

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-16-265

COMMITTEE TO RE-ELECT JUDGE)
ROBERT NADEAU AND ROBERT)
M.A. NADEAU,)

Plaintiffs)

v.)

TRAVIS LOVEJOY,)

Defendant.)

ORDER ON MOTION
TO DISMISS

Before the Court is Defendant Travis Lovejoy's Motion to Dismiss.

I. Background

Plaintiffs Committee to Re-elect Judge Robert Nadeau and Robert M.A. Nadeau bring this action seeking relief for the alleged taking and vandalism of campaign signs by Defendant Lovejoy. In the Complaint, Plaintiffs contend that Travis Lovejoy was responsible for posting signs in public roadways advocating against Nadeau's re-election without the sponsor, contact information or posting duration; adding the word "suspended" to signs promoting Nadeau's re-election; and removing and causing injury to signs for Nadeau's re-election from public roadways. Plaintiffs assert counts of trespass to chattels and interference with advantageous opportunities and seek punitive damages.

Defendant moves the Court to dismiss Plaintiffs' Complaint.

II. Standard of Review

In order to survive a motion to dismiss for lack of standing, the plaintiff must show, "that the party, at the commencement of the litigation, has sufficient personal stake in the controversy to obtain judicial resolution of that controversy. *Halfway House v. City of Portland*, 670 A.2d 1377, 1379 (Me. 1996). "To have standing, a party must show they suffered an injury that is fairly traceable to the challenged action and that is likely to be redressed by the judicial relief sought. Further, the injury must be particularized. Put differently, it must be distinct from the harm suffered by the public-at-large." *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257.

On review of a motion to dismiss for failure to state a claim, the court accepts the facts alleged in plaintiffs' complaint as admitted. *Saunders v. Tisher*, 2006 ME 94, ¶ 8, 902 A.2d 830. The court "examine[s] the complaint in the light most favorable to plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Doe v. Graham*, 2009 ME 88, ¶ 2, 977 A.2d 391 (quoting *Saunders*, 2006 ME 94, ¶ 8, 902 A.2d 830). "For a court to properly dismiss a claim for failure to state a cause of action, it must appear 'beyond doubt that [the] plaintiff is entitled to no relief under any set of facts that might be proven in support of the claim.'" *Dragomir v. Spring Harbor Hosp.*, 2009 ME 51, ¶ 15, 970 A.2d 310 (quoting *Plimpton v. Gerrard*, 668 A.2d 882, 885 (Me. 1995)).

III. Discussion

Defendant moves the Court to dismiss Plaintiffs' Complaint as to Plaintiff Robert Nadeau for lack of standing and as to the Committee to Re-elect Judge Robert Nadeau for failure to state a claim.

A. Standing

Defendant argues that Nadeau does not have standing to bring the current action because the Committee to Re-elect Judge Robert Nadeau, rather than Nadeau personally, owned the signs. Defendant argues that even if Nadeau personally purchased the signs, he donated them to the Committee, leaving Nadeau with no personal interest in the signs and therefore no standing to sue. *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 8, 843 A.2d 43. In the Complaint and subsequent filings, Nadeau asserts that the signs were owned by both Nadeau personally and by the Committee. For purposes of a motion to dismiss, the court takes the facts alleged in the Complaint to be true. Therefore, for the purpose of this Motion to Dismiss, the Court must assume that the signs were owned by both Nadeau personally and by the Committee. The Court denies Defendant's Motion to Dismiss with respect to Nadeau's personal standing.

B. Trespass to Chattels

Defendant correctly asserts that there is little Maine authority on the cause of action of trespass to chattels. However, the Court disagrees with Defendant's argument that trespass to chattels has been conflated with conversion. Most recently, the Superior Court has granted judgment on the claim in 2003. *Carver v. Shellfish USA & William Atwood*, Me. Super. LEXIS 19, 2003 WL 1676419 (Me. Super. Ct. Feb. 10, 2003). Trespass to chattels is "the intentional misuse of

another's personal property via physical contact with that property which results in the loss of use of that property by its rightful possessor." *Id.* The Court finds that Plaintiffs have asserted sufficient facts to survive this Motion to Dismiss on the count of trespass to chattels.

That said, this claim might be more appropriately brought as a civil violation pursuant to statute. As Plaintiffs mention in their filings, the legislature has provided a specific cause of action for damage caused to signs in a public roadway. *See* 23 M.R.S. § 1917-B.

C. Intentional Interference with Advantageous Opportunities

Plaintiffs' claim for intentional interference with advantageous opportunities fails because Plaintiffs do not assert facts that show "interference by fraud or intimidation" by Defendant. In order to assert a cause of action for intentional interference with advantageous opportunities, a plaintiff must allege facts sufficient to show "the existence of a valid contract or prospective economic advantage, interference with that contract or advantage through fraud or intimidation, and damages proximately caused by the interference." *James v. MacDonald*, 1998 ME 148, ¶ 7, 712 A.2d 1054.

In order to prove fraud, the complaining party must show that the other party made a false representation of material fact, with knowledge of its falsity or reckless disregard for its truthfulness, for the purpose of inducing another to act or refrain from acting in reliance on it, on which the third person justifiably relied. *Harlor v. Amica Mut. Ins. Co.*, 2016 ME 161, ¶ 34, 150 A.3d 793 (Me. 2016). Intimidation occurs where the party "(1) communicates a statement or threat to a third person ... ; (2) that suggests adverse physical, economic, or emotional consequences to the third person; (3) for the purpose of inducing the third person

to act or fail to act regarding the plaintiff ... ; and (4) the third person acts based on the statement or threat, damaging the plaintiff." *Id.* at ¶ 35.

Plaintiffs have not alleged sufficient facts to make out a prima facie case for the element of interference by fraud or intimidation. Plaintiffs do not allege that Defendant made a false statement or threat intended to induce a third party to act or refrain from acting. Therefore, Plaintiffs fail to set out a prima facie case for intentional interference with advantageous opportunities. The Court grants Defendant's Motion to Dismiss with respect to Plaintiffs' claim of intentional interference with advantageous opportunities.

D. Punitive Damages


Plaintiffs' final count is for punitive damages. Punitive damages may be awarded where it is proven by clear and convincing evidence that a tort was committed with malice. *Waxler v. Waxler*, 1997 ME 190, ¶ 15, 699 A.2d 1161. The Court denies Defendant's Motion to Dismiss as to Plaintiffs' request for punitive damages because Plaintiffs have alleged that Defendant committed trespass to chattels with malice.

IV. Conclusion

The Court denies Defendant's Motion to Dismiss with respect to Plaintiffs' claim of trespass to chattels and Plaintiff's standing.

The Court grants Defendant's Motion to Dismiss with respect to Plaintiffs' claim of intentional interference with advantageous opportunities.

Dated: 3/2/17



Lance E. Walker
Justice, Superior Court

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