JAN 28 2002

STATE OF NORTH CAROLINA COUNTY OF DURHAM	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION

FILED
02 JAN 28 AM 11:52
ORANGE COUNTY, C.S.C.
BY SC

WEBB BUILDERS, LLC Plaintiff, v. JOHN L. JONES, BETTY S. JONES, CARL C. WILLIAMS, CLAIRE BATHE WILLIAMS, JOSEPH LOCKLEAR, FOGLEMAN & WILLIAMS DEVELOPMENTS, INC., WILLIAMS CONSTRUCTION COMPANY, EARL HARRIS, AND TERRI A. HARRIS Defendants.	01 CVS 00457

STATE OF NORTH CAROLINA COUNTY OF ORANGE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION

WEBB BUILDERS, LLC Plaintiff, v. BERNARD S. LAW AND RUDRA SEEGOBIN-LAW, Defendants.	01 CVS 156

ORDER ON DEFENDANTS' MOTIONS TO DISMISS

THIS MATTER comes before the Court on the motions of certain defendants to dismiss certain of the claims against them pursuant to North Carolina Rule of Civil Procedure 12(b)(6). Specifically defendants ask this Court to dismiss the following of plaintiff's claims:

1. Counts Four and Five of the Durham County complaint alleging interference with business relations and defamation and slander of business reputation against Defendant John L. Jones
2. Counts Twelve and Thirteen of the Durham County complaint alleging tortious interference with business relations and defamation and slander of business reputation against Defendant Williams Construction Company
3. Count Fourteen of the Durham County complaint alleging defamation and slander of business reputation against Defendant Carl C. Williams and Claire Bathe Williams
4. Counts Eighteen and Nineteen of the Durham County complaint alleging interference with business relations and defamation and slander of business reputation against Defendant Terri A. Harris
5. Counts Five and Six of the Orange County complaint alleging interference with business relations and defamation and slander of business reputation against Defendant Bernard S. Law

These counts constitute all of the claims based upon tortious interference with business relations and defamation and slander of business relations. For reasons set forth below, defendants' motions are granted in part and denied in part.

Safran Law Offices by Todd A. Jones, for plaintiff.

Rightsell, Eggleston, Forrester & Donato, LLP, by Donald P. Eggleston; Beemer, Savery, Hadler & Jones, PA, by Jeffrey A. Jones; for Defendants Earl Harris and Terri A. Harris, John L. Jones and Betty S. Jones, Bernard S. Law and Rudra Seegoblin-Law, Carl C. Williams and Claire Bathe Williams and Williams Construction Company.

I.

BACKGROUND

In 1999, Plaintiff Webb Builders, LLC contracted with and began constructing private homes for Defendants Bernard and Rudra Law, John and Betty Jones, Carl and Claire Williams, and Earl and Terri Harris. Each contract was independent of the other. The Law home was being built in Orange County and the other three homes in Durham County. The performance by the plaintiff and related conduct of defendants during the course of these home building projects is the source of the present dispute.

II.

LEGAL STANDARD ON MOTION TO DISMISS

Defendants have moved to dismiss these claims of tortious interference with business relations and slander and defamation of business relations pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. When ruling on a motion to dismiss under Rule 12(b)(6), the court must determine "whether, as a matter of law, the allegations of the complaint . . . are sufficient to state a claim upon which relief may be granted." *Harris v. NCNB*, 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987). In ruling on a motion to dismiss, the court must treat the allegations in the complaint as true. *See Hyde v. Abbott Laboratories, Inc.*, 123 N.C. App. 572, 574-75, 473 S.E.2d 680, 682 (1996). The court must construe the complaint liberally and must not dismiss the complaint unless it appears to a legal certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim. *See id.*

III.

INTERFERENCE WITH BUSINESS RELATIONS[1]

The Court first addresses plaintiff's claims of tortious interference with business relations. In their argument for dismissal of these claims of tortious interference, defendants assert that a "critical element" of the cause of action is the presence of "force, threats and intimidation." At an earlier time in our jurisprudence, defendants would be correct. Prior to the nineteenth century, courts often required a showing that the defendant's actions that caused the preclusion of economic advantage took the form of a recognized intentional tort—i.e., those torts involving physical force, threats and intimidation. *See* Joel E. Smith, Annotation, *Liability of Third Party for Interference with Prospective Contractual Relationship Between Two Other Parties*, 6 A.L.R.4th 195 (2001); Restatement (Second) of Torts § 766B cmt. b (1979).

Modern case law evaluates tortious interference claims more broadly. Rather than comprising a "critical element" of the cause of action, the presence of physical force, threats and intimidation is treated as one aspect of a multi-factor analysis. Courts now

recognize that an actor's predatory behavior can take a variety of forms other than traditional intentional torts. Such behavior can be equally effective at producing the desired result of frustrating the performance of contractual obligations or other economic expectancy.

The task of the court is to determine whether, under all the circumstances in the case, the conduct is improper. A particular means of interference may be improper under some circumstances, while, in different circumstances, the same means may not be improper.

In a recent opinion, our Court of Appeals summarized from contemporary North Carolina case law the necessary elements of the action:

> An action for tortious interference with prospective economic advantage is based on conduct by the defendants which prevents the plaintiffs from entering into a contract with a third party. *Owens v. Pepsi Cola Bottling Co.*, 330 N.C. 666, 680, 412 S.E.2d 636, 644 (1992). In *Coleman v. Whisnant*, 225 N.C. 494, 35 S.E.2d 647 (1945), our Supreme Court stated the following:
>
> We think the general rule prevails that unlawful interference with the freedom of contract is actionable, whether it consists in maliciously procuring breach of a contract, or in preventing the making of a contract when this is done, not in the legitimate exercise of the defendant[s'] own rights, but with design to injure the plaintiffs, or gaining some advantage at [their] expense. . . . In *Kamm v. Flink*, 113 N.J.L. 582, 99 A.L.R., 1, 175 A. 62, it was said: "Maliciously inducing a person not to enter into a contract with another, which he would otherwise have entered into, is actionable if damage results." The word "malicious" used in referring to malicious interference with formation of a contract does not import ill will, but refers to an interference with design of injury to plaintiffs or gaining some advantage at [their] expense.
>
> 225 N.C. at 506, 35 S.E.2d at 656. Thus, to state a claim for wrongful interference with prospective advantage, the plaintiffs must allege facts to show that the defendants acted without justification in "inducing a third party to refrain from entering into a contract with them which contract would have ensued but for the interference." *Cameron v. New Hanover Memorial Hospital*, 58 N.C. App. 414, 440, 293 S.E.2d 901, 917, *disc. review denied and appeal dismissed*, 307 N.C. 127, 297 S.E.2d 399 (1982).

Walker v. Sloan, 137 N.C. App. 387, 392-93, 529 S.E.2d 236, 241-42 (2000). Clearly, therefore, North Carolina law is in line with the majority of jurisdictions that do not

require independently tortious conduct for a claim of interference with contract or prospective contract to be viable. *See also Dalton v. Camp*, 353 N.C. 647, 654, 548 S.E.2d 704, 709 (2001).

Recognizing the need for case-specific examination of the facts, the American Law Institute has outlined a set of factors that should be considered by courts when determining whether an actor's conduct in intentionally interfering with a contract or prospective contractual relation is improper or not. Those factors include:

> (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference and (g) the relations between the parties.

Restatement (Second) Torts § 767. These factors are not intended to be an exhaustive list of the court's considerations. They do illustrate, however, the broad range of considerations the court may weigh in discerning conduct rising to the level of tortious interference.

With respect to their claim for tortious interference with business relations, plaintiff's complaint filed in Durham County alleges the following:

> 60. Because of Jones' disputes with Webb, Jones intentionally told Williams, Law, and Harris negative things about the work of Webb.
>
> 61. Jones intentionally induced Williams, Law, and Harris to terminate their building contracts with Webb, and for Williams, Law, and Harris to refuse to pay for work properly performed by Webb.
>
> 62. Jones instructed Locklear to contact other customers of Webb including Dr. Tammy Gregory on January 10, 2001, to have her terminate her construction contract agreement with Webb.
>
> 63. Jones had no justification for such inducement.
>
> . . . .
>
> 127. Upon information and belief, Locklear and [Fogleman & Williams] intentionally induced Jones, Williams, Law, and Harris to not perform on their contracts and to terminate their contracts with Webb.
>
> 128. Locklear contacted other customers of Webb including Dr. Tammy Gregory on January 10, 2001, and attempted to induce her to terminate her construction contract agreement with Webb.

129. Locklear blatantly told Dr. Gregory that Webb was a bad home builder. Locklear directed Dr. Gregory to terminate her contract with Webb.

130. Upon information and belief, Locklear and [Fogleman & Williams] intentionally induced Jones, Williams, Law, and Harris to not pay Webb for work properly performed and completed.

131. Locklear and [Fogleman & Williams] had no justification for such negative inducement.

. . . .

182. Upon information and belief, Harris contacted members of the church building committee and encouraged them not to let Webb bid on the church project.

. . . .

184. Upon information and belief, Harris induced the church building committee to not allow Webb to bid on the new church project contract.

185. By Harris' comments and direct action, Harris tainted Webb to the church building committee's consideration.

186. Harris had no justification for such negative inducement.

The relevant paragraphs of the plaintiff's complaint filed in Orange County are:

60. Upon information and belief, Law contacted members of the church building committee, and encouraged them not to let Webb bid on the church project.

61. By Law's comments and direct action, Law tainted Webb to the church building committee's consideration.

62. Law had no justification for such negative inducement.

The Court finds that plaintiff has set forth sufficient allegations of tortious interference with contract or prospective economic advantage to survive this motion to dismiss. Plaintiff's claims allege facts that, if accepted as true, could rise to the level of tortious interference. Plaintiff has referenced specific construction projects and the contracts and potential contracts it accuses defendants of frustrating as a result of their alleged interference. Plaintiff has also alleged the nature of the defendants' conduct that it claims caused the interference—albeit, in the most general of terms. Defendants' motions to dismiss plaintiff's claims of tortious interference with business relations is therefore denied.

IV.

SLANDER AND DEFAMATION OF BUSINESS REPUTATION

The Court next considers defendants' motions to dismiss plaintiff's claims of slander and defamation. Defendants' motions are based on the sufficiency of plaintiff's pleadings and whether or not the alleged slanderous words should have been set forth with particularity therein. The Court finds that plaintiff should have so pleaded, and the slanderous words should have been set out as they were spoken—or at least substantially so—in its complaint.

To adequately plead slander, the complaint must enable the Court to determine whether the statement was defamatory. North Carolina courts do not require the allegedly defamatory words be set out verbatim in the pleadings. Rather, it is only necessary that the "words attributed to defendant be alleged 'substantially' *in haec verba*, or with sufficient particularity to determine whether the statement was defamatory." *Stutts v. Duke Power Co.*, 47 N.C. App. 76, 84, 266 S.E.2d 861, 866 (1980). The rationale for this requirement is simply to ensure that defendants have adequate notice of the slanderous words attributed to them. It would be unduly harsh to require defendants to venture a response to weighty accusations of slander couched in only the most general of terms.

In reviewing the allegations of slander set forth in plaintiff's complaints, the Court finds them void of any specific language or even an attempt to paraphrase the claimed slanderous words with any degree of particularity. The most precise language plaintiff uses to describe the alleged slander is that the defendants told potential clients of Webb Builders that the company was "not qualified to perform home construction" or that Webb Builders was "not a good homebuilder."

The Court of Appeals in *Stutts* garnered its articulation of the pleading standard for slanderous statements from two earlier cases where the courts found allegations of defamatory statements had not been sufficiently pled. The first of these cases is the federal district court ruling in *Drummond v. Spero*, 350 F. Supp. 844 (D. Vt. 1972). In *Drummond*, the plaintiff's claim for slander alleged that:

> The defendants, individually and collectively, on or about the 7th day of September 1971, and at divers other times did speak and utter false, defamatory and slanderous words about the plaintiff in the presence and hearing of other persons. (4) Said false, defamatory and slanderous words accused the plaintiff of committing the crime of embezzlement.

Id. at 845. The second case cited by the *Stutts* court is the North Carolina Supreme Court ruling in *Scott v. Veneer Co.*, 240 N.C. 73, 81 S.E.2d 146 (1954). In *Scott*, the plaintiffs alleged that the defendant had:

> "wrongfully, willfully and maliciously [accused] this plaintiff of the crime of embezzlement and fraud"; that on 23 September 1952, this defendant "caused a notice of summons and attachment to be printed and published in a newspaper of wide circulation in Caldwell County, alleging fraud and conspiracy on the part of this plaintiff . . . ."

Id. In both of these cases, the courts found that the plaintiffs had failed to allege either the exact language or the substance of the defamatory statements.

In comparison, the allegations of slander in the present case do not even rise to the level of particularity found in these cases where the courts found such detail lacking. While the plaintiffs in *Scott* and *Drummond* both set out claims that the defendants had made defamatory statements accusing them of specific crimes and wrongs, plaintiffs in the present case frame their accusations in only the broadest generalizations as to statements about the quality of the company.

Nor does plaintiff indicate the context in which these alleged defamatory statements were made. While allegations of time and place are normally immaterial, they are material for purposes of testing the sufficiency of the pleading—as is the case in the present motion to dismiss. *See* N.C. R. Civ. P. 9(f) (1999). The only indication the plaintiff provides as to the time of the statements is that they occurred "[t]hroughout the course of the project." The complaint makes no reference to the place where the alleged slander took place.

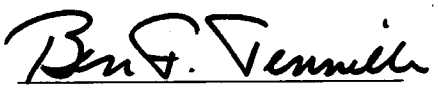
Due to the inadequacy of plaintiff's pleadings, the Court is unable to determine whether the alleged statements were defamatory. Accordingly, the Court finds that plaintiff has failed to state a claim upon which relief can be granted. Defendants' motions to dismiss these claims of slander and defamation are, therefore, granted.

V.

CONCLUSION

For the reasons outlined above, this Court hereby denies defendants' motions to dismiss plaintiff's allegation of tortious interference with business relations and grants defendants' motions to dismiss plaintiff's allegations of slander and defamation of business reputation.

SO ORDERED, this 24th day of January 2002.



Ben F. Tennille
Special Superior Court Judge
For Complex Business Cases

---

[1] As a point of clarification, plaintiff has styled its tortious interference allegations as "interference with business relations." While that label is commonly used in this area of tort law, North Carolina courts generally refer to the action as being that of "tortious interference with contract or prospective economic advantage." The Court's analysis in this matter is therefore based on the North Carolina case law developed under this latter nomenclature.