NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 1338

FELICIA HAWKINS AND HAWKINS CONSULTING, LLC D/B/A CRIMSON DISTINCTIVE INTERIORS

VERSUS

DECUIR, CLARK, AND ADAMS, LLP, AND THE STATE OF LOUISIANA THROUGH THE BOARD OF SUPERVISORS FOR THE SOUTHERN UNIVERSITY AND A&M COLLEGE SYSTEM

Judgment rendered AUG 16 2017

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. C641515
Honorable Janice Clark, Judge

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STATE OF LOUISIANA THROUGH THE BOARD OF SUPERVISORS OF SOUTHERN UNIVERSITY AND A&M COLLEGE

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BEFORE: PETTIGREW, McDONALD, AND PENZATO, JJ.

PETTIGREW, J.

This is an appeal by the plaintiffs, Felicia Hawkins and Hawkins Consulting, LLC d/b/a Crimson Distinctive Interiors (Hawkins), of a final judgment signed on July 18, 2016 that dismissed, without prejudice, Hawkins' claims against the State of Louisiana, through the Board of Supervisors for the Southern University and A&M College System (the Board), for malicious prosecution on the basis of prematurity, and that also dismissed Hawkins' remaining claims – tortious interference with contract, defamation, and negligent supervision – for failure to state a cause of action.[1] After a thorough review, we affirm.

FACTUAL BACKGROUND

In April 2014, Hawkins submitted a bid proposal to the Southern University and A&M College (Southern) for the purposes of providing furniture and/or interior design services for a building on Southern's campus, "University Place," in response to a "Request for Bid" announcement issued by the Baton Rouge campus. Hawkins' bid proposal was accepted, and Southern assigned its employee, Endas Vincent, to work with Hawkins to complete the bid contract, with the express understanding that Vincent was required to monitor all of Hawkins' transactions. Hawkins maintains that at all relevant times, all transactions executed by it were carried out with Vincent's knowledge and/or consent.

At some point in time, based on concerns that had been raised concerning the contract performance, the Board appointed its in-house general counsel, Tracie Woods, to

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[1] The district court had also rendered a non-final judgment on June 21, 2016, that dismissed the claims for tortious interference with contract and defamation. That judgment allowed a period of time for amendment. Although the motion and order for appeal filed by Hawkins included the June 21, 2016 judgment as being appealed, such inclusion is improper, as that judgment was not final and thus, not appealable. However, such error is of no moment as the subsequent July 18, 2016 judgment dismissed all of Hawkins' claims, and is properly before us on appeal.

We further note that the order of devolutive appeal submitted by Hawkins erroneously grants an appeal of the July 19 (rather than 18), 2016. The actual final judgment in the record was signed July 18, 2016. At the bottom of that judgment is a notation certifying that the judgment was mailed to counsel for the defendants on July 19, 2016. As there is no other July judgment in this matter, it is clear that the designation as the judgment being appealed as the July 19, 2016 judgment was the result of a typographical error or inadvertent error by counsel for Hawkins in noting the correct date of the signing of that judgment, rather than the date certifying notice to the defendants. Additionally, no one complains of this discrepancy and it is clear notwithstanding the error, that it is the July 18, 2016 judgment that is before us on appeal.

conduct an investigation. Following that appointment, on August 6, 2014, counsel for Hawkins received written notification from Ms. Woods that Stoma's of Baton Rouge, Inc., a competing unsuccessful bidder, had levied allegations of price padding and kickbacks against Hawkins in connection with the services Hawkins was providing under its bid contract with Southern. This written notification demanded that Hawkins cease and desist the performance of its obligations under the bid proposal agreement while the allegations levied against it were fully investigated. According to Hawkins, the cease and desist order caused the delay or halting of previously scheduled work, including the delivery of furniture, the installation of counter tops and cabinet doors, and other work that was necessary for the completion of the bid contract.

On September 19, 2014, while the cease and desist order was in place, Southern and the Board held a public board meeting wherein the matter of the services rendered by Hawkins was presented. During that meeting, according to Hawkins' original petition, publicly lodged allegations against Hawkins were made by members of the Board "for what was characterized as a failure on the part of [Hawkins] to perform the bid agreement."

On November 25, 2014, Winston Decuir, Jr., of Decuir, Clark & Adams, LLP, (law firm for Southern) submitted a demand letter to Hawkins on behalf of the Board, seeking the delivery of furniture or a cash refund for furniture not delivered. The letter made no mention concerning the allegations levied against Hawkins by Stoma's or the status or results of the investigation thereof. On December 5, 2014, Hawkins met with Decuir to discuss the November 25 demand letter. According to Hawkins, during this meeting, Felicia Hawkins advised Decuir that many of the items listed in the demand letter were subject to "change orders" that were submitted to Southern employee, Linda Antoine; thus, the items listed were replaced by alternative items that were documented and submitted to Antoine.

According to Hawkins, in December 2014, Hawkins received information from one of its other clients, Bethlehem Baptist Church of Bogalusa, that the church was suspending its agreement for services with Hawkins. According to information received

by Hawkins, Bethlehem Baptist's decision to suspend its agreement with Hawkins was recommended by its counsel, Michael Adams, also of Decuir, Clark & Adams, LLP, and was based on information that was submitted to the church by Tracie Woods and Winston Decuir, indicating that Hawkins was padding its prices.

On February 20, 2015, the Board held another meeting wherein information regarding Hawkins was again presented. Pursuant to the presentation, the Board publicly moved to grant the President of the Board the authority to pursue legal action against Hawkins.

PROCEDURAL HISTORY

On August 13, 2015, Hawkins filed a petition for damages naming as defendants Decuir, Clark, & Adams, LLP (the firm) and the Board (hereinafter referred to collectively as defendants, unless otherwise specified). In that petition, Hawkins asserted the foregoing factual history, and alleged that it was precluded from performing contractual obligations as a result of the levying of false allegations and/or placement of procedures and restrictions that prevented performance. Additionally, Hawkins alleged that it suffered damage to reputation, loss of income, and loss of business opportunity as a result of the false allegations levied against it. Hawkins alleged that the firm is liable to it for tortious interference with its contract with Bethlehem Baptist Church, and for providing slanderous and/or libelous information to Bethlehem Baptist Church that the firm knew not to be true at the time the information was provided. Hawkins further alleged the Board is liable to it for allowing its employee, Tracie Woods, to tortiously interfere with Hawkins' contract with Bethlehem Baptist Church; for failing to monitor, supervise, and/or control its employee, Ms. Woods; for failing to prevent or preclude Ms. Woods from providing slanderous or libelous information to Bethlehem Baptist Church that she knew was not true at the time the information was provided; for providing disparaging and injurious statements about Hawkins during its public meetings; for erroneously approving the taking of legal action against Hawkins when the defendants acted to cause the delay of performance by Hawkins; and for failing to obtain and review all of the information

within its purview which showed the "change orders" that were previously submitted by Hawkins.

The firm responded to Hawkins' petition with an exception raising an objection, asserting generally that Hawkins failed to state a cause of action for tortious interference with contract because the firm is not a corporate officer of the plaintiffs. The firm also asserted the petition failed to state a cause of action in defamation because the words allegedly attributable to the firm are not defamatory as a matter of law. The Board also responded to the petition with exceptions raising the objections of no cause of action and prematurity, asserting generally that none of Hawkins' allegations against it stated a legal cause of action. (The Board and the firm filed memoranda in support of their exceptions specifying the underlying arguments supporting their exceptions; Hawkins filed an opposition to the exceptions.) Following a hearing on March 14, 2016, the district court rendered judgment in open court dismissing with prejudice Hawkins' claim against the firm for tortious interference with contract and dismissing Hawkins' claim against the firm for defamation, but granted Hawkins leave to amend the petition within fifteen days to re-plead the defamation claim in accordance with law. That same judgment also dismissed with prejudice Hawkins' claim against the Board for tortious interference with contract, dismissed without prejudice (on the grounds of prematurity) Hawkins' claim against the Board for malicious prosecution, and dismissed Hawkins' claims against the Board for defamation and negligent supervision, but granted Hawkins leave to amend the petition within fifteen days to attempt to re-plead the defamation and negligent supervision claims in accordance with law. The judgment was signed April 4, 2016.

Within fifteen days from the date of the hearing, on March 29, 2016, Hawkins filed a first amending and supplemental petition for damages in which they amended allegations against the Board, but not against the firm. Thus, dismissal of the claims against the firm was rendered final.[2] Hawkins' amending petition reiterated all the

[2] On April 28, 2016, the district court rendered judgment in favor of the firm, and against Hawkins, dismissing Hawkins' claims against the firm with prejudice, noting that Hawkins had failed to amend the petition within the fifteen days allotted to state a cause of action against the firm.

previous factual allegations against the Board, and asserted with greater detail and specificity the statement made during the Board's meeting that Hawkins alleges was defamatory.[3] Hawkins also newly alleged that while the cease and desist order was in place, Southern contacted and/or retained a different vendor to finish the bid contract. Additionally, Hawkins alleged new facts regarding the role of Ms. Woods in the investigation of the bid contract performance and asserted that she acted as a corporate officer by serving in a position where she controlled the information she gave the Board members regarding her investigation of Hawkins and, thus, owed a fiduciary duty to Southern and to the Board, rendering her a person with the capacity to tortiously interfere with the contract at issue. The amending petition further alleged that the Board was vicariously liable for the tortious interference by Ms. Woods of the contract between Hawkins and Southern and for the statement made by Board member Mr. Walter C. Dumas during a public hearing referring to a deadline in the contract that Hawkins alleged was defamatory.

On April 15, 2016, the Board responded to Hawkins' amending petition with another exception raising the objection of no cause of action and a memorandum in support thereof. A "Final Judgment" was signed by the district court on May 23, 2016, sustaining the Board's exception, and dismissing with prejudice the claims in Hawkins' amending petition. Previously, however, on April 19, 2016, the district court had also signed a Rule to Show Cause setting the Board's exception for hearing on June 13, 2016. Hawkins filed an opposition to the exception on June 9, 2016, and the Board filed a reply in support of the exception on June 10, 2016.

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[3] Hawkins' amending petition alleged: "More specifically, Board Member Walter C. Dumas stated publicly '...the deadline to bring the furniture or money, certified funds, is 5 o'clock today, so advise Reverend Gant [a fellow Board member] whether or not we have furniture or we don't have furniture.'" The petition further provides that at the time Dumas made the statement, he was the Chairman of the Facilities and Properties Committee, and he made the statement while presenting his committee report to the Board, which included a status update on the work being performed by Hawkins at the University House. Hawkins alleged the statement was false and factually flawed, and was made by Dumas in a capacity that "provided more authority for those Board Members at the meeting ... to believe that the statement was factually correct when it was made."

A hearing was then held by the district court on the Board's exception, on June 13, 2016, following which on June 21, 2016, the district court signed a judgment vacating its earlier May 23, 2016 "Final Judgment" as having been inadvertently issued, but, also, for a second time, sustaining the Board's exception and dismissing with prejudice Hawkins' claims against it for tortious interference with contract and defamation. This judgment also granted leave to Hawkins to amend the petition within ten days of entry of the judgment to state a cause of action, if possible, against the Board, but ordered that if an amended petition was not filed by Hawkins within the ten days granted, the parties were to submit a proposed final judgment.

Ten days passed following the signing of the judgment and Hawkins filed no further amendments to its petitions. Thus, on July 18, 2016, the district court rendered final judgment dismissing without prejudice Hawkins' claim against the Board for malicious prosecution on the grounds of prematurity, and also dismissed with prejudice Hawkins' claims against the Board for tortious interference with contract, defamation, and negligent supervision. Hawkins appeals the July 18, 2016 judgment.

ASSIGNMENTS OF ERROR

Hawkins asserts two assignments of error on appeal: first, that the district court erred when it failed to find that Hawkins stated a cause of action against the Board for its general counsel's tortious interference with the contract between Hawkins and Southern, and secondly, that the lower court erred in failing to find that Hawkins stated a cause of action with respect to the allegedly defamatory statement made by Board member, Walter C. Dumas, regarding Hawkins.

NO CAUSE OF ACTION

An exception of no cause of action questions whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition. The exception is triable on the face of the petition and, to determine the issues raised by the exception, each well-pleaded fact in the petition must be accepted as true. In reviewing a district court's ruling sustaining an exception of no cause of action, appellate courts conduct a de novo review because the exception raises a question of law and the district

court's decision is based only on the sufficiency of the petition. **Badeaux v. SW. Computer Bureau, Inc.**, 2005-0612 (La. 3/17/06), 929 So.2d 1211, 1217. An exception of no cause of action should be granted only when it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief. **Barrie v. V.P. Exterminators, Inc.**, 625 So.2d 1007, 1018 (La. 1993). If the petition states a cause of action on any ground or portion of the demand, the exception should generally be overruled. **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1236 (La. 1993). Every reasonable interpretation must be accorded the language used in the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial. **Badeaux**, 929 So.2d at 1217; see also, **Ourso v. Wal-Mart Stores, Inc.**, 2008-0780 (La. App. 1 Cir. 11/14/08), 998 So.2d 295, 298, writ denied, 2008-2885 (La. 2/6/09), 999 So.2d 785.

DEFAMATION

Defamation is a tort involving an invasion of a person's interest in his reputation and good name. **Costello v. Hardy**, 2003-1146 (La. 1/21/04), 864 So.2d 129, 139; **Sassone v. Elder**, 626 So.2d 345, 350 (La. 1993). Generally, to prevail in a defamation action, plaintiff must prove: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault (negligence or greater) on the part of the publisher; and (4) resulting injury. **Costello**, 864 So.2d at 139. In other words, "plaintiff must prove that the defendant, with actual malice or other fault, published a false statement with defamatory words which caused plaintiff damages." **Sassone**, 626 So.2d at 350. If any one of the required elements is not sufficiently proven, the cause of action fails. **Costello**, 864 So.2d at 140.

Hawkins initially alleged that during a public hearing held by the Board to discuss the performance of Hawkins' services, "allegations were publicly lodged against [Hawkins] by members of [the Board] for what was characterized as a failure on the part of [Hawkins] to perform the bid agreement." In response to the district court's finding that Hawkins failed, within the fifteen days allotted, to state a cause of action in defamation,

Hawkins amended the petition, reasserting the foregoing general allegation and adding the following:

> More specifically, Board Member Walter C. Dumas stated publicly "... the deadline to bring the furniture or money, certified funds, is 5 o'clock today, so advise Reverend Gant [a fellow Board member] whether or not we have furniture or we don't have furniture."

The above verbatim statement is the sole basis for Hawkins' claim for defamation against the Board. In the amending petition, Hawkins added the following paragraph expounding on the statement:

> It must be noted that, at the time he made this statement, Walter C. Dumas was the Chairman of the Facilities and Properties Committee, and he made the subject statement while presenting his committee report to the Board of Supervisors, which included a status update on the work being performed by [Hawkins] at the University House. [Hawkins] contend that Mr. Dumas' giving of the false and factually flawed statement, in the capacity that he gave such statement, provided more authority for those Board Members at the meeting, those in attendance watching the meeting and those viewing the meeting over the Internet to believe that the statement was factually correct when it was made.

Notably, the statement itself appears to be more of an inquiry, requesting information on the status of the contract performance (specifically, the delivery of furniture) to determine if the deadline had been met. Indeed, we note that the only factual portion of the statement to which a challenge of veracity could be asserted is that the contractual deadline was at 5 o'clock on the day of the meeting. Hawkins have not contested the veracity of the 5 o'clock deadline, nor have they identified any other portion of Dumas' statement that they claim is false. Indeed, in a separate paragraph of the amending petition, in addition to asserting that Dumas' statement was "slanderous, false, unture (sic)," Hawkins added that Dumas' statement was "misleading ... by way of inferring that [Hawkins] had not provided any furniture to Southern University."

On appeal, Hawkins asserts that the statement made by Dumas "was one concluding that there was no furniture," that "did not leave open the possibility that Plaintiffs had delivered furniture at the time the statement was made," and that it "clearly communicated to the Board Members that ... there was no furniture at University House,"

which Hawkins contends was completely false because in fact, there was "a lot of furniture" in the house at the time the statement was made.

We cannot agree with Hawkins' contention that the statement clearly, or otherwise, concluded there had been no furniture delivered to University House. It is a simple, short statement, and as noted before, it in fact is not a statement but an inquiry as to the status of the performance under the contract that included delivery of furniture. While we agree with Hawkins that defamation can include statements inferring falsity, as supported by the jurisprudence on which Hawkins relies in argument, we do not agree that the statement made by Dumas inferred anything false. Again, it merely states there was a deadline, and asks that the status of the delivery of furniture be checked. There is no reasonable reading of the remark made by Dumas that would lead to the conclusion that no furniture had been delivered.

Based on the foregoing, we find that Hawkins' pleadings fail to set forth an allegation supporting or establishing the initial required element of a cause of action in defamation – a *false and defamatory* statement concerning another. As such, the district court did not err as the record reveals Hawkins failed to allege the essential elements for a cause of action in defamation against the Board, and the exception was properly sustained. There is no merit to this assignment of error.

TORTIOUS INTERFERENCE WITH CONTRACT

In the amending petition, Hawkins asserted that they were precluded from performing their contractual obligations due to the levying of false allegations and/or the placement of the cease and desist order that halted all activity under the bid contract. Hawkins alleged that the Board is liable for "[a]llowing its general counsel Tracie Woods to tortuously (sic) interfere with" the contract. In connection with that claim, Hawkins asserted that (1) there was a contract between Hawkins and Southern; (2) Ms. Woods had knowledge of the contract; (3) Ms. Woods placed a cease and desist order in place that rendered Hawkins unable to perform the contract; (4) there was no justification for precluding Hawkins from performing the contract; and (5) Hawkins suffered damages by being prevented from performing the contract.

With respect to Ms. Woods, Hawkins alleged that she was General Counsel for the Board; she was appointed by the President of the Board to investigate Hawkins' performance of the contract; she placed the cease and desist order and reported to the Board regarding the contract and the performance thereunder by Hawkins. As such, Hawkins alleged that Ms. Woods owed a fiduciary duty to Southern University and its Board, rendering her a person with the capacity to tortiously interfere with a contract according to law.

The record reflects that Ms. Woods was not a party to the contract. Moreover, despite Hawkins' attempts to designate her as such, she is not a corporate officer of a corporation, as required by Louisiana law, which recognizes a very narrow and limited claim for tortious interference with contract, precluding only a corporate officer from unjustifiably interfering with the contractual relation between his employer and a third party.

In **9 to 5 Fashions, Inc. v. Spurney**, 538 So.2d 228 (La. 1989), the seminal case regarding Louisiana's cause of action for tortious interference with contract, the supreme court granted writs to consider the plaintiff's urging the court to recognize an action that it has refused to allow since 1902 -- an action for tortious interference with a contractual relationship. The court reexamined the basic precepts of Louisiana's delictual law in the light of modern conditions to determine whether reparation is due under either an intentional or negligent interference with contract theory. *Id.* at 231-232. The court's decision recognized a very limited application of the common law doctrine to be applicable in Louisiana law that places a duty on a corporate officer to refrain from the intentional and unjustified interference with the contractual relation between his employer and a third person. *Id.* at 234. In limiting the scope of the cause of action it was recognizing, the court stated:

> It is not our intention, however, to adopt whole and undigested the fully expanded common law doctrine of interference with contract, consisting of "a rather broad and undefined tort in which no specific conduct is proscribed and in which liability turns on the purpose for which the defendant acts, with the indistinct notion that the purposes must be considered improper in some undefined way." W. Prosser & P. Keeton, The Law of Torts § 129, p. 979 (5th ed. 1984). Some

> aspects of this tort have been subjected to serious criticisms, leaving open a good many questions about the basis of liability and defense, the types of contract or relationship to be protected, and the kinds of interference that will be actionable. See W. Prosser & P. Keeton, Id.; Perlman, supra, Dobbs, Tortious Interference With Contractual Relationships, 34 Ark.L.Rev. 335 (1980).

Id. at 234. In Louisiana, the courts have limited the application of **9 to 5 Fashions** to its facts. Where the interference alleged is beyond the cause of action created in that decision, the trial court is correct in denying the claim. See **Healthcare Mgmt. Servs., Inc. v. Vantage Healthplan, Inc.**, 32,523 (La. App. 2 Cir. 12/8/99), 748 So.2d 580, 582-83.

For purposes of analysis, the action against a corporate officer for intentional and unjustified interference with contractual relations may be divided into five separate elements: (1) the existence of a contract or a legally protected interest between the plaintiff and the corporation; (2) the corporate officer's knowledge of the contract; (3) the officer's intentional inducement or causation of the corporation to breach the contract or his intentional rendition of its performance impossible or more burdensome; (4) absence of justification on the part of the officer; (5) causation of damages to the plaintiff by the breach of contract or difficulty of its performance brought about by the officer. **9 to 5 Fashions, Inc.**, 538 So.2d at 234.

Attempts by the courts of Louisiana to expand on the limited doctrine recognized in **9 to 5 Fashions** by allowing the claim against a non-corporate officer have been met with reversal by the supreme court. See e.g. **Cowen v. Steiner**, 96-830 (La. App. 3 Cir. 1/22/97), 689 So.2d 516, writ granted, judgment reversed by 97-1234 (La. 9/19/97), 701 So.2d 140 (where the supreme court reversed the judgment of the third circuit court of appeal that allowed, in part, an employee's claim for tortious interference with contractual relations to proceed against the medical director of a rehabilitation facility where the alleged interference stemmed from the director's refusal to sign an employment contract unless the employee was fired. The district court had sustained the defendant's exception of no cause of action, based on the assertion that the medical director was not a corporate officer of a corporation. The third circuit had reversed the

district court's decision, holding that the claim was not limited to that involving a "titled" corporate officer, and would have allowed the claim to proceed because the director "had the power or influence that a corporate officer might have." **Cowen**, 689 So.2d at 521. However, as noted, the supreme court reversed, reinstating the district court's sustaining the exception of no cause of action.)

Based on our review of the jurisprudence, we do not find Hawkins' attempt to analogize Ms. Woods' relationship with and duties to Southern and the Board to that of a corporate officer convincing. Indeed, the claim has been very limited by the Louisiana Supreme Court since its inception, and the narrow limitation of allowing the claim against only a corporate officer of a corporation has persisted throughout the subsequent jurisprudence. Moreover, as asserted by the Board in this matter, even if we were to accept Hawkins' analogy between Ms. Woods' title as "chief legal officer" to that of "corporate officer," the tortious interference with contract claim lies only against a corporate officer of a private corporation, and may not be brought against the corporation/employer itself or the Board, which is not a private corporation. Inasmuch as Ms. Woods is not a named party to the contract or the suit, such a claim has not been asserted. Therefore, the district court did not err in sustaining the exception of no cause of action as to this claim.

CONCLUSION

Finding no merit in any of Hawkins' assignments of error, the judgment of the district court, sustaining the exception of no cause of action and dismissing Hawkins' claims, is affirmed. Costs of this appeal are assessed to Felicia Hawkins and Hawkins Consulting, LLC d/b/a Crimson Distinctive Interiors.

AFFIRMED.