

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

MASON CLASSICAL ACADEMY, INC.)	
)	
Plaintiff,)	
)	
vs.)	CASE NO.: 19-CA-011779
)	
JOSEPH M. BAIRD,)	DIVISION: K
)	
Defendant.)	
)	
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**ORDER DENYING DEFENDANT’S VERIFIED
MOTION FOR DISMISSAL PURSUANT TO §768.295, FLA. STAT.**

THIS CAUSE came before the Court for hearing on May 14, 2020, on Defendant Joseph M. Baird’s (“Baird”) “Verified Motion for Dismissal Pursuant to §768.295, FLA. STAT.,” filed December 17, 2019 (“Motion to Dismiss”). The Court, having reviewed the court file, the Motion, Plaintiff Mason Classical Academy, Inc.’s (“MCA”) Response in Opposition to Defendant’s Verified Motion for Dismissal Pursuant to §768.295, FLA. STAT., filed February 12, 2020, the Affidavits of Kelly Lichter and Fedor Steer filed by MCA in support thereof, arguments of counsel, applicable law, and being otherwise fully advised in the premises, **DENIES** the Motion to Dismiss.

1. Mason Classical Academy, Inc. (“MCA”) filed an Amended Complaint against Joseph M. Baird (“Baird”) asserting claims for tortious interference with two contracts to which MCA is a party.

2. Count I asserts a claim against Baird for tortiously interfering with MCA’s charter school contract (the “Charter Contract”) with The District School Board of Collier County, Florida (the “District”).

3. Count II is a claim against Baird for tortiously interfering with MCA's agreement with Hillsdale College (the "Hillsdale Agreement").

4. Both claims against Baird are predicated upon alleged false statements that Baird made with malice to the District and Hillsdale which were intended to, and allegedly did, cause harm to MCA's contractual relationships with the District and Hillsdale.

5. Baird's Motion to Dismiss seeks dismissal of MCA's Amended Complaint under Fla. Stat. §768.295 known as Florida's Anti-SLAPP (Strategic Lawsuits Against Public Participation) statute.

ANTI-SLAPP STATUTE AND RELEVANT LAW REGARDING PROTECTED SPEECH

6. Florida's Anti-SLAPP statute, in pertinent part, declares it unlawful for

[a] person or governmental entity in this state [to] file ... any lawsuit... against another person ... without merit and primarily because such person exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. Fla. Stat. §768.295(3).

7. The statute defines "[f]ree speech in connection with public issues" as "any written or oral **statement that is protected under applicable law and is made before a governmental entity** in connection with an issue under consideration or review by a governmental entity..." §768.295(2)(a) (emphasis added).

8. The statute places "the initial burden on [Baird] to set forth a prima facie case that the Anti-SLAPP statute applies, and then shift[s] the burden to [MCA] to demonstrate that the claims are not 'primarily' based on First Amendment rights in connection with a public issue and not 'without merit...'" *Gundel v. AV Homes, Inc.*, 264 So.3d 304, 314 (Fla. 2d DCA 2019).

9. Regarding statements that are protected under applicable law, there is no dispute among the parties that private citizens are free to exercise their constitutionally protected right to engage in free speech.

10. However, applicable law does not give citizens the right to make false statements in order to cause harm.

11. Florida's Constitution expressly limits the type of protected speech that individuals may freely engage in:

Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right.
See Fla. Const. Art. I, S. 4.

12. Moreover, “[t]he use of calculated falsehoods under any circumstances...is not constitutionally protected.” *Long v. State*, 622 So. 2d 536, 537 (Fla. 1st DCA 1993).

13. The law also provides that citizens do not have a right to interfere with contractual agreements by making false statements to government officials.

14. The Florida Supreme Court has expressly held that individuals making false statements of fact to the government can be held liable for tortious interference with contractual and business relationships. *See Londono v. Turkey Creek Inc.*, 609 So. 2d 14 (Fla. 1992) (holding that developers' allegations that disgruntled homeowners intentionally and maliciously made false statements concerning developer's regulation and operation of PUD to third parties and local government officials for purpose of harming developer's economic interests made facially sufficient claim that homeowners abused First Amendment right to petition government and stated claims for tortious interference with contractual rights).

15. Similarly, the court in *Florida Fern Growers Ass'n, Inc. v. Concerned Citizens of Putnam County*, 616 So. 2d 562, 570 (Fla. 5th DCA 1993) held that a citizen who uses improper mode, manner or purpose (i.e. makes false statements) when making statements to a political authority results in abuse and forfeiture of the citizen's free speech rights. *Id.* at 570.

16. The Court held that while citizens do have a qualified privilege to engage in free speech and petition the government, such privilege is abused, and thus forfeited, where an individual employs improper means and methods to do so. *Id.* at 570.

17. Accordingly, the *Fern Growers* court ruled that the plaintiff there had stated a valid cause of action for tortious interference against the defendants and overturned the trial court's order dismissing plaintiff's complaint.

18. The Fourth District Court of Appeals similarly held in *Hurchalla v. Lake Point Phase I, LLC*, 278 So. 3d 58 (Fla. 4th DCA 2019) that an individual's constitutional and common law privilege to petition their government and speak to another about matters of mutual and public interest are qualified, not absolute, and may be forfeited where there is a showing of malice. *Hurchalla* at 63-64. Accordingly, the judgment against Hurchalla was upheld by the District Court of Appeals.¹

SUMMARY OF RELEVANT FACTUAL SUBMISSIONS, ALLEGATIONS, AND EVIDENCE SUBMITTED BY MCA²

19. MCA is a charter school that has operated under its Charter Contract with the District since 2014. Amended Complaint at ¶¶6-7.

¹ The *Hurchalla* Court denied Hurchalla's Motions to Dismiss under the Anti-SLAPP statute.

² MCA has filed its Notice of Filing Affidavits in Support of its Response to Baird's Motion to Dismiss, which contains the affidavits of Kelly Lichter and Fedor Steer. Baird did not file any countervailing affidavits, or provide any documents or other evidence challenging either affidavit. Further, Kelly Lichter's affidavit stated that the factual allegations against Baird were true and correct.

20. In connection with its Charter Contract, MCA entered into the Hillsdale Agreement pursuant to which Hillsdale College agreed to provide MCA with assistance in its operation as a charter school. *Id.* at ¶8.

21. From August to October 2016, Baird served as member of MCA's Board of Directors and as its treasurer. *Id.* at ¶9-10.

22. During this time, several of Baird's children attended MCA as students; however, in May of 2018, Baird informed MCA that his children would not return to MCA, choosing to homeschool them instead. *Id.* at ¶12.

23. Nonetheless, Baird requested that his children be allowed to participate in MCA's athletic programs. *Id.* at ¶¶13-14.

24. An apparent argument ensued over Baird's request, and MCA's compliance officer wrote to Baird, copying Principal Hull and Mrs. Lichter, stating that Baird's children would not be allowed to participate in MCA sports. *Id.* at ¶14; Lichter Affidavit at ¶¶42-43, Exhibit 18.

25. Thereafter, Baird and his family moved to South Carolina where he currently resides. *Id.* at ¶¶3, 15.

26. At or around the same time as Baird disputed his children's ineligibility to play in MCA sports, it is alleged that Baird began a campaign to have MCA's Board reconstituted without legal basis or justification, and sought to harm MCA's relationship with the District and Hillsdale as a means to accomplish his goal. *Id.* at ¶22.

27. Baird's efforts began on June 7, 2018 by filing a meritless and retaliatory complaint against MCA (the "Baird Complaint") with the Florida Department of Education ("FDOE") which contained misrepresentations that Baird knew to be false or were made with reckless disregard as to their falsity. *Id.* at ¶18-21.

28. The Baird Complaint was referred by FDOE to the District which thereafter began a yearlong undisclosed investigation (in which Baird participated extensively) into the matters asserted against MCA in the Baird Complaint. *Id.* at ¶¶23-24.

29. In the Baird Complaint, Baird allegedly made false statements of material fact about MCA, and the individual members of its Board (in particular, Kelly Lichter, Board Chair), and MCA's former Principal, David Hull. Lichter Aff. ¶¶ 47-58.

30. Kelly Lichter and Fedor Steer (MCA's Information Technology Director since the school's inception) identified specific examples of allegedly material false statements of fact Baird made to the District and Hillsdale, which examples were not contradicted by Baird.

31. For example, in Kelly Lichter's Affidavit she attests as follows:

55. Baird also alleged that MCA abused his children stating that "[i]n January 2018, we withdrew our daughter who was a senior at MCA. The primary reason we withdrew her was because we thought Mr. Hull was taking the school in the wrong direction, and we were continually hearing reports from our children about Mr. Hull yelling at students, bringing the senior class to tears on a regular basis, calling teachers incompetent in front of the class, threatening teachers with their jobs etc. It was clear that Mr. Hull's behavior was taking a severe toll on my daughter, so we withdrew her from the school." Exhibit 19, p. 9.

56. Similarly, Baird stated in an attachment to a Facebook post and to Hillsdale that "[m]y eldest daughter who is now in college has been diagnosed with PTSD arising from trauma sustained during her time at MCA. Her trauma was primarily the result of having witnessed abuse of students and teachers on a regular basis. Now that she is in college, she finds herself jumpy and anxious because she is afraid that at any moment David Hull will open the door and come into the classroom to start yelling at the teacher or the class, or what was worse, engage in what she could only describe as 'quiet harassment' of them all." Exhibit 20, p. 19.

a. These statements are false. I personally addressed the withdrawal of Baird's children from MCA with Baird and his wife. Their explanation was consistent with their daughter's explanation in her email. Indeed, Baird's explanation of the reason for withdrawing his daughter from MCA is contradicted by his own prior emails.

- b. Baird, approximately one month after his daughter withdrew from MCA, wrote to Principal Hull reiterating what his wife had said in the past about Principal Hull: “you are one of the very few people that we are willing to entrust our children’s formation to. That is one of the highest compliments I can pay anyone.” Exhibit 17.
- c. Baird went on to apologize to Mr. Hull for his aggressive behavior at a meeting, explaining that he has “a terrible tendency to become combative when faced with differing views and opinions.” Exhibit 17.

64. Baird adds to his list of false statements from the FDOE Complaint false statements such as MCA destroyed public records “with intent to cover up dubious business practices” and “[f]alsification of documents with intent to cover up the cover up.” Exhibit 22. This is a reference to Baird’s theory that MCA provided false documents in response to his public records request for MCA’s Google Drive documents.

- a. This is false. MCA did not destroy public records in response to Baird’s public records request and did not falsify documents in a coverup.

32. Regarding Baird’s claim that MCA falsified documents, Fedor Steer attested that Baird threatened him asserting that Steer had been involved in the falsification, and requesting that Steer “blow the whistle.” He further attested that Baird’s allegations of falsification of records were untrue. Steer Affidavit, ¶¶ 15-17.

33. The false statements allegedly harmed MCA as set for in MCA’s Amended Complaint.

BAIRD’S MOTION TO DISMISS DOES NOT SET FORTH A PRIMA FACIE CASE

34. Applicable law provides that a citizen’s constitutional and common law privilege to petition their government and speak about matters of public interest are qualified, not absolute, and may be forfeited where there is a showing of falsity and malice. *See Hurchalla v. Lake Point Phase I, LLC*, 278 So. 3d 58 (Fla. 4th DCA 2019).

35. Accordingly, in order to set forth a prima facie case that his statements were protected under applicable law, Baird's Motion to Dismiss must at least indicate that his statements were true and without malice.

36. Here, MCA's Amended Complaint, and the evidence submitted by MCA, demonstrate, if proven at trial, that Baird made material false statements of fact with malice, which harmed MCA.

37. But Baird's Motion to Dismiss did not assert that the statements he is alleged to have made to the District and Hillsdale were true, and made without malice.

38. Accordingly, Baird did not set forth a prima facie case that the Anti-SLAPP statute applies.

39. Furthermore, regarding Count II for tortious interference with the Hillsdale Agreement, Baird has not set forth that his statements to Hillsdale were made before a governmental entity, and therefore the Anti-SLAPP statute cannot apply.

**MCA HAS DEMONSTRATED THAT ITS CLAIMS ARE NOT PRIMARILY
BASED ON FIRST AMENDMENT RIGHTS AND ARE NOT WITHOUT MERIT**

40. Even if Baird did set forth a prima facie case that the Anti-SLAPP statute applies, MCA has demonstrated that its claims are not primarily based on First Amendment Rights and are not without merit.

41. As set forth above, MCA's Amended Complaint, and the affidavits of Kelly Lichter and Fedor Steer submitted by MCA, demonstrate, if proven at trial, that Baird made material false statements of fact with malice, which harmed MCA.

42. The Amended Complaint alleges that it is Baird's false statements of material fact made with malice which support its claims for tortious interference.

43. MCA has acknowledged that in order to prevail on its claims for tortious interference that it must prove at trial that Baird made material false statements of fact with malice, which harmed MCA.

44. Accordingly, MCA's claims for tortious interference are not primarily based on Baird's exercise of First Amendment rights.

45. Furthermore, to establish tortious interference, MCA must prove:

(1) the existence of a business relationship, not necessarily evidenced by an enforceable contract; (2) knowledge of the relationship on the part of the defendant, (3) an intentional and unjustified interference with the relationship by the defendant, and (4) damage to the plaintiff as a result of the breach of the relationship.

Tamiami Trail Tours, Inc. v. Cotton, 463 So. 2d 1126, 1127 (Fla. 1985).

46. In its Amended Complaint, MCA alleges that Baird intentionally interfered with MCA's Charter Contract and the Hillsdale Agreement (significant relationships of which Baird had knowledge), without justification by making misrepresentations to the District and Hillsdale which were intended to, and did, cause the District and Hillsdale to breach their respective agreements with MCA.

47. MCA further alleges that Baird exercised actual and express malice by deliberately making misrepresentations that he knew to be false or were made with reckless disregard as to the statements' truth or falsity.

48. If MCA proves its allegations at trial, which allegations have been demonstrated here through record evidence to have some basis in fact, MCA's claims will prevail.

49. Accordingly, MCA's claims of tortious interference are not without merit.

CONCLUSION

50. In accordance with the Anti-SLAPP statute and the Second District Court of Appeals decision in *Gundel v. AV Homes, Inc.*, 264 So.3d 304 (Fla. 2d DCA 2019), the Court treats the Motion to Dismiss as both a motion to dismiss and motion for summary judgment, considering not only the four corners of the Amended Complaint, but also treating the Motion to Dismiss itself, which is verified, as an affidavit in support of a motion for summary judgment, and the affidavits filed by MCA in opposition to a motion for summary judgment.³

51. Baird's Motion to Dismiss is denied because the Amended Complaint properly states a claim for tortious interference under the applicable law. *See Tamiami Trail Tours, Inc. v. Cotton*, 463 So. 2d 1126 (Fla. 1985); *see also Hurchalla v. Lake Point Phase I, LLC*, 278 So. 3d 58 (Fla. 4th DCA, 2019).

52. Further, Baird's Motion to Dismiss is denied because he failed to set forth a prima facie case that the Anti-SLAPP statute applies.

53. Even if Baird had set forth the proper prima facie case, Baird's Motion to Dismiss is denied because MCA has demonstrated that the Amended Complaint is not primarily based on protected speech—the Amended Complaint is primarily based on the harm caused by Baird's alleged malicious false statements of material fact—and is not without merit.

WHEREFORE, it is hereby **ORDERED AND ADJUDGED** that

1. Defendant's Motion to Dismiss is **DENIED**; and

³ "If the evidence raises any issue of material fact, if it is conflicting, if it will permit different reasonable inferences, or if it tends to prove the issues," it should be submitted to the fact-finder for determination. *Pyjek v. Valleycrest Landscape Dev., Inc.*, 116 So. 3d 475, 478 (Fla. 2d DCA 2013). If the record reflects even a possibility of a disputed issue of material fact, the doubt must be resolved against the moving party and against summary judgment. *Hervey v. Alfonso*, 650 So. 2d 644, 646 (Fla. 2d DCA 1995). To the extent that Baird claims that he did present evidence that his statements were in fact true, or that his statements were made without malice, MCA has produced more than sufficient evidence to identify disputed issues of material fact.

2. Pursuant to §768.295(4), Florida Statutes, MCA is entitled to recover its reasonable attorneys' fees and costs incurred in connection with Baird's claim that the Amended Complaint was filed in violation of the Anti-SLAPP statute.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of August, 2020.

Electronically Conformed 8/3/2020

~~Caroline Tesche Arkin~~

CAROLINE TESCHE ARKIN, Circuit Judge

Copies furnished to:

All counsel of record via JAWS.