

VIRGINIA:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

WAT LAO BUDDHAVONG, INC.,

Plaintiff,

v.

SOUKSOMBOUN SAYASITHSENA, et al.,

Defendants.

Case No. CL-20-122

DEFENDANT SOUKSOMBOUN SAYASITHSENA'S DEMURRER

COMES NOW, Defendant Souksomboun Sayasithsena ("Sayasithsena") and hereby files this Demurrer to the Complaint filed by Wat Lao Buddhavong, Inc ("Wat Lao" or "Plaintiff"). Specifically, Sayasithsena avers that each and every claim set forth in the Complaint fails to state a claim upon which relief may be grant against this Defendant and likely any other defendant. In support of these bases for dismissal, Sayasithsena states as follows:

1. As explained in more detail in his Plea in Bar, Sayasithsena avers that consideration of the present action by this Honorable Court is barred by the Free Exercise Clause of the First Amendment to the Constitution of the United States and Article I, § 16 of the Constitution of Virginia. (See Plea in Bar at Section A).
2. Any litigation or related actions by Defendant, if any, that are alleged to have caused Plaintiff harm or form the basis of any claim are protected by the *Noerr-Pennington* doctrine. (See Plea in Bar at Section B).
3. The Plaintiff Corporation was not a defendant to the previous lawsuit and has no standing to raise certain of these claims that are based upon the previous lawsuit. (See Plea in Bar at Section C).

FILED AT 150 P M
 APR 03 2020
 GAIL H. BARR, CLERK
 BY: [Signature] D.C.

4. Even if this Court had jurisdiction over this matter and the Plaintiff's Board has standing to bring this action, each claim fails as follows:
- a. Plaintiff has failed to state a claim upon which relief may be granted for its Statutory Conspiracy claim because:
 - i. Plaintiff Corporation is a non-profit, so it does not engage in any business for profit that can be the subject of such a claim, rather, it is "a religious, non-profit, charitable organization" in the business "to promote the peaceful exercise of the Buddhism" (Complaint at ¶ 36);
 - ii. Plaintiff has not been injured in its "reputation, trade, business or profession" and any reputational damage was solely to Plaintiff's board members and not Plaintiff itself;
 - iii. Plaintiff has failed to allege sufficient facts to establish that Defendant Sayasithsena was part of any such conspiracy or engaged in any improper acts in furtherance of the conspiracy;
 - iv. Plaintiff fails to identify the specific damages that it alleges were "caused" by the alleged conspiracy;
 - v. Any damages alleged by any such conspiracy are speculative at best;
 - vi. The corporation cannot claim any damages from allegations made against the individual alleged board members;
 - vii. Plaintiff has failed to exhaust its remedies for the alleged filing of false documents with the VSCC and alleged solicitation of contributions in the name of Wat Lao, if any: and

- viii. Plaintiff cannot distinguish the consequences of the alleged acts of the defendants as the cause of Plaintiff's alleged injury as opposed to other factors including but not limited to the acts of Plaintiff's alleged board.
- b. Plaintiff has failed to state a claim upon which relief may be granted for its Intentional Interference with Business Expectancy claim because:
- i. Plaintiff has failed to identify a specific contract into which it expected to enter;
 - ii. Plaintiff has alleged a "business expectancy" for which the defendants themselves would be a party;
 - iii. Plaintiff has failed to identify in what improper action, if any, Defendant Sayasithsena engaged in furtherance of this alleged interference;
 - iv. Plaintiff has failed to allege that the defendants knew that their actions would cause any legitimate loss of a "business expectancy;" and
 - v. Plaintiff has failed to identify the specific loss which it has purportedly suffered from the defendants' actions.
- c. Plaintiff has failed to state a claim upon which relief may be granted for its Conspiracy claim because:
- i. Plaintiff sues for the conversion of an unidentified amount of money, not part of a fund or distinguishable account;
 - ii. Plaintiff has not identified any manner in which Defendant Sayasithsena has engaged in the "wrongful exercise or assumption of authority ... over Plaintiff's goods, depriving it of possession;" and

- iii. Plaintiff has failed to identify the specific loss which it has purportedly suffered from the defendants' actions.
- d. Plaintiff has failed to state a claim upon which relief may be granted for its Injunctive Relief claim because:
 - i. Plaintiff has failed to identify the specific conduct which it requests the Court to enjoin allegedly engaged by the defendants;
 - ii. Plaintiff has failed to identify the specific conduct which it requests the Court to enjoin allegedly engaged by Defendant Sayasithsena; and
 - iii. Plaintiff has alleged no conduct by Defendant Sayasithsena that it seeks to have enjoined.
- e. Plaintiff has failed to state a claim upon which relief may be granted for its Declaratory Judgment claim because:
 - i. Plaintiff has failed to identify a statutory or common law basis under which it seeks to have such a declaration made;
 - ii. Plaintiff has failed to identify a current controversy over the composition of the board prior to the filing of this lawsuit; and
 - iii. Plaintiff seeks an advisory opinion.
- f. Plaintiff has failed to state a claim upon which relief may be granted for its Malicious Prosecution claim because:
 - i. As with a claim under Va. Code § 8.01-271.1, a non-suited case cannot be the basis for a malicious prosecution claim, especially because the non-suit was without prejudice;

- ii. Plaintiff has failed to identify any “arrest of the plaintiff, seizure of his property, or other ‘special injury to plaintiff,’” as required under Virginia law;
- iii. Plaintiff cannot recover under such a claim for any “expenditure of attorneys' fees and costs to defend against a single lawsuit” or “loss of professional reputation” under Virginia law; and
- iv. Plaintiff cannot assert an alleged “lack of authority to hire a law firm to file [a] suit” as evidence of “probable cause for such a claim; and
- v. Defendant Sayasithsena was not a party to the lawsuit that Plaintiff claims was maliciously prosecuted.

3. Plaintiff has stated a basis upon which it may recover attorneys’ fees for any claim other than the statutory conspiracy claim, as required under the Supreme Court of Virginia Rule 3:25, and thus, any attempt to recover attorneys’ fees for any claim other than Count I must be struck.

4. Plaintiff has not identified a claim and a specific basis under which it seeks punitive damages, so any such request for such a remedy must be struck.

5. Plaintiff seeks a double recovery, as it seeks both treble damages under the statutory conspiracy claim and punitive damages.

6. Plaintiff has failed to identify the specific amounts that it seeks for each claim and the basis for which it is entitled to each amount.

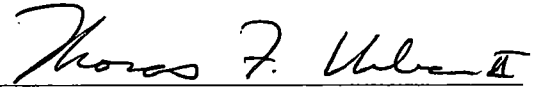
7. Plaintiff has failed to identify a basis upon which it is entitled to pre-judgment interest.

8. Plaintiff has failed to allege and establish any legal basis or facts that would entitle Plaintiff to a pendente lite injunction, so that request must be struck.

A Memorandum in Support of this Demurrer shall be filed prior to the hearing on this Demurrer.

DATED: April 2, 2020

Respectfully submitted,



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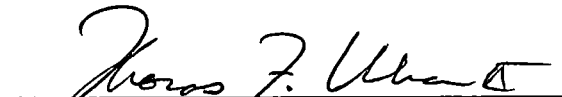
*Counsel for Defendant Souksomboun
Sayasithsena*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a true and accurate copy of the foregoing was served via U.S. First Class Mail to

August McCarthy, Esq.
70 Main Street, Suite 23
Warrenton, VA 20186

on or about this the 2nd day of April, 2020.



Thomas F. Urban II