VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 145-8-20 Oscv

Buik vs. Tyrell et al

ENTRY REGARDING MOTION

Title: Motion for Summary Judgment (Motion: 13)
Filer: Steven A. Adler
Filed Date: January 28, 2022

Plaintiff John Buik, represented by Steven A. Adler, has moved for summary judgment with respect to four counterclaims Defendants Susan Tyrell and Robert Nolan have asserted against him. Mr. Buik seeks dismissal of the following counterclaims: nuisance, invasion of privacy, conversion, and the intentional infliction of emotional distress. Ms. Tyrell and Mr. Nolan, represented by Vince Illuzzi, oppose the motion and assert that genuine issues of material fact exist with respect to each of these causes of action.[1] The court issues the following decision based on the parties' memoranda, supporting documentation, and the relevant statutory and case law.

I. Factual and Procedural Background

At all relevant times, Plaintiff and Defendants owned neighboring parcels of real property in Brownington, Vermont. Plaintiff purchased his parcel from Ms. Tyrell in 2013, and at that time, both parties shared an access road from Hinman Settler Road to their respective properties. This access road was owned by a third party who, in 2020, sold the land surrounding and underneath the access road to Plaintiff. Thus, by the time Plaintiff initiated this action in August 2020, Ms. Tyrell had an easement of ingress and egress over land owned by Plaintiff for the purpose of accessing her property. The parties disagreed about the width of the access road and

[1] The court notes that the Vermont Rules of Civil Procedure impose no page or word limits for motion practice in trial courts such as those imposed in other courts. Defendants' opposition to Plaintiff's motion was 68 pages long, not counting statements of material disputed facts, exhibits, affidavits, and other supporting material that Defendants filed. Defendants' memorandum included unnecessary photographs that were included in the supporting materials; reproducing them in the legal memorandum provides no assistance to the court in ruling on the motion. The court recognizes that parties are bound only by the V.R.C.P. but warns Defendants' counsel that this "voluminous, tortured approach to motion practice directly contravenes the purpose of motions for summary judgment: to conserve limited and valuable resources of both the judiciary and the parties." *In re 49 Tanglewood Final Plan Approval*, 2013 WL 4404693, at *1 n.3 (Vt. Super. Ct. Apr. 22, 2013). Filing unnecessarily long memoranda and including extraneous information therein does not serve an attorney's clients well and causes unnecessary delay.

Plaintiff eventually filed suit against Ms. Tyrell and her partner, Robert Nolan,[2] in an effort to quiet title and have the court determine the width of the access road. Plaintiff also asserted claims for trespass and declaratory relief, in which Plaintiff asked the court to order Defendants to enter into a shared road maintenance agreement with him.

Defendants filed counterclaims against Plaintiff, and these counterclaims are the subject of the instant motion for summary judgment.

II. Summary Judgment Standards

A party is entitled to summary judgment if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). A fact is material "'if it might affect the outcome.'" *In re Estate of Fitzsimmons*, 2013 VT 95, ¶ 13, 195 Vt. 94 (quoting *N. Sec. Ins. Co. v. Rossitto,* 171 Vt. 580, 581, 762 A.2d 861, 863 (2000) (mem.)). "'Where the moving party does not bear the burden of persuasion at trial, it may satisfy its burden of production by showing the court that there is an absence of evidence in the record to support the nonmoving party's case. . . . The burden then shifts to the nonmoving party to persuade the court that there is a triable issue of fact.'" *Boulton v. CLD Consulting Eng'rs*, 175 Vt. 413, 417 (2003) (quoting *Ross v. Times Mirror, Inc.,* 164 Vt. 13, 18 (1995)). "'The nonmoving party may survive the motion if it responds with specific facts raising a triable issue, and it is able to demonstrate sufficient evidence to support a prima facie case.'" *State v. G.S. Blodgett Co.*, 163 Vt. 175, 180 (1995) (quoting *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 324 (1986)). "If the nonmoving party fails to establish an essential element of its case on which it has the burden of proof at trial, the moving party is entitled to summary judgment as a matter of law." *Washington v. Pierce*, 2005 VT 125, ¶ 17, 179 Vt. 318 (quoting *G.S. Blodgett,* 163 Vt. at 180). When considering motions for summary judgment, the nonmoving party is entitled to "all reasonable doubts and inferences." *West v. N. Branch Fire District #1*, 2021 VT 44, ¶ 13 (citing *In re Miller Subdivision Final Plan*, 2008 VT 74, ¶ 8, 184 Vt. 188); *G.S. Blodgett*, 163 Vt. at 180.

III. Legal Analysis

A. Nuisance

In their counterclaim, Defendants assert that Plaintiff, on his own and/or through his agent Joyce Littlefield, caused a rock-encircled flower garden to be placed in a location that impairs Defendants' ability to exercise their easement. Defendants assert that the rocks were placed in the fall of 2016 and that they "created a hazardous and dangerous driving condition to ingress and egress the Tyrell property." Defendants further assert:

> 65. Since the placement of the rock circled garden on or about the fall of 2016, multiple vehicles, including snowplows contracted by Buik or Littlefield, have slid off or driven into [the] drainage ditch located on the right side of the right of way at the location of the rock garden, inconveniencing or endangering persons and property, including Joyce Littlefield, Ms. Tyrell's sister, friends, snowplow

[2] Plaintiff included Mr. Nolan as a named defendant under the mistaken belief that he was married to Ms. Tyrell. Mr. Nolan remains a defendant despite not having an apparent ownership interest in the property at issue.

> operators and others. One or more of Tyrell's guests and two or more of Buik and Littlefield's contractors have had their vehicles get stuck at that location, requiring one or more trucks to be required to extract vehicles stuck at that location.
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> . . . .
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> 67. The gravity of the harm created by the rock garden's location, and its interference with Tyrell's ingress and egress, far outweighs any reason for it to remain there.
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> . . . .
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> 71. Counterclaim Defendants' placement of the rock garden in Tyrell's right of way, and Buik's refusal to take such reasonable and necessary steps to remove it from the right of way is contrary to common standards of decency, is intentional, malicious and serves no purpose except to cause harm to Tyrell and her guests and agents. It constitutes the tort of nuisance. As a proximate cause of that nuisance, Tyrell has incurred damages.

Plaintiff argues that Defendants' nuisance claim is barred by the statute of limitations, which Plaintiff, relying on 12 V.S.A. § 512, asserts is three years. Defendants disagree, contending that the applicable statute of limitations is six years. Vermont statutes provide that civil actions, "except as otherwise provided, shall be commenced within six years after the cause of action accrues and not thereafter." 12 V.S.A. § 511. According to the Vermont Supreme Court, actions for damage to real property are subject to the six-year statute of limitations. *Inv. Props., Inc. v. Lyttle*, 169 Vt. 487, 491–92 (1999); see also *Country Mut. Ins. Co. v. Altisource Solutions, Inc.*, 2021 WL 719159, at *2 (D. Vt. Feb. 24, 2021). Defendants allege that Plaintiff installed the rocks around their flower garden in 2016, and Defendants asserted their nuisance claim in 2020, well within the six-year timeframe they had to assert this claim. Therefore, Defendants' nuisance claim is not barred by the statute of limitations.

Plaintiff also questions whether Defendants have stated a claim for nuisance. The Vermont Supreme Court has recently defined a private nuisance as "a substantial and unreasonable interference with a person's interest in the use and enjoyment of land." *Jones v. Hart*, 2021 VT 61, ¶ 26 (citing *Coty v. Ramsey Assocs., Inc.*, 149 Vt. 451, 457 (1988)). This definition is based on "'the general principle that it is the duty of every person to make a reasonable use of his own property so as to occasion no unnecessary damage or annoyance to his neighbor.'" *Id*. (quoting *Myrick v. Peck Elec. Co.*, 2017 VT 4, ¶ 4, 204 Vt. 128). The parties in *Jones* were neighbors, and their claims against each other included adverse possession, easements, trespass, and private nuisance, among others. *Id*. ¶¶ 3, 10. With regard to the nuisance claim, the *Jones* Court wrote:

> An interference is substantial if it exceeds "the customary interferences a land user suffers in an organized society," *Coty*, 149 Vt. at 457, 546 A.2d at 201 (quotation omitted), and unreasonable if "the gravity of the harm outweighs the

> utility of the actor's conduct," *Post & Beam Equities Grp., LLC*, 2015 VT 60, ¶ 25, 199 Vt. 313, 124 A.3d 454 (quotation omitted).

Jones, 2021 VT 61, ¶ 26. The Court continued, stating that "a sustained and intentional campaign to annoy a neighbor by interfering with the use and enjoyment of the neighbor's property can amount to a private nuisance." *Id*. ¶ 29.

The parties here disagree about the proper width of the access road and whether the rocks Plaintiff had placed around his garden actually impeded the passage of Defendants, their contractors, and/or their friends or families using the access road for purposes of ingress or egress to or from Ms. Tyrell's property. The court finds that, based on the law and allegations Defendants set forth in their counter-complaint, Defendants have stated a cognizable claim for a private nuisance. The parties' submissions indicate genuine issues of material fact exist with regard to its proof. As a result, the court denies Plaintiff's motion for summary judgment with respect to Defendants' claim for nuisance.[3]

B. Invasion of Privacy

Plaintiff next seeks summary judgment on Defendants' claim for invasion of privacy. Plaintiff contends that Defendants cannot recover on this claim because Defendants base this claim on conduct by Joyce Littlefield, not by Plaintiff, and Ms. Littlefield is not a party to the case.[4] Because this cause of action is based on conduct by an individual who is not a party to the case, Plaintiff argues, this claim must be dismissed.

Defendants acknowledge that Ms. Littlefield is not a party to the action, but they contend that Plaintiff is responsible for the conduct by Ms. Littlefield that Defendants describe in their counter-complaint because she was acting as Plaintiff's apparent agent or at Plaintiff's direction. In addition, Defendants cite conduct by Plaintiff in support of their claim for invasion of privacy. Defendants' allegations in support of this claim include the following:

> 78. As late as on or about September 21, 2020, and on other dates, [Ms.] Littlefield complained to the Town of Brownington that Tyrell or Nolan and their guests were trespassing on her property when they were walking on Tyrell's rights of way with their dogs, prompting an investigation of Tyrell and Nolan by the Town of Brownington animal control officer on a late Sunday afternoon, September 20, 2020 and continuing into Monday, September 21, 2020. The complaints have been deemed unfounded as Tyrell and her guests have the right to use the rights of way to ingress and egress from her property for any lawful

[3] As part of their counterclaim for nuisance, Defendants included a section entitled "Breach of Duty Mutual Trust and Respect." It appears from the structure of Defendants' counterclaim that they do not intend to rely on this breach of duty to set forth a separate cause of action, but that they rely on this alleged duty to support their nuisance claim. In concluding that Defendants state a claim for a private nuisance, the court does not opine on whether or not Plaintiff owes Defendants a specific duty of mutual trust and respect.

[4] The court denied Defendants' motion to add Ms. Littlefield as a party to the case in November 2020 because she was not married to Mr. Buik and had no ownership interest in the property at issue.

purpose. A previous unfounded complaint from Buik or Littlefield prompted a similar investigation by the Town of Brownington's animal control officer.

79. Counterclaim Defendants have made repeated unfounded or false complaints to state and municipal enforcement officers or municipal agents about Tyrell and Nolan, and thus Tyrell and Nolan's privacy has been invaded. . . .

80. Counterclaim Defendants by their actions and conduct have breached their duty to Tyrell and Nolan because they have manifested personal ill toward Tyrell and Nolan, carried out under circumstances evidencing insult or oppression, or by conduct showing a reckless or wanton disregard of the rights of Tyrell and Nolan and as a proximate cause, Tyrell and Nolan have been damaged and claim actual and punitive damages on their claim for invasion of privacy.

In further support of their claim for invasion of privacy, Defendants assert Plaintiff and/or Ms. Littlefield engaged in the following conduct:

a. An unfounded complaint to Lakes and Shoreland Program (Analyst Lindsay Miller) that Tyrell was taking out or removing trees, shrubs and other rooted material, in violation of the law and applicable rules;

b. An unfounded complaint to the Vermont Wetlands Program (Wetland Ecologist Shannon Morrison) that Tyrell was damaging identified and protected wetlands and thereby impacting the functions and values of the wetlands, in violation of the law and applicable rules;

c. An unfounded complaint to an agent of the Town of Brownington, animal control officer (Rene Falconer), that Tyrell and Nolan had a vicious dog on the loose and that the vicious dog had either threatened them or made them fearful of their personal safety;

d. Buik harassed Tyrell's licensed electrician who was at the subject property at Buik's insistence and Tyrell's expense to separate the electric service to Buik's building because it ran through Plaintiff's building since the time of Buik's purchase of the property; although Tyrell's electrician had not separated the two services Buik had signed off and accepted the property in its "as is" condition on September 24, 2013; Buik told the electrician to stop working and that he should not be at the Vermont Electric Cooperative pole because it was on Buik's [] property; Buik tried to interfere with the electrician's task being performed at Buik's insistence by Tyrell as a good will gesture, even though she was not legally required to do so some seven years after the property was purchased by Buik;

e. Buik threatened in the winter months to cut off electricity, and cable service to Tyrell's building because cable is a "luxury" and they "didn't deserve it";

f. Sent bills to Tyrell for damage to the drainage ditch opposite the rock circled garden, claiming Tyrell's sister damaged it when her vehicle went into the ditch -- while trying to avoid the rock surrounded garden;

g. Buik sent another bill to Tyrell when another one of her guests drove into the ditch because they could not make the 90 degree corner because of the placement and location of the rock surrounded garden;

h. Buik or Littlefield or someone at their direction, in the summer of 2019, on multiple occasions placed little boulders in one of the traveled wheel paths on the east side of the cast side of the right of way, preventing Tyrell and her guests and agents from using the right of way with a vehicle; Tyrell or Nolan would move them to the side; when Tyrell left the property, Buik or Littlefield or someone on their behalf would move them back into the traveled wheel path; this occurred six or more times over a 2 1/2 month period, at all times interfering with their use of the right of way;

i. On multiple occasions, Buik or Littlefield placed a cinder block with a the [sic] trunk of a small tree causing the trunk to lean into the right of way, preventing use of the right of way with a vehicle; Tyrcll or Nolan would need to get out of their vehicle and move so that they could pass; this occurred over a 2 1/2 month period;

j. On multiple occasions, Buik or Littlefield or someone on their behalf rolled a creosote log from the side of the right of way into the right, into the wheel path on the east side of the right of way;

k. Joyce Littlefield blocked the right of way for between nine and ten minutes with her vehicle one of Tyrell's and Nolan's contractors, RP, a woodworker, from leaving the property;

l. Joyce Littlefield, using a wheel barrel, blocked the right of way to prevent a contractor with Smitty's landscaping service from entering the property;

m. Joyce Littlefield called the Town of Brownington to report that Tyrell and Nolan arrived at 3 a.m. on Sunday, September l4, 2020 and that they brought a dog that was not leashed and it was on their property, resulting in an investigation by the Town of Brownington animal control officer that was unfounded;

n. Joyce Littlefield from September l4 to September 21, 2020 sent repeated text messages to the Town of Brownington animal control officer making additional unfounded complaints to include an urgent text message that Tyrell and Nolan and their friends have dogs and that those friends and their dogs were trespassing on their property; an investigation determined the complaint was unfounded;

o. Threatening Tyrell and Nolan with trespass because they placed a surveillance placard on a Vermont Electric power pole giving notice that the property is under surveillance;

p. Complaining about the presence of a gate on the entrance to the property from Hinman Settler Road when a gate in the same footprint has been at that location dating back to a time well prior to Tyrell purchasing the property, and a photograph of the previous gate in the same location was included in the listing agreement which advertised the property for sale;

q. Buik harassed Tyrell's landscapers on September l7, 2020 by approaching the landscaper, Ian, who is an employee Renee Ducharme, owner of Plant and Prune, in Ducharme's presence, and accused him of trespassing on Buik's property; the complaint was unfounded;

r. Buik harassed Nolan on September l7, 2020, after harassing the Plant and Prune contractors, by a statement, "You and your attorney are going to be getting a big surprise . . . You need to understand that I own this property, the access road and the right of way that you're standing on, and I just allow you to use the property to get to your cabin." Buik then laughed at Nolan and walked away.

113. Since arriving to stay at the property on September 14, 2020, Buik and Littlefield have continued to engage in conduct in the form of statements to Nolan and repeated unfound complaints to the Town of Brownington animal control officer, and to contractors alleging trespass or wrongdoing on the part of Tyrell and Bulk, or their contractors, the only purpose of which has been to harass and intimidate them.

114. Buik has repeatedly made false or unfounded complaints against Tyrell to state authorities, while Littlefield has repeatedly made false or unfounded complaints against Tyrell and on information and belief Nolan to an agent of the Town of Brownington. These actions, in addition to constituting evidence in favor of the tort of invasion of privacy, also are evidence in support of the tort of intentional infliction of emotional distress.

"'The right of privacy is the right to be left alone.'" *Pion v. Bean*, 2003 VT 79, ¶ 35, 176 Vt. 1 (quoting *Denton v. Chittenden Bank*, 163 Vt. 62, 68–69 (1994)). To prove an invasion of this right, Defendants must prove that Plaintiff "intentionally interfered with their interest in solitude or seclusion in a way that would be highly offensive to a reasonable person," and that the interference was "substantial." *Id*. (citing *Denton*, 163 Vt. at 69). In *Pion*, the Vermont Supreme Court affirmed the trial court's determination that the defendants established the plaintiffs' invasion of their privacy by the plaintiffs' "repeated false complaints to the police and health inspectors." *Id*. ¶ 36. Although legitimate complaints would not support an invasion of privacy claim, the Court stated that making false claims showed plaintiffs' "intentional[] and substantial[] intru[sion] on defendants' solitude and seclusion." *Id*. The defendants in *Pion* presented evidence that the plaintiffs "engaged in a persistent pattern of intrusive conduct that amounted to 'hounding.'" *Id*. ¶ 34.

The allegations Defendants included in their counter-complaint along with the affidavits and exhibits they submitted in support of their memorandum in opposition to Plaintiff's motion for summary judgment lead the court to conclude that Defendants have set forth a viable claim for invasion of privacy. Plaintiff's motion to dismiss this cause of action is, therefore, denied.

C. Conversion

In their claim for conversion, Defendants allege Plaintiff has "invaded Tyrell's interest in the rights of way which are exclusive to her use to ingress and egress from her property and otherwise use and enjoy for lawful purposes." Plaintiff contends, *inter alia*, that Defendants' claim for conversion is barred by the three-year statute of limitations. The court does not reach

the statute of limitations issue because, based on the law as it currently stands in Vermont, the tort of conversion applies to chattel and financial instruments such as stocks and bonds, but it does not apply to real property or easement rights to use real property. See *Montgomery v. Devoid*, 2006 VT 127, ¶ 12 (citing Restatement (Second) of Torts § 222A(1)). According to the Restatement, conversion is "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." The *Montgomery* Court explained that "chattel is generally defined as tangible personal property." *Montgomery*, 2006 VT 127, ¶ 12 n.1. "[T]he tort of conversion traditionally applied only to tangible goods, but has since expanded to include intangibles merged in documents such as bonds, stock certificates, bills of exchange, money, and negotiable instruments." *Id*. (citing *Lyon v. Bennington College Corp.*, 137 Vt. 135, 137 (1979)); see also *Oak Hill Mgmt., Inc. v. Edmund & Wheeler, Inc.*, 2022 WL 797394, at *9 (D. Vt. Mar. 16, 2022) (discussing tort of conversion generally and its application to chattels and money in bank accounts); but see *Mooers v. Middlebury College*, 2021 WL 4225659, at *9–10 (D. Vt. Sept. 16, 2021) (holding conversion cause of action does not extend to tuition and fees paid to college). In the case *Birchwood Land Co., Inc. v. Ormond Bushey & Sons, Inc.*, 2013 VT 60, ¶ 1, 194 Vt. 478, a developer sued a contractor for removing sand from a construction site without permission. Addressing the developer's claim for damages, the Court stated that developer's claim was not for damage to the real property, but "for conversion of personal property because contractor exercised dominion over the sand without authorization by developer." *Birchwood Land*, 2013 VT 60, ¶ 16.

Defendants cite no cases in which the tort of conversion has been applied to real property or an easement holder's rights to use the real property, and the court is not aware of any such caselaw. As a result, the court grants Plaintiff's motion to dismiss Defendants' claim for conversion.

D. Intentional Infliction of Emotional Distress

Plaintiff's final argument is that Defendants' claim for intentional infliction of emotional distress ("IIED") should be dismissed because the bases for Defendants' claim are insufficient to meet the standard necessary to state such a claim. Defendants rely on the asserted actions by Plaintiff and his purported agent Ms. Littlefield that are quoted above in paragraphs a.–r. and 113–14 as the bases of their IIED claim. Defendants also base their IIED claim on the following allegations:

> 107. Counterclaim Defendant Buik wrote to Tyrell on or about 2019 and accused her of misrepresenting the size of the lot sold to him, claiming she sold him one tenth of an acre less than what she had listed and represented to him. Buik wrote that he was sold .5 acres instead of .6 acres. Buik claimed damages of $12,500 plus six years of property taxes he paid on the one tenth of an acre.
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> 108. Counterclaim Plaintiff's listing with Coldwell Banker All Seasons Realty was entered into by Tyrell's then husband. The listing agreement stated that the lot sold to Buik was .6 acres. The listing agreement also includes a photograph of the gate at the entrance to the common driveway off Hinman Settler Road.

> 109. Counterclaim Defendant Buik accepted the property in its condition prior to closing on or about October 24, 2013, following a title search by his attorney and a property inspection by his property inspector, and signed off on the remaining items when he signed an "Acknowledgement of Satisfactory Property Inspection Report" on September 24, 2013," even though certain electrical work which was supposed to be done prior to closing had not been completed. Notwithstanding, Tyrell had the electrical work performed, even though she was not legally obligated to do so some seven years later.

In addition, Defendants assert that Plaintiff took advantage of Ms. Tyrell's emotional attachment to Plaintiff's property when offering to sell his property back to Ms. Tyrell in 2019. According to the counter-complaint, Plaintiff purchased his lot from Ms. Tyrell in 2013 for $138,000. Contending that the value of the property had not increased from 2013 until 2019, when Plaintiff offered to sell it back to Ms. Tyrell, Defendants assert that Plaintiff unconscionably demanded $238,000 for the property. Defendants assert that Ms. Tyrell lost her 15-year-old son to cancer in the 1990s and that this son was particularly attached to the camps located on Plaintiff's and Ms. Tyrell's property. Defendants allege that Plaintiff was aware of the reason Ms. Tyrell was so interested in repurchasing Plaintiff's property and that Plaintiff set such a high price for no reason other than to upset Ms. Tyrell.

To establish a claim for IIED, Defendants must prove Plaintiff engaged in "'(1) conduct that is extreme and outrageous, (2) conduct that is intentional or reckless, and (3) conduct that causes severe emotional distress.'" *Baptie v. Bruno*, 2013 VT 117, ¶ 24, 195 Vt. 308 (quoting *Thayer v. Herdt,* 155 Vt. 448, 455 (1990)). "'An IIED claim can be sustained only where the plaintiff demonstrates 'outrageous conduct, done intentionally or with reckless disregard of the probability of causing emotional distress, resulting in the suffering of extreme emotional distress, actually or proximately caused by the outrageous conduct.'" *Id*. (quoting *Colby v. Umbrella, Inc.,* 2008 VT 20, ¶ 10, 184 Vt. 1 (further quotations omitted)); see also *Fromson v. State*, 2004 VT 29, ¶ 14, 176 Vt. 395. Defendants' burden in establishing this claim is "heavy" because they "must show [Plaintiff's] conduct was 'so outrageous in character and so extreme in degree as to go beyond all possible bounds of decent and tolerable conduct in a civilized community and be regarded as atrocious and utterly intolerable.'" *Fromson*, 2004 VT 29, ¶ 14 (quoting *Dulude v. Fletcher Allen Health Care, Inc.*, 174 Vt. 74, 83 (2002)). It is the job of the trial court to "make[] the initial determination of whether a jury could reasonably find that the alleged conduct satisfies all the elements of an IIED claim." *Id*. (citing *Jobin v. McQuillen,* 158 Vt. 322, 327 (1992) (itself citing Restatement (Second) of Torts § 46, cmt. h (1965)). The test for outrageous behavior is an objective one: "'a plaintiff must demonstrate legal harm resulting from inflicted distress so severe that no reasonable person could be expected to endure it.'" *Id*. at 400 (quoting *Baldwin v. Upper Valley Servs., Inc.*, 162 Vt. 51, 57 (1994))); see also *Davis v. Am. Legion, Dep't of Vt.*, 2014 VT 134, ¶ 20, 198 Vt. 204. It is notable, however, that "[o]therwise unactionable conduct may become extreme and outrageous in character if an actor knows 'that the other is peculiarly susceptible to emotional distress[] by reason of some physical or mental condition or peculiarity,' and the actor proceeds in the face of that knowledge." *Denton*, 163 Vt. at 68 (quoting Restatement (Second) Torts § 46, cmt. f).

Plaintiff contends that Defendants have failed to set forth a viable claim for IIED, focusing primarily on the allegations surrounding the sale of Plaintiff's property back to Ms.

Tyrell. According to Plaintiff, Defendants fail to show that the price he offered to sell his property back to Ms. Tyrell was overpriced because Plaintiff later sold his property (in December 2021) to a third party for $250,000, which is $12,000 more than the price he offered to sell it to Defendants.[5] In *Cooper v. Myer*, 2007 VT 131, ¶ 4, 183 Vt. 561 (mem.), a jury awarded a plaintiff $200,000 in damages for an IIED claim based on a call the defendant made to the police threatening to kill the plaintiff that resulted in a call to the plaintiff suggesting that he vacate the premises. In *Nichols v. LaPlante*, 2015 WL 5311507, at *3 (Vt. Super. Ct. Sept. 3, 2015), the trial court found that the plaintiff's claim for IIED was sufficient to survive a motion to dismiss based on his allegation of a conspiracy between correctional officers to subject the plaintiff to additional jail time in retaliation for previous suits the plaintiff had filed against the Department. In *Gipe v. State*, 2014 WL 10321332, at *2–3 (Vt. Super. Ct. Oct. 2, 2014), the trial court denied the State's motion for summary judgment where an inmate's estate alleged the State engaged in IIED by calling the inmate "potassium girl" while denying her medication she needed to survive. In *Carnelli v. Butler*, 2019 WL 13061492, at *2 (Vt. Super. Ct. Nov. 15, 2019), the plaintiff asserted that the defendant engaged in IIED as a result of making intentionally false and malicious statements to authorities that led to his arrest, criminal process, and trial for serious offenses that he did not commit. The trial court concluded that it could not say, as a matter of law, that such behavior did not support a claim for IIED. *Carnelli*, 2019 WL 13061492, at *2. In another case, the trial court declined to dismiss a claim for IIED where the plaintiff alleged that defendants caused his termination by "soliciting an unnecessary investigation into his internet activity and knowingly promoting the ultimate third-party report that included falsities." *Lewis v. Northfield Sav. Bank*, 2020 WL 112321204, at *9 (Vt. Super. Ct. Jan. 16, 2020).[6]

Defendants allege the following physical and emotional damages they experienced because of Plaintiff's alleged conduct:

> 116. Tyrell as a proximate cause of Buik and Littlefield's joint and several actions has and will continue to suffer emotional harm, had trouble sleeping, was required to stay in bed for five days, was prescribed medication for stress and now becomes anxious and worried when she visits her property in Vermont.
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> 117. Nolan as a proximate cause of Buik and Littlefield's actions has suffered actual harm, to include temporary humiliation, emotional harm, interference with his relationship with his fiancée, and is apprehensive when visiting Tyrell's property in Vermont because it causes him anxiety and fear as to what Buik and Littlefield, or both, will complain about, say or do next.

Taking all Defendants' allegations in support of their IIED together, the court finds that Defendants have alleged conduct that a jury could find is extreme and outrageous, intentional or reckless, and that such conduct caused severe emotional distress. See *Baptie*, 2013 VT 117, ¶

[5] Plaintiff does not present evidence, however, that the real estate market at the end of 2021 was the same as the real estate market in 2019, when the events at issue took place.

[6] In a case from Washington, the Court of Appeals affirmed a trial court's decision awarding a residential piano teacher damages for IIED based on her neighbor's "regular[] and repeated[] remote-start[of] his Ford F-250 pickup truck, revv[ing of] its engine, and activat[ing] its alarm to scare [the piano teacher's] young piano students as they walked past his truck on the way to their piano lessons" over the course of four months. *Spicer v. Patnode*, 443 P.3d 801, 803 (Wash. Ct. App. 2019).

24. It will be a matter for the jury to determine whether or not Defendants are able to prove their allegations and if so, how much, if any, damages Defendants are entitled to as a result. Plaintiff's motion to dismiss the IIED claim is, therefore, denied.

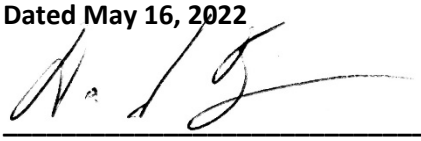
E. Other Claims

Plaintiff did not move for summary judgment on Defendants' claim for trespass, so that cause of action is not currently before the court. Defendants contend that Plaintiff did not move to dismiss their claim for slander. The counter-complaint Defendants filed does not include a cause of action for slander. If Defendants intend to allege such a claim, they will have to take proper action within the allowable time to amend their counter-complaint.

IV. Conclusion

The court grants Plaintiff summary judgment on Defendants' claim for conversion. The court denies Plaintiff's motion for summary judgment on the other causes of action addressed herein.

Dated May 16, 2022



David Barra
Vermont Superior Court Judge
Electronically signed