



IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

**LAKE FOREST PROPERTY OWNERS’
ASSOCIATION, INC.**

PLAINTIFF,

vs.

**LAKE FOREST STRONG, DOREEN
KNIGHT, EVE GRAY, DEXTER
CURRY, CATHIE MARX, LYNN
DAVIS, AND FICTITIOUS PARTIES 1-
100**

DEFENDANTS.

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NO. CV-2023-900163

PLAINTIFF’S OPPOSITION TO MOTION TO DISMISS

Comes now Plaintiff Lake Forest Property Owners’ Association, Inc. (“Plaintiff” or “LFPOA”) and files its opposition to the motion to dismiss filed by Defendants Cathie Marx and Lynn Davis (“Defendants”) based on Rule 12(b)(6) of the Alabama Rules of Civil Procedure. Ala. R. Civ. P. 12(b)(6). The Defendants do **not** raise any affirmative defenses to support their motion to dismiss. Instead, without even citing or discussing the applicable rule, the Defendants seem to argue that the Plaintiff did not comply with the liberal pleading requirements in Rule 8 of the Alabama Rules of Civil Procedure. Ala. R. Civ. P. 8. The Defendants are clearly incorrect. The Court should deny the Defendants’ motion to dismiss and allow discovery to proceed on the merits. Cathedral of Faith Baptist Church, Inc. v. Moulton, 2022 WL 4395532, at *3 (Ala. Sept. 23, 2022) (“Accordingly, we hold that the allegations of the complaint, when construed in the plaintiffs’ favor, are sufficient to state a claim for a declaratory judgment, thus satisfying the pleading requirements of Rule 8(a)”); McKelvin v. Smith, 85 So. 3d 386 (Ala. Civ. App. 2010) (reversing

trial court’s order dismissing action after finding that “homeowners’ pleading provided sufficient notice of negligence and wantonness claims to survive dismissal, despite absence of facts alleging duty.”); Crum v. Johns Manville, Inc., 19 So. 3d 208 (Ala. Civ. App. 2009) (holding that the complaint sufficiently placed the defendant on notice of wantonness claim). In further opposition, the Plaintiff states as follows:

1. Rule 8 governs the sufficiency of the Plaintiff’s complaint against the Defendants.

Rule 8(a) states:

A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks.

Ala. R. Civ. P. 8(a). Rule 8(e)(1) states, [e]ach averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.” Ala. R. Civ. P. 8(e)(1). Rule 8(f) states, “[a]ll pleadings shall be so construed as to do substantial justice.” Ala. R. Civ. P. 8(f).

2. For over 40 years, the Alabama Supreme Court has taken the position that Rule 8 only requires “notice pleading.” Weaver v. American Nat. Bank, 452 So. 2d 469, 473 (Ala. 1984). “Strict rules of technicality and form may be disregarded. A complaint is sufficient if it puts the defendant on notice of the actions against which it must defend.” Id. (internal citation omitted).

3. Recently, the Alabama Supreme Court reiterated the longstanding legal principal that, “the dismissal of a complaint is not proper if the pleading contains ‘even a generalized statement of facts which will support a claim for relief under Rule 8, Ala. R. Civ. P.,’ because ‘the purpose of the Alabama Rules of Civil Procedure is to effect justice upon the merits of the claim and to renounce the technicality of procedure.’” Cathedral of Faith Baptist Church, Inc. v. Moulton, 2022 WL 4395532, at *3 (Ala. Sept. 23, 2022) (internal citations omitted).

4. Here, the Plaintiff filed a lengthy complaint against the Defendants that clearly complies with Rule 8. (Doc. 2.) The Plaintiff brought causes of action for libel (Count I), slander (Count II), invasion of privacy – false light (Count III), and civil conspiracy (Count IV). (Id.) The Plaintiff alleged that the Defendants reside in Lake Forest and are members of the LFPOA. (Id., ¶¶ 6, 7.) The Plaintiff then alleged the following:

16. A small, vocal minority of LFPOA members and non-members, including Knight, Gray, Curry, Marx, and Davis, formed Lake Forest Strong in an ill-conceived, miscalculated attempt to overthrow the Board and replace the Board with members of Lake Forest Strong. Lake Forest Strong was organized into three groups: an “Interim Board”, and “Advocacy Team”, and an “Advisory Team”. Marx and Gray were elected as the president and vice president of the Interim Board, respectively. They were also members of the Advisory Team. Curry was a member of the Interim Board, a member of the Advocacy Team, and a member of the Advisory Team. Knight managed and controlled the Advocacy Team. Davis was a member of the Advisory Team.

17. The Defendants believed that they could remove the Board members from their positions if a certain number of homeowners signed a petition. The Defendants further intended to replace each Board member with the Interim Board. To entice homeowners to sign the petition,

the Defendants privately conspired to create a false, defamatory narrative about the Board. The Defendants created a website, www.lakeforeststrong.com, with the petition and a link to a “Go Fund Me” platform to solicit money for legal funds to remove the Board through court proceedings. The Defendants conspired to feed a false, defamatory narrative to the media, including NBC 15 (the local NBC affiliate based in Mobile, Alabama) and Lagniappe (an independent weekly newspaper which publishes localized content).

18. The Defendants promoted the idea of a petition as a means to remove the Board to dozens of other LFPOA members through Facebook and other publications. On a private Facebook page used by hundreds of LFPOA members known as “Lake Forest Residents for Immediate Elections” f/k/a “The Residents for Responsible Management” a/k/a REFORM, the Defendants encouraged members to sign a petition based on the false, defamatory narrative created by the Defendants.

19. On May 27, 2022, Carl Winners (“Winners”), the administrator of REFORM, posted on the page that he would admit members of Lake Forest Strong on the page. In response, Davis posted on REFORM: “Thank you for allowing cooperative posts, but it’s time to think beyond watchdog now. We have had the last segment of control or influence taken from the membership by chicanery, bullying and back door deals. It is time for action.” Knight then responded, stating, in part: “I’m not even a member of the POA, so have little to gain from this beyond fulfilling a promise to a friend – and I will continue to contribute my monthly pledge until we win this fight because I believe it is the right thing to do.”

20. On September 3, 2022, Winners posted a link on REFORM to Lake Forest Strong’s petition, advocating members to sign it.

21. The Go Fund Me platform represented that the Board was not complying with the IRS code and had acted unethically.

22. The Defendants conspired to send hundreds of letters to the Alabama Attorney General (“AG”), Internal Revenue Service (“IRS”), and Federal Bureau of Investigation (“FBI”) in an attempt to cause a criminal investigation directed at the Board’s activities or, at a minimum, create the appearance that the Board had engaged in a crime. The Defendants knew that the criminal agencies would likely view any complaints as a “civil matter”, so they intentionally conspired to flood the criminal agencies with waves of letters to give the illusion of widespread complaints of a criminal nature. The Defendants acted with malice, ill will, and spite and knew or should have known that there was no factual basis to allege that the Board or any of its members had committed a crime.

23. The Defendants believed that if the Advocacy Team promoted sending letters to the AG and the IRS, then the Interim Board would be shielded from any knowledge or culpability, thus allowing the Interim Board to complete the scheme.

24. On May 23, 2022, Knight and Winners posted on REFORM and discussed “discrediting” the LFPOA Board with the city and community and forcing them to resign. He stated: “Their lives must be made as horrible as they made our legally elected representatives when the [sic] served with the bullying intimidation of the old guard.”

25. On May 26, 2022, NBC 15 in Mobile reported that Lake Forest Strong had retained an attorney, quoting him as stating that “these kinds of boards invite certain, ‘unsavory’ activities improprieties, embezzlement, kickbacks, acts of friendly contracts.” <https://myNBC15.com/news/local/daphne-residents-unhappy-with-homeowners-association#>.

Lake Forest Strong’s attorney publicly advocated a “complete forensic audit of the finances,

financial records, and their contracts . . .” On the same day, Knight posted on REFORM: “Can anyone record the news tonight – all stations?” Knight then posted a link to the petition on www.change.org.

26. On July 29, 2022, NBC 15 in Mobile broadcast a report which contained a narrative claiming that, “[a] group of residents called ‘Lake Forest Strong’ brought forth their complaints about the property owners association board of directors, and what the group claims are unscrupulous dealings.” NBC 15 further reported that Lake Forest Strong “sent thousands of complaint letters to the state attorney general and the IRS.” During the same broadcast, a video displayed boxes allegedly containing thousands of letters which were sent to the AG and the IRS. <https://myNBC15.com/newsletter-daily/community-group-sends-thousands-of-complaints-to-irs-alabama-ag-about-lake-forest-hoa>.

27. On its website, www.lakeforeststrong.com, the Defendants published a video of an unidentified person purportedly mailing hundreds of letters to the AG and the IRS. The Defendants intentionally misled the community and local media that hundreds of LFPOA members submitted criminal complaints to the criminal agencies.

28. On REFORM, in response to the NBC 15 broadcast, a LFPOA member posted, “[s]aw where Channel 15 sent a news crew and were turned away, They showed up to ask the board about the ‘thousands’ of messages sent by this group to the IRS and Alabama AG. Excellent work!!!”

29. The Defendants demanded that the AG investigate the LFPOA and the Board. The Defendants represented to the AG that the complaints made by the homeowners “are no longer civil.” The Defendants further represented that, “[p]ursuant to the IRS Compliance Guide, under the Private Benefit and Inurement, a non-profit is ‘prohibited from allowing more than an

insubstantial accrual of private benefit to individuals OR organizations. This restriction is to ensure that a tax-exempt organization serves a public interest, not a private one. If a private benefit is more than incidental, it could jeopardize the organization's tax-exempt status. No part of an organization's net earnings may inure to the benefit of a person who has a personal or private interest in the activities of the organization.”

30. Based upon information and belief, the Defendants falsely accused the LFPOA of violating § 501(c)(7) of the Internal Revenue Code in mass letters written to the IRS. In particular, the Defendants alleged that the LFPOA had engaged in inurement as a result of members personally profiting from the common amenities managed by the Board and engaging in acts contradictory to its non-profit, tax-exempt status. The Defendants believed that, if the LFPOA lost its § 501(c)(7) status, the Board or certain members would be personally liable for any “back taxes”, penalties, and interest. The Defendants believed or hoped that this could cause the Board or certain members to file for bankruptcy protection.

31. Based upon information and belief, the Defendants' letters to the IRS triggered an audit of the LFPOA in October 2022. The LFPOA was forced to retain and pay an accounting firm, Robertson, Andreoli & Covington, P.C., to respond to the IRS audit and provide documentation to the IRS in support of its § 501(c)(7) status. The LFPOA has incurred special damages.

32. In November 2022, the IRS sent a letter to the LFPOA and indicated that the audit did not reveal any irregularities or facts to cause the LFPOA to lose its § 501(c)(7) status.

33. If the Defendants had caused the LFPOA to lose its § 501(c)(7) status, there would have been serious negative financial consequences for the LFPOA.

34. After the current AG (Steve Marshall) did not comply with the Defendants' demands, the Defendants began supporting Wendall Major, a candidate running against Attorney

General Marshall in the November 2022 election. On REFORM, Knight posted: “Ya’ll if you have not signed up for Wendall Major’s meeting, this is the time and the exact reason you need to. The news will be there. It’s one thing for us to say this is wrong, and this is why. It’s another thing for a candidate for the AG office to say it – and to call the current AG out on doing his damned job. Really important that we have a big turn out!” Knight then posted a link to the campaign function, “Please RSVP. This is a very important meeting to attend. It will be televised. A candidate for Attorney General on record stating the AGs office has to intervene is a gift for this community.” Knight and the Defendants actively promoted that the LFPOA Board should be subject to a criminal investigation.

35. The Defendants intentionally and maliciously created the false impression through the media, its website, and other means that the LFPOA Board and its members had committed crimes, violated the IRS code and related regulations, violated LFPOA’s bylaws or rules, or otherwise acted dishonestly or unethically. The Defendants believed that, by starting the false, defamatory narrative, they could make Board members quit or otherwise replace the Board with the Interim Board. The Defendants intentionally tried to shame and humiliate the LFPOA Board.

36. The Defendants intentionally and maliciously sought to promote the false and defamatory narrative to entice LFPOA members and others to sign the petition Defendants were promoting under the narrative that the Defendants and their co-conspirators could take over the Association. Because of the Defendants’ conspiracy to defame the Board and spread disinformation, other LFPOA members were misled.

37. The LFPOA demanded that the Defendants retract their defamatory statements pursuant to § 6-5-180 et. seq., Code of Alabama (1975). The Defendants have failed to properly retract their defamatory statements. The Defendants, therefore, are liable for punitive damages.

5. The Plaintiff specifically alleged that Defendant Cathie Marx was the president of the Interim Board and responsible for the torts and wrongful conduct alleged. The Plaintiff also specifically alleged that Defendant Lynn Davis was a member of the Advisory Team and responsible for the torts and wrongful conduct alleged. Ex parte McInnis, 820 So. 2d 795, 798-99 (Ala. 2001) (“A corporate agent who personally participates, albeit in his or her capacity as such agent, in a tort is personally liable for the tort.”), see also Nelson v. Lapeyrouse Grain Corp., 534 So. 2d 1988, 1095 (Ala. 1988) (“We have held that ‘a corporation may be liable for a slanderous utterance made by one of its agents if the slanderous utterance was made within the line and scope of the agent’s employment. We have also held that ‘agency is normally a question of fact to be determined by the jury. Therefore, Lapeyrouse’s liability for Jacob’s alleged defamatory communication presents a jury question.’”) (internal citations omitted). As leaders in Defendant Lake Forest Strong, the Defendants fully know their roles in the failed *coup d’etat*. The Defendants are being disingenuous with the Court when they claim ignorance of why they have been sued. The Defendants are simply trying to delay responding to the discovery served with the complaint.

6. The Plaintiff has complied with Rule 8 by alleging the factual basis for its claims. Ala. R. Civ. P. 8. Each element of each claim is correctly pleaded. A.P.J.I. 23.01 (Defamation), A.P.J.I. 35.03 (False Light), A.P.J.I. 43.01 (Civil Conspiracy). The Defendants have not cited any legal authority supporting their view that the Plaintiff has not complied with Rule 8. The Court should deny the Defendants’ motion to dismiss and allow discovery to proceed on the merits of the claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April, 2023, I electronically filed the foregoing with the Clerk of Court using the Alafile electronic document filing system which sends notification of such filing to the following attorneys of record:

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