

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 24-CV-01685

Melanie MacEachern, et al v. Kurtis Day Mellett, et al

ENTRY REGARDING MOTION

Title: Motion to Strike under 12 VSA 1041 (Motion: 4)
Filer: James M. LaRock
Filed Date: August 21, 2024

In this neighbor dispute, plaintiffs Melanie MacEachern and James LaRock have moved to strike or dismiss a counterclaim for slander of title pled by defendants Kurtis and Margot Mellett. For the reasons set forth below, the motion is GRANTED IN PART.

Background

Plaintiffs have pled nuisance, trespass, and related claims against defendants. Defendants have filed a civil counterclaim for slander of title against plaintiffs. Plaintiffs now move to strike the counterclaim under Vermont's anti-SLAPP statute, or in the alternative, to dismiss the claim under Rule 12(b)(6) of the Vermont Rules of Civil Procedure.

In support of the counterclaim, defendants allege that plaintiffs "maliciously and without cause" gave statements to a News & Citizen reporter for an article describing this lawsuit, including statements that defendants had constructed a "spite fence" and were violating environmental permitting requirements.

Defendants allege that these statements were false, that plaintiffs knew the statements were false, and that because of these statements, defendants' broker has refused to list their property for sale, causing them damages and emotional distress. Defendants attached to the counterclaim the news article in question, which was published on August 1, 2024, by the News & Citizen, a community newspaper.

Analysis

1. Motion to strike

Vermont's anti-SLAPP statute, codified at 12 V.S.A. § 1041, is designed to combat "strategic lawsuits against public participation." *See generally Felis v. Downs Rachlin Martin PLLC*, 2015 VT 129, ¶¶ 29-52. As the Vermont Supreme Court has explained:

The statute contains a two-step process. A defendant may move to strike a complaint in ‘an action arising from the defendant’s exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the U.S. or Vermont Constitution.’ If the defendant satisfies the threshold requirement, the court must grant the motion ‘unless the plaintiff shows that: (A) the defendant’s exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law; and (B) the defendant’s acts caused actual injury to the plaintiff.

Cornelius v. The Chron., Inc., 2019 VT 4, ¶ 8, 209 Vt. 405 (quoting 12 V.S.A. § 1041(a), (e)(1).

Because the statute attempts to balance two constitutional rights—“a defendant’s right to free speech and petition and a plaintiff’s right to petition and free access to the courts”—the statute “should be construed as limited in scope” and “great caution should be exercised in its interpretation.” *Felis*, 2015 VT 120, ¶ 41. To that end, a motion to strike must be denied if the movant cannot satisfy the “in connection with a public issue” requirement, “regardless of the type of activity” at issue. *Id.*, ¶ 52.

Plaintiffs here cannot satisfy that requirement. Although their dispute with defendants allegedly involves environmental permitting issues, this case fundamentally involves a private dispute between neighbors. Plaintiffs described their private legal claims to a community newspaper. This did not transform their private dispute into a “public issue.” See generally *Ernst v. Kauffman*, 50 F. Supp. 3d 553, 560-62 (D. Vt. 2014) (denying motion to strike based on publication of newsletter detailing litigation between neighbors and noting that “people involved in litigation, which becomes the subject of press attention” do not thereby become public figures).

Accordingly, the court denies the motion to strike defendants’ counterclaim under the anti-SLAPP statute.

2. Motion to dismiss

A claim should be dismissed under Rule 12(b)(6) “only if it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” *Birchwood Land Co. v. Krizan*, 2015 VT 37, ¶ 6, 198 Vt. 420 (quotation omitted). In considering a motion to dismiss, the court construes alleged facts and draws all reasonable inferences from those alleged facts in favor of the non-moving party. *Id.* Ultimately, the court must determine “whether the bare allegations of the complaint are sufficient to state a claim.” *Birchwood Land. Co. v. Krizan*, 2015 VT 37, ¶ 6, 198 Vt. 420. Documents relied on in a complaint merge into the pleadings and may be considered on a motion to dismiss. *Sutton v. Purzycki*, 2022 VT 56, ¶ 20, 217 Vt. 326.

The elements of a claim for slander of title are (1) publication of false statement concerning the claimant's title, (2) which caused claimant "special damages," and (3) that the speaker "acted with malice." *Sullivan v. Stear*, 2011 VT 37, ¶ 8, 189 Vt. 442. "The essence of the tort is the publication of an assertion that is derogatory to the plaintiff's title to property in an effort to prevent others from dealing with the plaintiff." *Id.* (quotation omitted).

Here, the only statements by either plaintiff that were published in the News & Citizen article was James LaRock's statements that:

- "When we moved to Craftsbury, we were just hoping to start a family and a farm and keep to ourselves."
- "This whole experience has been weird and really upsetting. We just want to get through to the end of this, and we have faith that the judicial process will help us resolve it. We hope it'll be over soon."
- He asked why town employees "were assisting [defendants] with constructing the berm" and received no answer from the Town.
- Defendant Kurtis Mellett told him that plaintiffs had no legal right to access the property and was "feeling super neighborly" after LaRock complained to the Town.
- Kurtis Mellett has now staked out and poured a white, unidentified substance around his property line.
- He planned to amend his lawsuit.

None of these statements concern defendants' title. *See Sullivan*, 2011 VT 37, ¶ 11 ("Whether a statement concerns a person's title revolves around whether it affects that person's ability to make deals with others regarding the property disparaged.").

The rest of the news article described the allegations contained in the complaint in this action. And while allegations concerning allegedly unpermitted activities might concern defendants' title, defendants cannot base a slander counterclaim on these allegations, even if they were subsequently reported in the press. "Vermont law recognizes a litigation privilege that extends to statements within documents filed in a judicial proceeding." *Kucera v. Tkac*, No. 5:12-CV-264, 2014 WL 6463292, at *18 (D. Vt. Nov. 17, 2014) (citations omitted).

Accordingly, the court grants the motion to dismiss defendants' counterclaim under Rule 12(b)(6).

Order

Defendants' counterclaim for slander of title is dismissed for failure to state a claim under Rule 12(b)(6).

Electronically signed on: 10/18/2024 pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read 'B. D. Battles', written over a horizontal line.

Benjamin D. Battles
Superior Court Judge