

VIRGINIA:

IN THE CIRCUIT COURT FOR FAUQUIER COUNTY

WAT LAO BUDDHAVONG, INC.,)
)
 Plaintiff,) Case No. CL20-122
)
 v.)
)
 SOUKSOMBOUN SAYASITHSENA, ET AL.)
)
 Defendants.)

**WAT LAO BUDDHAVONG'S REPLY TO DEFENDANTS'
MEMORANDA IN SUPPORT OF THEIR DEMURRERS**

COMES NOW your Plaintiff, WAT LAO BUDDHAVONG, INC. ("Wat Lao"), through counsel, and replies to the memoranda filed by Defendants in support of their Demurrers.

Defendant Sayasithsena filed a memorandum individually, and the remaining defendants purported to file one memorandum jointly. However, of the remaining defendants, only Kimberly Richards is not in default; the other defendants did not file responsive pleadings within 21 days of being served, and have not sought leave to file late pleadings.¹ So, for convenience, this memorandum will refer to the Sayasithsena Demurrer and the Richards Demurrer, as these are the only two defendants not currently in default.

The Sayasithsena Demurrer exceeds the page limit of this Court's July 23, 2020 order, which specifically limits Sayasithsena to seven (7) pages. His Demurrer runs to

¹ The defendants in default are Sysavat, Panyasith, Stevens, Sengkhyavong, and Inthichak

26 pages with attachments. Any such attachments are made part of the pleading, and therefore this pleading clearly exceeds the Court's page limit.

For this reason, the Court should not consider Sayasithsena's Demurrer, and Wat Lao moves to strike it.

Both demurrers seem utterly confused as to the nature of a demurrer. The Richards Demurrer spends some nine (9) pages discussing background facts, the "ecclesiastical abstention doctrine," the protection of free speech under the First Amendment to the U.S. Constitution, and the *Noerr-Pennington* doctrine. Not a single one of these topics, not even the background discussion, is appropriate for a demurrer.

The Sayasithsena Demurrer similarly raises defenses related to the "ecclesiastical abstention doctrine," the protection of free speech under the First Amendment to the U.S. Constitution, and the *Noerr-Pennington* doctrine. Sayasithsena also raises the defense of lack of standing, yet another claim that is not proper in a demurrer.

A demurrer tests one thing: The legal sufficiency of *the Complaint*. It assumes that every fact asserted in the Complaint is true. *Almy v. Grisham*, 273 Va. 68, 639 S.E.2d 182 (2007); *Thompson v. Skate America*, 261 Va. 121, 128, 540 S.E.2d 123, 126 (2001). A Demurrer does not make assertions of fact at all. It merely tests the Complaint *as written*. So, the assertions of *fact* in the Demurrers, which are meant to contradict the allegations in the complaint, are simply misplaced. They do not belong in a demurrer.

Defendant Sayasithsena seems to acknowledge this: in his original Demurrer, he refers repeatedly to his Plea in Bar, which is a more appropriate place to raise such fact-based defenses.

The Richards Demurrer finally begins on page 9, and the Sayasithsena Demurrer finally begins in the middle of page 3. The two demurrers make similar arguments regarding the causes of action set out in the Complaint

Conspiracy Claim

Sayasithsena cites the correct legal standard for a business conspiracy claim, as set out, among other places, in *Allen Realty Corp. v. Holbert*, 227 Va. 441 (1984): "(1) A combination of two or more persons for the purpose of willfully and maliciously injuring plaintiff in his business[;] and (2) resulting damage to plaintiff."

It could not be clearer that Wat Lao has met this standard. The Complaint alleges that (1) the defendants (two or more persons) conspired "with the specific intent to injure Wat Lao in its business"; and (2) did in fact injure plaintiff, in the many ways detailed in the Complaint.

Sayasithsena claims that the conspiracy claim is deficient because (1) it fails to allege that Sayasithsena was part of the conspiracy; (2) Wat Lao cannot be injured in its trade or business because it is organized as a non-profit corporation; (3) any damage to Wat Lao was the result of corrupt board members; and (4) the Complaint fails to allege specific damages that were caused by the conspiracy.

Sayasithsena is simply wrong. (1) The conspiracy claim *does* allege that Sayasithsena was, in fact, part of the conspiracy. He conspired with the other defendants to injure Wat Lao. This is set out clearly in the Complaint. (2) There is no such non-profit exclusion from business conspiracy. Wat Lao is a Virginia corporation; it conducts business; it files taxes; it has revenue; and it pays bills. The defendants conspired to injure Wat Lao in the conduct of its business, in the myriad ways detailed in the Complaint, just as clearly as if Wat Lao were any other corporation. (3) This is a

factual allegation and therefore is not properly part of a demurrer; and (4) the Complaint *does* allege many types of damages caused by the defendants. It is not necessary - or possible in this case - to allege specific amounts of money taken from Wat Lao or the specific monetary cost to Wat Lao of the conspiracy. Those are factual matters for trial.

The Richards Demurrer is difficult to understand on the conspiracy claim. It cites to the correct legal standard in Virginia Code § 18.2-499, but then ignores that standard, ignores the Complaint altogether, asserting instead that the Complaint fails to allege any business interests that were harmed. This assertion is so obviously wrong that it hardly seems necessary to elaborate. The Complaint alleges numerous ways in which Wat Lao was injured in its business.

The Richards Demurrer also alleges that the Complaint fails to "plead any facts to support the conclusory allegation that the defendants had the malicious intent to harm the plaintiff's business." Again, it is hard to believe that Defendant Richards could miss the numerous details alleged in the Complaint that describe Defendants' malicious intent. The complaint alleges that Defendants stole money from Plaintiff with the specific intent to injure Plaintiff; they impersonated officers of Plaintiff with the specific intent of confusing the public and taking business from Plaintiff; they opened fraudulent bank accounts in Plaintiff's name with the specific intent of siphoning money from the corporation; and so on. It would be difficult to imagine a pleading with more detail to support the conspiracy claim.

Intentional Interference Claim

Sayasithsena's Demurrer sets out the legal standard for a claim for tortious interference with business expectancy, citing *Chaves v. Johnson*, 230 Va. 112 (1985) and

Dunlap v. Cottman Transmission Sys., LLC, 287 Va. 207 (2014), but then simply states that Wat Lao has not made the necessary allegations without supporting this statement. Sayasithsena is mistaken. To paraphrase the standard taken from *Chaves*, a claim for tortious interference requires Plaintiff to allege (1) the existence of a business expectancy; (2) knowledge of the expectancy on the part of the interferor; (3) intentional interference that causes a breach of the expectancy; and (4) resultant damage to the party whose expectancy has been disrupted.

The Complaint alleges in detail each of these elements of the claim. (1) The Wat Lao corporation has been in business for many years, during which it has built a strong reputation and following in its community. As a result, it has enjoyed revenues in the form of donations from the people who used its temple in Catlett, Virginia. This revenue stream over two decades is a business expectancy. (2) Defendants were familiar with Wat Lao's business; so familiar, in fact, that they knew exactly how to hold "fake" elections, impersonate Wat Lao officers, and so on, as detailed in the Complaint. (3) Defendants took the numerous actions described in the Complaint with the specific intent to interfere with Wat Lao's business, or breach the expectancy of revenue that Wat Lao had built over many years. And (4) Wat Lao has suffered in the many ways described in the Complaint: lost revenues; damage to its reputation; loss of patrons to its temple; and so on.

It could not be clearer that, even under Sayasithsena's own legal standard, Wat Lao has more than sufficiently alleged a intentional interference claim.

Defendant Richards cites a similar legal standard in her Demurrer, but takes a different tack in her argument. Notably, Richards cites primarily to non-binding caselaw from the federal trial court in the Eastern District of Virginia. Her argument

boils down to two points: (1) because Wat Lao received donations, it did not have an expectancy of further donations; and (2) the Complaint does not allege that the defendants knew of this expectancy. As noted above, (2) is clearly met. Defendants were familiar with Wat Lao's business; so familiar, in fact, that they knew exactly how to hold "fake" elections, impersonate Wat Lao officers, and so on, as detailed in the Complaint.

The more important question is posed by Richards in (1): Does a Virginia corporation, that receives all of its revenue for over two decades from predictable donations, and has come to rely on those donations, have a "business expectancy" sufficient to support a claim for intentional interference with this business expectancy?

The clear answer to this question is yes. First of all, some of the money taken from Wat Lao was money that was *actually* donated. So this amount was not an "expectancy" at all, but had actually been donated. There was nothing "hypothetical" about it, as Richards seems to imply.

Richards avoids the term "expectancy" in her argument, choosing to use the word "contract" instead. And because Wat Lao did not have a "contract" for the donations it received, goes this argument, it could not be harmed if Defendants interfered with those donations.

First, there are two types of claims: one for interference with contract, and another for interference with business expectancy. *See Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207 (2014). More importantly, she is mistaken as to the true nature of the intentional interference claim. It requires only a "business expectancy"; that is, a reasonable expectation that, as Richards herself argues, "absent defendants' intentional misconduct, plaintiff would have ... realized the expectancy."

The Complaint alleges that for over 20 years, Wat Lao, which is a corporation licensed to conduct *business* in Virginia just like any corporation, had built a following and reputation that generated hundreds of thousands of dollars per year in donations. This was real money over real years. Wat Lao certainly had an "expectancy" that these donations would continue, as they had continued, uninterrupted, for two decades. And they surely would have, but for the misconduct of Defendants.

Richards is mistaken that Wat Lao must allege that Defendants are in competition with Wat Lao in order to sufficiently allege this cause of action. While this happens to be true in the present case, competition is not a necessary element of the claim.

Conversion Claim

Wat Lao alleged that money that belonged to Wat Lao was taken from it by defendants, who converted it to their own use, depriving Wat Lao of this money. By the standards cited by both Sayasithsena and Richards, Wat Lao has alleged a cause of action for conversion.

Richards makes factual assertions that are not properly part of a demurrer. She alleges that the money taken from Wat Lao was deposited into a certain account, and so on. These factual assertions are improper in a demurrer, which tests only the pleadings as written. The Court should ignore them.

Sayasithsena makes essentially the same argument on the conversion claim as Richards does, but adds that the claim is not sufficiently plead because it does not allege a specific amount of money that was converted. Sayasithsena is mistaken. It is not necessary - or possible - in this case, to allege an amount of money that was taken by Defendants as a result of their fraud in inducing Wat Lao patrons to donate money. Wat

Lao simply does not know how much money was taken. Only the defendants know this. It is not an element of a conversion claim to allege a specific amount of money. Indeed, Sayasithsena cites to no authority for this requirement.

Injunctive Relief Claim

Wat Lao has alleged conduct that it has suffered tremendous harm at the hands of the defendants, and that this harm continues to this day. Wat Lao alleges that Defendants' conduct will cause - indeed has already caused - irreparable harm, that even if the Court enters a money judgment for Wat Lao, the harm being inflicted by Defendants is destroying a religious institution that means a great deal to many worshipers throughout the world. All of these allegations are in the Complaint.

Injunctive relief is appropriate.

Malicious Prosecution Claim

Sayasithsena and Richards fail to allege any shortcoming in the malicious prosecution claim in the Complaint. Instead, they each claim additional facts to support their demurrer. Sayasithsena claims a lack of standing for the malicious prosecution count, a claim that will require an evidentiary hearing. To illustrate this point, note that Sayasithsena has attached an exhibit to his Demurrer. As noted above, a demurrer merely tests the sufficiency of the Complaint, *as written*. It does not argue the facts, as Defendants are doing; indeed, it must accept the facts as written. Sayasithsena's Demurrer must fail as a result.

Richards claims that, because the complaint at issue was dismissed by nonsuit, which was without prejudice, the suit cannot be the basis for a malicious prosecution claim. A malicious prosecution does not require for Plaintiff in the present case to have

won the prior suit; only that it ended in a way that was not adverse to Plaintiff. A nonsuit is such a result.

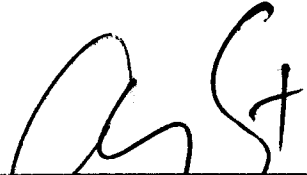
Wat Lao's Complaint properly alleges a malicious prosecution claim. Defendants have not properly challenged that, and their demurrers should be overruled on this claim.

WHEREFORE, in light of the foregoing, Plaintiff respectfully moves this honorable Court to overrule the demurrers filed in this case; and grant Plaintiff such further general relief as the Court deems just.

Respectfully submitted,

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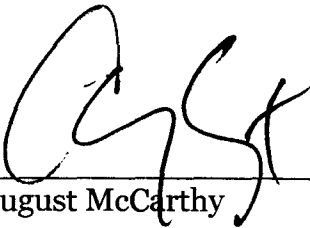
CERTIFICATE OF SERVICE

I certify that on this 30th day of June, 2020, a copy of the foregoing was served via facsimile to:

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