

IN THE CIRCUIT COURT, FOURTH JUDICIAL
CIRCUIT, IN AND FOR DUVAL COUNTY,
FLORIDA

Case No. 2022-CA-1047

Division: CV-F

CHARLES STOVALL WEEMS, IV and)
KERRI WEEMS, individuals,)

Plaintiffs,)

v.)

CELEBRATION CHURCH OF)
JACKSONVILLE, INC., a Florida)
nonprofit corporation, *et al.*,)

Defendants.)
_____)

**DEFENDANTS KEVIN CORMIER, MARCUS ROWE, ANGELA CANNON,
AND JACOB WILLIAM'S MOTION TO DISMISS SECOND AMENDED
COMPLAINT, OR IN THE ALTERNATIVE, TO COMPEL ARBITRATION**

Defendants Kevin Cormier, Marcus Rowe, Angela Cannon, and Jacob William (collectively, the "Trustees"), pursuant to Rules 1.140(b)(1) and 1.140(b)(6), Florida Rules of Civil Procedure, move to dismiss the Second Amended Complaint filed by plaintiffs Charles S. Weems, IV ("Stovall Weems") and Kerri Weems. The Second Amended Complaint is fatally defective and should be dismissed because (1) this Court lacks subject matter jurisdiction over claims involving matters of ecclesiastical government and church discipline under the First and Fourteenth Amendments to the United States Constitution and Article 1, Section 3 of the Florida Constitution; (2) the dispute is governed by a valid, binding, and enforceable arbitration agreement contained in Celebration's bylaws; (3) the Second Amended Complaint fails to state a cause of action for conspiracy, aiding and

abetting, and intentional infliction of emotional distress; (4) the Trustees are immune from liability under Section 617.0834, Florida Statutes; and (5) the Second Amended Complaint fails to state a cause of action for defamation, invasion of privacy, or public disclosure of private facts.

Celebration moved to dismiss the Second Amended Complaint or to compel the parties to engage in the Christian Conciliation process outlined in the church's bylaws.

Celebration's motion summarizes the church's arguments as follows:

The claims alleged in the Second Amended Complaint would require this Court to excessively entangle itself into a purely religious dispute over matters of church governance and discipline. Such an intrusion would violate the First and Fourteenth Amendments and lead to "the total subversion" of the church by the state, as prohibited by *Watson* and its progeny. Plaintiffs' claims are subject to the arbitration provision in Section 19.05 of Celebration's bylaws. Therefore, the complaint should be dismissed, or plaintiffs should be compelled to follow the alternative dispute resolution processes outlined in the bylaws.

The Second Amended Complaint also fails to state causes of action for conspiracy, aiding and abetting, and intentional infliction of emotional distress. The intra-company conspiracy doctrine bars the first two claims because the church and its agents cannot conspire or aid and abet torts amongst themselves. As to the claim for intentional infliction of emotional distress, the statements do not rise to the level of outrageousness required by Florida law.

Motion to Dismiss, p. 28. Because the arguments in Celebration's motion to dismiss also apply to the Trustees, those arguments are adopted by the Trustees and incorporated herein by reference.

In addition to the reasons set forth in Celebration's motion, the complaint should also be dismissed for two reasons specific to the Trustees: (1) the Trustees are immune from personal liability under FLA. STAT. § 617.0834; and (2) the Second Amended Complaint fails to state a cause of action because it does not allege the Trustees published any defamatory statements or private facts about the plaintiffs, which is a required

element of claims for defamation (Counts II and V), invasion of privacy (Count IX), and public disclosure of private facts (Count X). This motion addresses these two bases for dismissal.

MEMORANDUM OF LAW

I. Standard of Review

A motion to dismiss for failure to state a cause of action tests the legal sufficiency of the complaint. *See Tribute Co. Holdings, Inc. v. Dep't of Revenue*, 24 So.3d 762, 765 (Fla. 1st DCA 2010). When considering such a motion, the question before the court is whether the complaint alleges ultimate facts sufficient to support the claimed cause of action. *See Fla. R. Civ. P. 1.110(b)(2); Estate of Rocks v. McLaughlin Eng'g Co.*, 49 So.3d 823, 826 (Fla. 4th DCA 2010). "Courts must liberally construe, and accept as true, factual allegations in a complaint and reasonably deductible inferences therefrom," but they "need not accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party." *W.R. Townsend Contracting v. Jensen Civil Constr., Inc.*, 728 So.2d 297, 300 (Fla. 4th DCA 1999). A court must apply the "four corners rule" in its analysis of the sufficiency of a complaint to state a cause of action, which limits the court's review to the complaint and its attachments. *See Santiago v. Mauna Loa Investments, LLC*, 189 So.3d 752, 755-56 (Fla. 2016).

II. The Trustees are immune from liability under Section 617.0834.

Directors of nonprofit corporations are immune from liability except under very limited circumstances:

- (1) **An officer or director of a nonprofit organization** recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, or of an agricultural or a horticultural organization recognized under s. 501(c)(5), of the Internal Revenue Code of 1986, as amended, **is not personally liable for monetary damages to any person for any statement, vote,**

decision, or failure to take an action, regarding organizational management or policy by an officer or director, **unless:**

(a) **The officer or director breached or failed to perform his or her duties as an officer or director; and**

(b) **The officer's or director's breach of, or failure to perform, his or her duties constitutes:**

1. A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against an officer or director in any criminal proceeding for violation of the criminal law estops that officer or director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the officer or director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;
2. A transaction from which the officer or director derived an improper personal benefit, directly or indirectly; or
3. Recklessness or an act or omission that was committed in bad faith or with malicious purpose.

FLA. STAT. § 617.0834 (emphasis added). The statute defines directors as “a person who serves as a director, trustee, or member of the governing board of an organization.” FLA. STAT. § 617.0834(2)(b).

When a complaint fails to allege facts that meet all the elements of the exception to an individual director's immunity, it is properly dismissed. *See Raphael v. Silverman*, 22 So.3d 837 (Fla. 4th DCA 2009) (affirming dismissal of claims against individual directors where the complaint failed to allege facts sufficient to satisfy the conditions necessary to constitute an exception to director immunity under § 617.0834(1)(b)). Here, the Second Amended Complaint alleges that Celebration is a Florida not for profit corporation (Second Am. Compl. ¶ 9) and that at all material times, the Trustees were acting as Celebration's trustees (Second Am. Compl. ¶ 44). But the Second Amended Complaint fails to allege ultimate facts establishing any of the elements of the immunity exception. The complaint does not allege that any of the Trustees “breached or failed to perform his or her duties as an officer or director[.]” FLA. STAT. § 617.0834(1)(a). Nor does

the complaint allege that the breaches of any duties by the Trustees were “a violation of the criminal law,” “a transaction from which the ... director derived an improper personal benefit,” or the result of “[r]ecklessness or an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.” FLA. STAT. § 617.0834(1)(b). For these reasons, the exception does not apply, the Trustees are immune from liability, and the complaint should be dismissed.

III. The Second Amended Complaint fails to allege the Trustees published a defamatory statement to a third party.

“Defamation is defined as ‘the unprivileged publication of false statements which naturally and proximately result in injury to another.’ ‘Publication of defamatory matter is communication of the statement to a third person.’” *Hoch v. Loren*, 273 So.3d 56, 57 (Fla. 4th DCA 2019) (citations omitted). To plead a claim of defamation, a plaintiff must allege ultimate facts identifying the allegedly defamatory statements and their publication to third parties. Here, though, the only allegedly defamatory statements were made by others, not the Trustees. Instead, the Second Amended Complaint alleges the following regarding the Trustees’ role:

The Widespread Publication and Dissemination of the Defamatory Report

196. On or before April 24, 2022, the Trustees **authorized and approved** the widespread public dissemination of Wedekind’s Defamatory Report, including on Celebration Church’s Website

The Defamatory Presentation

204. On or before April 25, 2022, the Trustees also **participated in, authorized, and approved** the creation and publication a [sic] pre-recorded video of Wedekind regurgitating the same false and defamatory narrative and statements in the Defamatory Report (which are descriebd

above). This video was played at a staff meeting attended by numerous lower-level church employees and volunteers.

Second Am. Compl. ¶¶ 196, 204.

Plaintiffs do not allege the Trustees published any defamatory statements to a third party, only that they “authorized,” “approved,” or “participated in” publications by others. The complaint fails to allege any ultimate facts explaining what specific actions the Trustees took with respect to the alleged publications, or how any such actions could legally constitute a publication by the Trustees.

In its defamation claims against the Trustees (Counts II and V), the Second Amended Complaint references specific paragraphs in which the Trustees are alleged to have “published, caused to be published, and/or directed or encouraged others to publish the defamatory narrative statements ...” Second Am. Compl. ¶¶ 249 and 294. But those paragraphs do not contain any allegation that the Trustees themselves published any defamatory statements, and a complaint cannot stand on such vague and conclusory allegations. Because the Second Amended Complaint fails to allege the foundational element of a publication by the Trustees, it fails to state a cause of action for defamation and should be dismissed.

IV. The Second Amended Complaint fails to allege the Trustees published private facts.

“Florida recognizes three categories of privacy torts: (1) appropriation—the unauthorized use of a person's name or likeness to obtain some benefit; (2) intrusion—physically or electronically intruding into one's private quarters; [and] (3) public disclosure of private facts—the dissemination of truthful private information which a reasonable person would find objectionable.” *Oppenheim v. I.C. Sys., Inc.*, 695 F. Supp. 2d 1303, 1308 (M.D. Fla.), *aff'd*, 627 F.3d 833 (11th Cir. 2010) (citation and internal

quotation marks omitted). Although given different labels, Kerri Weems' claims for invasion of privacy (Count IX) and public disclosure of private facts (Count X) are duplicative and based on the same alleged publication of private facts.

A claim for publication of private facts requires the following elements: (1) the publication, (2) of private facts, (3) that are offensive, and (4) are not of public concern. *Malverty v. Equifax Information Services, LLC*, 407 F. Supp. 3d 1257, 1267 (M.D. Fla. 2019). Like the absent allegations regarding defamation discussed above, the Second Amended Complaint also fails to allege that the Trustees—individually—published any private facts and information regarding Kerri Weems. Instead, those claims appear to be based on the alleged “disclosure and dissemination of K. Weems’s private information in the Defamatory Report and Defamatory Presentation...” Second Am. Compl. ¶ 334-35. But because the report and alleged presentation were not published by the Trustees, the Second Amended Complaint fails to state a cause of action against the Trustees for invasion of privacy or public disclosure of private facts.

CONCLUSION

For the reasons discussed above, and those set forth in Celebration’s motion to dismiss, defendants Kevin Cormier, Marcus Rowe, Angela Cannon, and Jacob William request that the Court enter an Order dismissing the Second Amended Complaint, or alternatively, order the parties to engage in the alternative dispute resolution process required by Celebration’s bylaws.

Dated: July 20, 2022

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 20, 2022, a copy of the foregoing was served by email on the below addresses by filing through the Florida Courts' E-Filing Portal:

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