. Klayman cannot be expected to have already obtained copies of communications between Defendants and Google/YouTube – this is what discovery is for.

However, Mr. Klayman has gone beyond the pleading standard to show that this is not the first time that Defendants have exerted undue pressure, interference and threats in order to try to steer favorable coverage of Defendant Biden, evidencing a pattern and practice. This is

exemplified by Defendant Beddingfield's letter in response to an opinion piece by Peter Schweizer which stated that Defendant Hunter Biden had illegal landed numerous business deals as a result of Defendant Joe Biden's power:

As vice president, Joe Biden served as point person on American policy toward China and Ukraine. In both instances, his son Hunter, a businessman, landed deals he was apparently unqualified to score save for one thing: his father With the Russian invasion of Crimea in 2014, Joe Biden became point person in Ukraine as well. That same year, Hunter Biden landed a board position with the Ukrainian energy giant Burisma Holdings. Despite having no background in energy or Ukraine, the vice president's son was paid as much as \$50,000 a month, according to financial records. (He left the board in early 2019.) Comp. ¶ 18.

This article drew a scathing letter from Defendant Beddingfield, in concert with the other Defendants, stating, “[a]re you truly blind to what you got wrong in 2016, or are you deliberately continuing policies that distort reality for the sake of controversy and the clicks that accompany it?” Comp. ¶ 20. Defendants have also tried to pressure Facebook and Twitter into removing a campaign ad for President Trump due to what they claimed were false claims against Defendant Biden. Comp. ¶ 22.

4. Mr. Klayman Has Properly Alleged Damages

Defendant attempt to draw a false distinction between Freedom Watch and Mr. Klayman. The Complaint alleged that Mr. Klayman is the one who maintains and broadcasts on the subject YouTube channel, which happens to be named Freedom Watch TV. Comp. ¶ 9. Any assertion by Defendants to the contrary is an improper factual assertion that is not contained within the four corners of the Complaint.

As far as damages, Mr. Klayman has alleged:

Mr. Klayman had his good will and reputation damaged by the suspension of Freedom Watch's YouTube channel, as this created the false narrative and impression the he had done something illegal to warrant taking down the aforementioned Radio America broadcast and the total removal of all videos posted on Freedom Watch's YouTube channel, over many years. Comp. ¶ 26.

There is nothing speculative about this assertion. It truly takes a lot, generally, to be suspended and/or removed from YouTube. For Mr. Klayman to have been subject to this obviously creates a very negative impression to the general public, as well as a severe damage to reputation and good will.

B. Defendants' Motion to Strike Must Be Denied

Defendants argue that Paragraphs 15 – 22 of the Complaint, which detail Defendants' previous attempts to coerce other news and media outlets into giving Defendant Biden favorable coverage must be stricken. However, as set forth above, *supra* section I, "[a] motion to strike matter as redundant, immaterial or scandalous should only be granted if the material is wholly irrelevant, can have no bearing on the equities and no influence on the decision." *McWhirter*, 704 So. 2d at 216. This is clearly not the case here.

These past instances of Defendants doing the exact same thing that they have allegedly done to Plaintiff are not irrelevant. They establish the fact that Defendants have a pattern and practice of seeking out those who criticize or have unfavorable opinions towards Defendant Biden and then attempting to silence them by threatening and coercing news and social media outlets. Thus, this section is neither irrelevant, nor immaterial or scandalous.

C. The Complaint Does Not Impermissibly Co-Mingle Claims

Defendants next assert that Plaintiff has failed to comply with Fla. R. Civ. P 1.110(f), which in pertinent part states, "Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when a separation facilitates the clear presentation of the matter set forth." However, as set forth in Plaintiff's Complaint, each of the Defendants were working together in concert to harm Plaintiff:

This was done by YouTube as a result of undue and illegal political and other pressure and veiled threats from and exerted by Defendants, each and every one of them, working together in concert, jointly and severally. Comp. ¶ 12.

It is easy to see why Defendants were working together in concert. Defendant Biden is a presidential candidate. Defendant Bedingfield is his deputy campaign manager and communications director. Comp. ¶ 6. The actions taken by Defendants, as alleged in the Complaint, were done to further Defendant Biden's presidential campaign. Thus, it makes perfect sense that the candidate and his deputy campaign manager would be working together in concert. In any event, discovery will certainly bear this out.

D. Personal Jurisdiction and Venue Are Proper

“Determining whether a court can exercise personal jurisdiction over a defendant involves a two-step inquiry.” *Imerys Talc Am., Inc. v. Ricketts*, 262 So. 3d 799, 802 (Fla. Dist. Ct. App. 2018). “The court must determine whether the allegations in the complaint bring the action within Florida's long-arm statute and, if so, whether sufficient "minimum contacts" exist between the non-resident defendant and Florida to satisfy due process.” *Id.*

“Specific personal jurisdiction exists when 'the alleged activities or actions of the defendant are directly connected to the forum state.” *Imerys Talc Am., Inc. v. Ricketts*, 262 So. 3d 799, 802 (Fla. Dist. Ct. App. 2018). “The Supreme Court has explained that for specific personal jurisdiction to be appropriate, the defendant's suit-related conduct must create a substantial connection with the forum State.” *Id.* (internal quotations omitted).

Here, the tortious acts by Defendants were done in furtherance of Defendant Biden's presidential campaign in 2020. They were done in order to shut down what they perceive to be unfavorable coverage of Defendant Biden that may preclude him from winning the presidency. In this regard, Defendants have more than purposefully availed themselves to Florida. It is

indisputable that Plaintiff Klayman is a citizen and resident of the state of Florida. The harm to him was done in the state of Florida. Furthermore, as a necessarily large part of Defendants' campaign, they have actively engaged with the Florida in order to try to garner support. For instance, as reported by the Miami Herald, Defendant Biden personally attended a campaign event in Miami on September 15, 2019.¹ He also held a fundraiser event in Palm Beach in December of 2019, which he attended via telephone.² These are just a few of numerous examples of Defendants inserting themselves into Florida, ahead of the Florida Democratic presidential primary scheduled for March 17, 2020. Thus, personal jurisdiction is proper.³ Finally, there can be no doubt that Defendants have done and continue to do substantial business in Florida in light of the importance of the Sunshine State, the third largest in the nation with the third largest of electoral votes, to winning the presidency in 2020.

E. Freedom Watch is Not an Indispensable Party

Defendants assert that Freedom Watch is an indispensable party, but this ignores the fact that Plaintiff Klayman alleged in the Complaint that it was him personally that had a long time business relationship with YouTube and who published videos on Freedom Watch TV:

“Mr. Klayman...has had a long time business relationship with YouTube where Mr. Klayman...frequently published videos on the channel where he appeared, Freedom Watch TV.” Comp. ¶ 25. Thus, the plaintiff in this case is properly Mr. Klayman and Mr. Klayman alone as it is his reputation and good will that has been damaged. Freedom Watch is not necessary plaintiff simply because the YouTube channel that Plaintiff Klayman appears and broadcasts happens to

¹ <https://www.miamiherald.com/news/politics-government/article234978267.html>

² <https://www.palmbeachpost.com/news/20191215/joe-biden-phones-in-to-palm-beach-fundraiser-as-campaign-looks-ahead-to-florida>

³ With regard to venue, the Courts have held that venue can lie in any court in Florida, so long as it could secure jurisdiction of the defendant. *Hollywood Mem'l Park, Inc. v. Rosart*, 124 So. 2d 712 (Fla. Dist. Ct. App. 1960)

be named Freedom Watch TV.

F. Defendants' Motion under the Florida Anti-SLAPP statute must be Denied

Immediately, it is clear that the Florida Anti-SLAPP statute does not apply, because there is no constitutionally protected speech at issue. The crux of this Complaint is Defendants' exercise of coercion and threats to YouTube in order to have the channel Plaintiff Klayman appears and broadcasts on suspended, if not removed. It would appear that Defendants are asserting the Florida anti-SLAPP statute based on paragraphs 15 – 22 of the Complaint, which detail Defendants' public reaction to an unfavorable article in the New York Times. However, this is not what Plaintiff Klayman's cause of action for tortious interference is based upon – it simply shows Defendants' pattern and practice. There are simply no First Amendment rights involved in Plaintiff Klayman's actual claims.

In any event, as set forth above, Plaintiff Klayman has demonstrated a likelihood of success on the merits. As such, Defendants' motion under the Florida anti-SLAPP law must be denied.

CONCLUSION

Based on the foregoing, Mr. Klayman respectfully requests that this Court deny Defendants' Motion to Dismiss and allow this matter to proceed.

Dated: February 4, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Larry Klayman, hereby certify that on this day, February 4, 2020, a copy of the foregoing was filed via this Court's e-filing system and served upon all parties and/or counsel of record through Notices of Electronic Filing.

*/s/ Larry Klayman*_____
Larry Klayman

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