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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE MALLARD LAKE COMMUNITY ASSOCIATION, INC., Plaintiff, v. SIMONE REBA, Defendant.	C.A. No. 2025-1116-DH

DEFENDANT SIMONE REBA'S OPENING BRIEF IN SUPPORT OF HER MOTION TO DISMISS

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TABLE OF CONTENTS

INTRODUCTION 5

FACTUAL AND PROCEDURAL BACKGROUND 5

ARGUMENT 11

I. Standard of Review. 11

II. The First Amendment and the Delaware Constitution Protect Reba's Actions. 12

III. This Court Lacks Subject Matter Jurisdiction Because Plaintiff Seeks an Injunction Against Future Wrongdoing. 17

IV. Plaintiff Fails to Allege Sufficient Facts Supporting Its Request For Relief. 19

V. The Court Should Award Reba Attorney Fees and Costs. 24

CONCLUSION 27

TABLE OF AUTHORITIES

Cases

Arbitrium (Cayman Islands) Handels AG v. Johnston, 705 A.2d 225 (Del. Ch. 1997).....24

Barrows v. Bowen, 1994 WL 514868 (Del. Ch. Sept. 7, 1994) 25

Burkhart v. Genworth Fin., Inc., 250 A.3d 842 (Del. Ch. 2020).....11

CapStack Nashville 3 LLC v. MACC Venture Partners, 2018 WL 3949274 (Del. Ch. Aug. 16, 2018) 13

Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs. LLC, 27 A.3d 531 (Del. 2011) 11

Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010) 13, 14

Cousins v. Goodier, 283 A.3d 1140 (Del. 2022).....13

Diamond State Tel. Co. v. University of Delaware, 269 A.2d 52 (Del. 1970).....12

Glean Tech Fund II LP v. McIntosh, 2025 WL 2505049 (Del. Ch. Sept. 2, 2025) 23, 24

Grobow v. Perot, 539 A.2d 180 (Del. 1988) 23

HB Next LLC v. Alvin Joe Goodman III, 2025 WL 3174629 (Del. Ch. Oct. 31, 2025).....11

Hillman v. Hillman, 910 A.2d 262 (Del. Ch. 2006) 12

H-M Wexford LLC v. Encorp, Inc., 832 A.2d 129 (Del. Ch. 2003) 22

In re Carlisle Etcetera LLC, 114 A.3d 592 (Del. Ch. 2015).....12

Judge v. City of Rehoboth Beach, 1994 WL 198700 (Del. Ch. Apr. 29, 1994) 25

Mallard Lakes Sandy Interest Group et al. v. Mallard Lakes Community Association, C.A. No. 11653-VCG (Del. Ch. Jul. 20, 2016) 25

Malpiede v. Townson, 780 A.2d 1075 (Del. 2001) 23

McMahon v. New Castle Assocs., 532 A.2d 601 (Del. Ch. 1987).....17

Medek v. Medek, 2008 WL 4261017 (Del. Ch. Sept. 10, 2008 11
Meyer v. Grant, 486 U.S. 414 (1988).....13
Mock v. Div. of State Police, Dep't of Safety & Homeland Sec., 2022 WL 1744439 (Del. Ch. May 31, 2022) 17
New York Times Co. v. Sullivan, 376 U.S. 254 (1964).....16
Organovo Hldgs., Inc. v. Dimitrov, 162 A.3d 102 (Del. Ch. 2017) 17
Orman v. Cullman, 294 A. 2d 5 (Del. Ch. 2002) 12
Preston Hollow Cap. LLC v. Nuveen LLC, 2020 WL 1814756 (Del. Ch. Apr. 9, 2020).....17
Snyder v. Phelps, 562 U.S. 443 (2011).....13
Sorrell v. IMS Health Inc., 564 U.S. 552, 131 S.Ct. 2653, 2673–74 (2011).....13
State v. Delaware State Educ. Ass'n, 326 A.2d 868 (Del. Ch. 1974) 20
Thorpe v. Cerbco, Inc., 1996 WL 560173 (Del. Ch. Sept. 13, 1996) 19
United States v. Gonzalez, 905 F.3d 165 (3d Cir. 2018) 13
United States v. Matusiewicz, 84 F. Supp. 3d 363 (D. Del. 2015) 13
White v. Panic, 783 A.2d 543 (Del. 2001) 24

Statutes and Rules

25 *Del. C.* § 81-308 6
DEL. CONST. Art. I, § 5 13

INTRODUCTION

This action should be dismissed for three reaons: (1) Plaintiff seeks relief that is barred by the First Amendment and the Delaware Constitution; (2) Plaintiff seeks an injunction against future harm; and (3) Plaintiff has failed to include enough factual material in its Complaint to articulate a cognizable claim.

Plaintiff objects to the fact that one of the unit owners in the community, Simone Reba, has sought political solutions to the flooding problem plaguing her community. But Reba is engaged in what courts have long recgonized as core political speech that is entitled to robust protection by both the First Amendment and the Delaware Constitution. This Court cannot impose a gag order on Reba, nor can it impose onerous requirements as a precondition to Reba engaging in communication with her elected officials or speaking at public meetings.

Unfortunately, attempting to silence those with whom it disagrees through expensive, though ultimately futile, litigation, is a tactic Plaintiff has engaged in previously. Plaintiff and its counsel have explicitly been told by this Court that the Court cannot enjoin policial speech. Plaintiff's claims should be dismised, and Reba should be awarded her attorney fees for having to defend against claims Plaintiff knows cannot succeed.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Simone Reba ("Reba") is a unit owner in the Mallard Lakes

community in Sussex County.[1] Compl. ¶ 4. Mallard Lakes is a Delaware common-interest community and Plaintiff The Mallard Lake Community Association, Inc. ("Plaintiff" or the "Association") is a Delaware entity responsible for the operation, care, upkeep, replacement, and maintenance of all of the common elements in the community. *Id.* ¶ 3. Mallard Lakes is located on Route 54 between Fenwick Island and Selbyville and contains 477 residential condominium units in 47 buildings. *Id.* ¶ 13. Much of Mallard Lakes lies within a flood plain. *Id.*

The Association is governed by the *Cumulative, Combined and Restated Declarations Establishing A Plan for Condominium Ownership of Premises Located in Baltimore Hundred, Sussex County Delaware, Pursuant to the Unit Property Act of the State of Delaware Mallard Lakes Condominium* (the "Declaration"), and the *Cumulative, Combined and Restated Code of Regulations of Mallard Lakes Condominium* (the "Code"). *Id.* ¶ 8. Pursuant to the Code and Delaware statute, the Association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the unit owner's unit. *Id.* ¶ ¶ 9-10; 25 *Del. C.* § 81-308(a). Permit applications for improvements to common areas must be made by the Association. Compl. ¶ 11.

Rising water caused by high tides and coastal storms have plagued the

[1] The facts set forth in this filing are drawn from the Complaint and are not admitted.

community since the late 1980s. *Id.* ¶ 15. Due to structural changes to a pipe under Route 54 in the early 2000s, the average height of the daily tide in the community salt pond increased by six to ten inches, resulting in the frequent presence of water under most of the buildings. *Id.* ¶ 17.

The community experienced substantial flooding and damage in October 2012 due to superstorm Sandy. *Id.* ¶ 19. The damage resulted in at least two lawsuits involving the Association. *Id.* ¶ 20. A group of unit owners sued the Association in this Court, and it was in that litigation that Plaintiff first tried to obtain an unconstitutional gag order against its residents. *See*, D.I. 10, Ex. 1. Though the Association was the defendant in that case and had not filed any pleading, the Association filed a motion for preliminary injunction asking the Court to order the following:

> While this litigation is ongoing, Plaintiffs shall not interfere with sale of any unit in Mallard Lake Community including but not limited to, communicat[ing] with the buyers or sellers of units, [or] communicat[ing] with realtors for buyers or sellers, or [to] seek to delay or prohibit sale of any unit[;]
>
> While the litigation is ongoing, Plaintiffs shall not contact the Association or question the Association during open meetings related to the substance of this litigation…

and

> While this litigation is ongoing, Plaintiffs shall not contact any governmental entity related to the Association ....

D.I. 10, Ex. 1, 9:11-24.

Plaintiff's attorney, who continues to represent Plaintiff in this litigation, was thoroughly dressed down by then Vice-Chancellor Glasscock for seeking such quixotic and blatantly unconstitutional relief. *See*, D.I. 10, Ex. 1, ¶ 12.

Having learned nothing from the Court's comments in 2012, Plaintiff is once again trying to stop one of its residents from engaging in public commentary and core political speech. Reba purchased her unit in 2023 and began to undertake a campaign to obtain governmental intervention related to tidal water. Compl. ¶ 26. Reba now is allegedly misrepresenting to others that she speaks for the Association. *Id.* ¶ 27. She also allegedly

> perpetuates misinformation indicating that elevation of buildings in the community will ultimately be "free" because of government funding/grants she claims will cover the cost in full, and her actions serve only to poison the well and create division and animosity between the community and government agencies which may at some point be in a position to help the community to address the issue of rising tidal water.

Id.

Most of the allegations are almost risibly vague. The Complaint contains only two specific factual allegations supporting Plaintiff's claims. The first is that "At a recent public hearing in Sussex County on July 15, 2025, Defendant improperly and confusingly represented herself as speaking for the Association and/or the community as a whole rather than as an individual homeowner." Compl. ¶ 30. Fortunately, an audio recording of that hearing is available online. *See,*

https://sussexcountyde.gov/sites/default/files/audio/07%2015%2025%20CC%20%281%29.mp3. The audio record makes plain that Reba never misrepresented herself, and Plaintiff's allegation is clearly false. In a subsequent filing, Plaintiff has shed additional light on what it considers to be Reba "representing herself as speaking for the Association." Plaintiff now admits that Reba prefaced her remarks by telling the Sussex County Council that she owns a unit in Mallard Lakes. D.I. 12, ¶ 6. Apparently, this disclaimer was not strong enough. *Id.* Plaintiff then identifies what it claims is the problem: that Reba uses words like "we" and "us" in speaking to the council. *Id.* ¶ 7. This includes phrases like "Thank you for meeting with us." *Id.*

Plaintiff also claims in its most recent filing that Reba is not allowed to ask her elected officials to budget money to address flood mitigation in Sussex County or at Mallard Lakes, including in partnership with the Army Corps of Engineers, or to obtain an engineering report. *Id.* ¶ ¶ 8-9. Plaintiff sums up its position:

> [A]ny time Defendant requests that the government take action to provide funds for addressing tidal water issues at Mallard Lakes (as she did during the Sussex County Council meeting) she is improperly requesting those funds on behalf of the Association and community as a whole *by necessity*.

Id. ¶ 9 (emphasis in original).

The other specific alleged fact about Reba is that she created a website which was, "until recently" misleading, but that, once contacted by Plaintiff, Reba included a disclaimer stating the website was unaffiliated with the Association. Compl. ¶ 29.

(Reba contends that the disclaimer was always there, but that is not relevant for the purposes of deciding the pending Motion.) The "incorrect, misleading, and alarmist misinformation posted on the Website by [Reba]" allegedly "sows discord among residents of the Condominium[.]" *Id.*

Meanwhile, the Association has sat on its hands and done nothing with respect to the flooding issue. No unit owners of the affected buildings have requested that their buildings be elevated. Compl. ¶ 25. On the one hand, Plaintiff alleges Reba has "made future discussions with or requests to relevant government agencies unquestionably more difficult for the Association." *Id*. ¶ 33. On the other hand, Plaintiff admits, "To date, there appear to be no readily available, financially feasible solutions to address tidal and storm water flow into the community[,]" and

> At present, no group of owners of a building has requested that the Association coordinate the improvement to elevate their buildings. The Association is hopeful that a governmental solution to the water flow will present itself though future governmental programs.

Id.

Despite this admission, Plaintiff filed its Complaint on October 1, 2025, just two weeks before the Board election in which Reba was running for an elected position. D.I. 12, ¶ 1. Reba filed a Motion to Dismiss on October 10, 2025. D.I. 6. Also pending before the Court is Reba's Motion to Strike Paragraphs 28 and 30 of the Complaint (D.I. 13) and Plaintiff's Motion to Expedite. D.I. 1. Oppositions have been filed to both motions.

This is Reba's Opening Brief in support of her Motion to Dismiss.

ARGUMENT

I. Standard of Review.

a. Motion to Dismiss pursuant to Rule 12(b)(1).

"The Court of Chancery will dismiss an action for want of subject matter jurisdiction if it appears from the record that the Court does not have jurisdiction over the claim." *Medek v. Medek*, 2008 WL 4261017, at *3 (Del. Ch. Sept. 10, 2008. The plaintiff bears the burden of establishing this Court's jurisdiction, and where the plaintiff's jurisdictional allegations are challenged it must support its jurisdictional allegations with competent proof. *Burkhart v. Genworth Fin., Inc.*, 250 A.3d 842, 851 (Del. Ch. 2020).

> Viewing form over substance requires this Court to refuse jurisdiction when the only equitable hook is an injunction improperly seeking to preclude a theoretical future wrong which cannot anchor subject matter jurisdiction in this Court. At the pleading stage, [the Court] must review the request for injunctive relief to be sure there is a reasonable, non-speculative concern about future harm.

Re: HB Next LLC v. Alvin Joe Goodman III, 2025 WL 3174629, at *6 (Del. Ch. Oct. 31, 2025).

b. Motion to Dismiss pursuant to Rule 12(b)(6).

In evaluating a motion to dismiss pursuant to Rule 12(b)(6), the Court must assume that all well-pled facts asserted in the complaint are true. *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Hldgs. LLC,* 27 A.3d 531, 536 (Del. 2011). The

operative test in a Delaware state court is one of "reasonable conceivability," which asks whether there is a possibility of recovery. *In re Carlisle Etcetera LLC*, 114 A.3d 592, 597 (Del. Ch. 2015). The Court must dismiss the complaint if a plaintiff is not entitled to recovery under any reasonably conceivable set of circumstances susceptible to proof. *Id*. A complaint may be dismissed if it is clearly without merit, which may be a matter of law or fact. *Diamond State Tel. Co. v. University of Delaware*, 269 A.2d 52, 58 (Del. 1970). As a general rule, when deciding a Rule 12(b)(6) motion, the Court is limited to considering only the facts alleged in the complaint and normally may not consider documents extrinsic to it. *Orman v. Cullman*, 794 A. 2d 5, 15 (Del. Ch. 2002). There are two exceptions to this general rule. First, the court may consider the plain terms of documents incorporated in or attached to the complaint without thereby converting the motion into one for summary judgment. *Hillman v. Hillman*, 910 A.2d 262, 269 (Del. Ch. 2006). The second exception is when the document is not being relied upon to prove the truth of its contents. *Orman,* 294 A. 2d at 16.

II. The First Amendment and the Delaware Constitution Protect Reba's Actions.

Plaintiff's Complaint must be dismissed because, even if everything Plaintiff alleges in its Complaint is accurate, Reba's actions are protected by the First Amendment and the Delaware Constitution. Therefore, the Court cannot grant Plaintiff the relief it seeks, and its complaint fails as a matter of law.

"Political speech is entitled to robust protection under the First Amendment." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 480 (2010).

> Because many, perhaps most, activities of human beings living together in communities take place through speech, and because speech-related risks and offsetting justifications differ depending upon context, this Court has distinguished for First Amendment purposes among different contexts in which speech takes place. Thus, the First Amendment imposes tight constraints upon government efforts to restrict, *e.g.,* "core" political speech, while imposing looser constraints when the government seeks to restrict, *e.g.,* commercial speech, the speech of its own employees, or the regulation-related speech of a firm subject to a traditional regulatory program.

United States v. Matusiewicz, 84 F. Supp. 3d 363, 373 (D. Del. 2015), *aff'd sub nom. United States v. Gonzalez*, 905 F.3d 165 (3d Cir. 2018), citing *Snyder v. Phelps,* 562 U.S. 443, (2011) and *Sorrell v. IMS Health Inc.,* 564 U.S. 552, 131 S.Ct. 2653, 2673–74, 180 L.Ed.2d 544, (2011) (internal quotations and citations omitted). *See also, Meyer v. Grant,* 486 U.S. 414, 414(1988) ("First Amendment protection is at its zenith" in the area of "core political speech."). For its part, "Delaware may offer its citizens *more* protection for their speech than what is provided by the United States Constitution…." *Cousins v. Goodier*, 283 A.3d 1140, 1149 n. 46 (Del. 2022) (emphasis in original). Among other things, "the Delaware Constitution appears to explicitly prohibit prior restraints, providing that 'any citizen may print on any subject, being responsible for the abuse of that liberty.'" *CapStack Nashville 3 LLC v. MACC Venture Partners*, 2018 WL 3949274, at *4 (Del. Ch. Aug. 16, 2018), quoting DEL. CONST. Art. I, § 5.

The speech that Reba is alleged to have engaged in is nothing if not "core political speech." Plaintiff is unhappy that Reba is speaking during the public comment section of governmental meetings, speaking to her elected officials, and posting on her website, about issues of public concern such as budgeting money for flood mitigation. Reba is free to do this and the Court cannot impose restraints on Reba's speech in this regard, even if Plaintiff does not like it. Even in the absence of First Amendment protections, Reba's undisputed comments at the Sussex County council meeting in July are not actionable. But the First Amendment plainly prohibits this Court from preventing Reba from making these comments.

Nor can the Court impose onerous restrictions on Reba's speech, such as requiring that she preface every statement with a disclaimer or refrain from using first person plural pronouns such as "we" and "us." "Prolix laws chill speech for the same reason that vague laws chill speech: People of common intelligence must necessarily guess at the law's meaning and differ as to its application." *Citizens United*, 558 U.S. at 324. Plaintiff's proposed order on its preliminary injunction motion (presumably a precursor to a permanent version of the same order) could hardly be deciphered by people of common intelligence: it asks the Court to prohibit Reba "from holding herself out to federal and state agencies, local government representatives, elected officials, and other third parties as someone who speaks for the Mallard Lakes community as a whole, the Plaintiff Association, or its Council."

D.I. 3, ¶ 2. It also asks the Court to require that Reba make such modifications to the pages and domain name of her website as are necessary, *in the discretion of the Council*, to make clear the website and its content are not associated or endorsed in any way by the Association or the Council." *Id.*, ¶ 3. In other words, Plaintiff asks the Court to hand it the right to determine what Reba must say on a website engaged in core political speech. This request for relief is so blatantly unconstitutional that the Court should not give it a second thought.

Reba has every right to speak at public meetings and to request and petition public officials to budget money for flood mitigation, and Plaintiff has no right to stop her from doing so. This is true even if Reba has no authority to speak on behalf of the Association, or if the expenditure of any requested money on Mallard Lakes common areas would require ultimate approval from the Association. Simply asking that public money be budgeted in a certain way does not require the Association's approval. Anyone can ask Sussex County to budget money for flood mitigation, just as Reba or anyone else could ask Sussex County to budget money for slum clearance without actually owning slum properties. If Reba's actions result in positioning Mallard Lakes to be the recipient of public funds for improvements to its common areas, the Association is free to decline any such funding.

The Complaint also alleges that Reba

> perpetuates misinformation indicating that elevation of buildings in the community will ultimately be "free" because of government

> funding/grants she claims will cover the cost in full, and her actions serve only to poison the well and create division and animosity between the community and government agencies which may at some point be in a position to help the community to address the issue of rising tidal water.

Id. ¶ 27.

The Court cannot enjoin such statements just because Plaintiff disagrees with them.

> Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth—whether administered by judges, juries, or administrative officials—and especially one that puts the burden of proving truth on the speaker. The constitutional protection does not turn upon the truth, popularity, or social utility of the ideas and beliefs which are offered.

New York Times Co. v. Sullivan, 376 U.S. 254, 271 (1964). "[E]rroneous statement is inevitable in free debate, and…it must be protected if the freedoms of expression are to have the breathing space that they need to survive[.]" *Id.* 271-272. Reba denies that she is making false statements, but even if Plaintiff's allegations are accepted as true, this Court cannot impose restrictions on Reba's speech just because it is allegedly false, and certainly not because it creates division and animosity between the community and government officials.

Plaintiff's Complaint contains no allegations other than that Reba has engaged in speech that falls squarely within the core political speech that the United States Supreme Court has repeatedly recognized is subjected to the highest levels of First Amendment protection, and which this Court has recognized is entitled to even

greater protection by the Delaware constitution. Accepting all of Plaintiff's allegations as true, the Complaint fails to state a claim and should be dismissed.

III. This Court Lacks Subject Matter Jurisdiction Because Plaintiff Seeks an Injunction Against Future Wrongdoing.

An injunction against "future wrongdoing" is not generally available. *See Mock v. Div. of State Police, Dep't of Safety & Homeland Sec*., 2022 WL 1744439, at *10 (Del. Ch. May 31, 2022); *Organovo Hldgs., Inc. v. Dimitrov*, 162 A.3d 102, 114 (Del. Ch. 2017) (collecting cases). A party requesting forward-looking injunctive relief must show a likelihood of harm absent relief, and assert facts showing a reasonable apprehension of future wrong—"it is insufficient to show past harm . . . [the party] must show that without the injunction, it is likely to suffer harm that the injunction could prevent." *Preston Hollow Cap. LLC v. Nuveen LLC*, 2020 WL 1814756, at *22 (Del. Ch. Apr. 9, 2020); *see also McMahon v. New Castle Assocs*., 532 A.2d 601, 606 (Del. Ch. 1987) (requiring that facts show "a reasonable apprehension of a future wrong" to grant injunction because defendants cannot simply "be enjoined from breaching such duty again").

Here, Plaintiff has only alleged a single prior event with any specificity—that Reba made confusing statements at a Sussex County Council meeting in July. While Reba vigorously disputes this allegation and the audio recording of the comments proves it is incorrect, the Court obviously could not enjoin this prior act even if Plaintiff's allegations were true. The Complaint does not seek to undo this past

event. Instead, it seeks to enjoin Reba from making future comments to public officials, and to place guardrails on what she may say in the future based on this single concrete allegation.

The remainder of the allegations about Reba's alleged conduct are conclusory statements containing no specific facts: that Reba "perpetuates misinformation," that she "has misrepresented on multiple occasions that she speaks for the Association[,]" that "Upon information and belief," she "has contacted and continues to contact public officials falsely implying that she speaks on behalf of the Association" (*Id.*, ¶ 31) and that her "actions have harmed the reputation of the Association, created confusion about who is authorized to speak for the Association, and made future discussions with or requests to relevant government agencies unquestionably more difficult for the Association." *Id.* ¶ 33. The allegations say nothing at all about what was said, to whom, when, or how such alleged statements have created confusion or caused harm. Yet on this basis, Plaintiff seeks an injunction policing Reba's future speech with elected officials.

Evan all of the conclusory allegations, like the single concrete factual allegation that Reba made confusing statements in July, occurred in the past. It is insufficient to request future injunctive relief based on these past events. "Injunctions may, of course, be issued where the evidence establishes a pattern of conduct from which a court may and does conclude that there is a reasonable

apprehension of risk of future breaches of duty of a predictable type." *Thorpe v. Cerbco, Inc*., 1996 WL 560173, at *4 (Del. Ch. Sept. 13, 1996). That is not the case here. The conclusory allegations containing no facts cannot establish a pattern of conduct sufficient to create a reasonable apprehension of future harm

Plaintiff's Complaint is plagued by an even greater problem—it admits the Association is not seeking government solutions to the flooding problems. Therefore it could not be harmed by Reba allegedly "reducing the likelihood that government agencies or local officials will continue to work constructively with the Association on remediation options or treat the Condominium as a favored community for the receipt of funding to pursue remediation options." Compl. ¶ 37. This alleged harm is remote and speculative and Plaintiff has not established any reasonable apprehension it will occur. The Court should determine it cannot grant the injunctive relief Plaintiff seeks and dismiss Count I of the Complaint. Because none of the other counts in the Complaint seek injunctive or other relief within the jurisdictional purview of this Court, the Court should dismiss the Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

IV. Plaintiff Fails to Allege Sufficient Facts Supporting Its Request For Relief.

Notwithstanding the above, Plaintiff's complaint should be dismissed because it does not assert enough factual material to support her claims for injunctive relief. Even if all of Plaintiff's allegations are accepted as true, it has (1) failed to identify

any legal right with which Reba has interfered and (2) failed to articulate facts showing Reba misrepresented herself or failed to include a sufficient disclaimer on her website.

a. Plaintiff does not allege any right with which Reba has interfered.

"Irreparable harm depends on interference with a legal right…." *State v. Delaware State Educ. Ass'n*, 326 A.2d 868, 875 (Del. Ch. 1974). This is not a trademark case. The Complaint does not seek to enjoin Plaintiff's trade or business speech. It does not allege defamation or libel, nor could it. Rather, it asks the Court to issue an order governing Reba's communications with "federal and state agencies, local government representatives, elected officials, and [other] third parties…." Compl. Prayer for Relief A. But the Complaint only makes vague allegations that Reba has ever done these things. The only specific allegation in this regard is the July Sussex County Council meeting, and that allegation is easily disproven by listening to a recording of the hearing. Reba never once claimed to be speaking on behalf of Plaintiff. To the extent that any person was confused even after Reba clearly identified herself as a Mallard Lake homeowner, that did not and cannot amount to irreparable harm.

But even if Plaintiff could show likelihood of confusion, or even actual confusion on the part of listeners, the Board has no legal right for the public, or public officials, not to be confused by a citizen's political speech, nor does it have

any right to enjoin speech just because it does not like what the person is saying or because the speech causes an alleged problem, such as sowing chaos and devision. That is the whole point of freedom speech, which Vice-Chancellor Glasscock has already explained to this Plaintiff and its lawyer.

If the Court were to wade into this area and attempt an actual harm analysis of a citizen's alleged confusing comments at a public hearing, there would be almost no limit to the number of injunctions sought against public participation. Almost everything said in a political context is something that someone, somewhere, would prefer not be said. Political speech is often confusing, sometimes deliberately so. Anyone who has ever attended a public hearing in this state knows that citizens are very often less than a model of clarity when getting up to speak. Certainly, many are less clear than Reba was at the Sussex County meeting when she plainly prefaced her remarks by stating she was a Mallard Lake homeowner and did not ever claim to represent the homeowners. Plaintiff cannot show it will suffer irreparable harm in the absence of preliminary relief because even if everything Plaintiff is alleging is true, Reba is not interfering with any legal right of Plaintiff. For this reason as well Plaintiff's Complaint should be dismissed.

b. Plaintiff's Allegations Cannot Support its Claims.

Plaintiff's allegations cannot support its claims for two reasons. First, the only two particularized facts Plaintiff includes in its complaint are not actionable and

cannot as a matter of law give rise to liability. Second, the remaining allegations are not just vague but conclusory.

Plaintiff alleges that Reba maintains a website called ML Sustainability (the "Website") which was, "until very recently," intentionally misleading. Compl. ¶ 29. The Website allegedly suggested it was affiliated with the Association. *Id.* The Complaint includes a link to the website. A screenshot is also attached as Exhibit 1. Because the Complaint references the document and includes the link, the Court may consider it without converting this Motion into one for summary judgment. The Website very plainly contains a disclaimer clearly indicating that it is not affiliated with the Association. *See*, Ex. 1. Reba disputes that the website was ever misleading, or that it previously did not have a disclaimer. But this is not relevant since the Court cannot retroactively enjoin a prior version of the website.

On the basis of this allegation, Plaintiff asks the Court for "A preliminary and permanent injunction as necessary and appropriate…ordering Reba to make clear that it is unofficial and unaffiliated with the Association or Council[.]" But this request for relief makes no sense given that the website already contains a disclaimer.

"A trial court need not blindly accept as true all allegations, nor must it draw all inferences from them in Plaintiffs' favor unless they are reasonable inferences." *H-M Wexford LLC v. Encorp, Inc*., 832 A.2d 129, 139 (Del. Ch. 2003), quoting

Grobow v. Perot, 539 A.2d 180, (Del. 1988). "Under Rule 12(b)(6), a complaint may, despite allegations to the contrary, be dismissed where the unambiguous language of documents upon which the claims are based contradict the complaint's allegations." *Id.* "[A] claim may be dismissed if allegations in the complaint or in the exhibits incorporated into the complaint effectively negate the claim as a matter of law." *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001). "The court need not accept every strained interpretation of the allegations proposed by the plaintiff." *Glean Tech Fund II LP v. McIntosh*, No. 2024-0032-PAF, 2025 WL 2505049, at *5 (Del. Ch. Sept. 2, 2025), quoting *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

Here, it is not even clear whether Plaintiff actually alleges the current disclaimer is insufficient or misleading, but the Court need not accept any such allegation when the unambiguous document on which such allegations rely clearly shows the Reba's website contains a disclaimer showing it is not affiliated with the Association. Any allegation to the contrary cannot support the allegations in the Complaint. Nor must the Court accept Plaintiff's strained interpretation that the website is confusing.

To the extent the Complaint references Reba's remarks at the July Sussex Country Council meeting, it impliedly references the official audio recording of that meeting containing the remarks. The audio recording is available online and plainly

shows that Reba did not in any way make confusing comments that would lead a listener to believe that she spoke on behalf of the Association. She clearly prefaced her remarks by stating she is a Mallard Lake homeowner. Once again, the Court does not need to credit Plaintiff's allegations when the unambiguous language of documents on which the claims are based contradict and negate those allegations. Nor must it accept Plaintiff's strained interpretation of these undisputed comments.

Beyond these two allegations, the rest of the complaint is conclusory and completely deficient. Plaintiff is "entitled to all reasonable factual inferences that logically flow from the particularized facts alleged, but conclusory allegations are not considered as expressly pleaded facts or factual inferences." *Glean Tech Fund II LP*, 2025 WL 2505049, at *5, citing *White v. Panic*, 783 A.2d 543, 549 (Del. 2001). Because Plaintiff's entire Complaint relies on only two concrete allegations, and those allegations are flatly contradicted by the documents on which they rely and to which they refer, the Complaint should be dismissed.

V. The Court Should Award Reba Attorney Fees and Costs.

Under the "bad faith exception" to the American rule, a court may award fees in "cases where the court finds that the litigation was brought in bad faith or that a party's bad faith conduct increased the costs of litigation." *Arbitrium (Cayman Islands) Handels AG v. Johnston*, 705 A.2d 225, 231 (Del. Ch. 1997), *aff'd*, 720 A.2d 542 (Del. 1998). Bad faith has been found where a party was "faced with a

mountain of evidence, including legal opinions, legal authority and judicial declarations, demonstrating" the incorrectness of its litigation position. *Barrows v. Bowen*, 1994 WL 514868, at *1 (Del. Ch. Sept. 7, 1994), citing *Judge v. City of Rehoboth Beach,* 1994 WL 198700, at *2 (Del. Ch. Apr. 29, 1994).

Here, it strains credulity that Plaintiff and its counsel could credibly believe that they can obtain an injunction preventing Reba from engaging in protected political speech with her elected officials, or via her website. But worse, Plaintiff and its counsel are repeat offenders. They have already previously tried to obtain unconstitutional gag orders and were told in no uncertain terms by this Court that it cannot enjoin speech. Plaintiff and its counsel brought claims against Reba anyway.

The Court previously stated to Plaintiff, and the same attorney who now represents Plaintiff:

> [T]he [United States Supreme] Court said, "It is elementary, of course, that in a case of this kind the courts do not concern themselves with the truth or validity of the publication. ... the injunction, so far as it imposes prior restraint on speech and publication, constitutes an impermissible restraint on First Amendment rights."

Mallard Lakes Sandy Interest Group et al. v. Mallard Lakes Community Association, C.A. No. 11653-VCG, Trans. at 23 (Del. Ch. Jul. 20, 2016) (emphasis added) (D.I. 10, Exhibit A). The above quoted text was spoken directly to the attorney who filed the present case. He and his client was told by this Court that Plaintiff cannot obtain a preliminary injunction enjoining speech, yet he and his client proceeded with this

case anyway. Vice-Chancellor Glasscock went on:

> I can't enjoin people from getting up at a meeting and complaining or demanding information. I can't enjoin people from future e-mails telling realtors they think that disclosures are insufficient. I can't enjoin people from contacting government agents and telling them that they think that they should be entitled to redress because private organizations are doing things that they think are improper.

Id.

Plaintiff was "faced with a mountain of evidence, including legal opinions, legal authority and judicial declarations, demonstrating" that the position it has taken in this litigation is without merit. Plaintiff and its counsel could not have believed that this lawsuit was meritorious after being told explicitly by this Court that the United States and Delaware Constitutions protect speech and injunctions against speech are not available. That they proceeded anyway suggests the real goal was to force Reba to expend resources defending this frivolous litigation and to punish her for making statements the Association does not like.

Moroever, the Association filed this case immediately before the Board election, then publicized it on the Association website, and even included a politically charged article (the Politico piece) solely to cast Reba as "difficult" or "unable to work with others." None of that has anything to do with its stated legal claim. The timing and the use of a personal reputational attack (currently the subject of a motion to strike) strongly suggest this litigation was not filed to protect any Association interest — but to punish and discredit Reba publicly right before ballots

were cast and to interfere in a community election. That is not only improper motive, but directly relevant to bad-faith analysis and fee shifting.

The Court should determine that the bad faith exception to the American Rule applies and award Reba her attorney fees and litigation costs.

CONCLUSION

Plaintiff's claims fail because Plaintiff quixotically seeks to enjoin what is plainly and obviously protected speech. Plaintiff's claim should be dismissed, and Reba should be awarded attorney fees for this repeat offender who has already been warned that this Court cannot enjoin speech.

Barring the robust First Amendment protections applicable to this case, Plaintiff seeks to enjoin future wrongdoing without creating a reasonable apprehension of future wrong and it fails to include any concrete allegations in its complaint. Its case must be dismissed for these reasons as well.

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