

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

Case No.: 24-003939-CI

JULIE MARCUS, et al.,

Defendants.

**DEFENDANT CATHY SALUSTRI LOPER'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT AND FOR ATTORNEYS' FEES**

Pursuant to Florida Rule of Civil Procedure 1.140 and Section 768.295 of the Florida Statutes, Defendant Cathy Salustri Loper (“Loper”) moves this Court to dismiss with prejudice the First Amended Complaint (“Amended Complaint” or “AC”) of John William Liccione (“Liccione” or “Plaintiff”), and for an award of fees under the Florida anti-SLAPP statute. The Complaint fails to state a cause of action against Loper, is without merit as to her, and was brought primarily because Loper exercised the constitutional right of free speech in connection with a public issue. Loper, therefore, is entitled to an order dismissing the Amended Complaint against her and awarding her reasonable attorneys’ fees and costs.

Factual Background

1. Liccione’s ten-count Amended Complaint presents a list of grievances primarily against the Pinellas County Supervisor of Elections and the Chair of the Pinellas County Democratic Executive Committee. AC ¶¶ 10-20, 33-38, 46-48. Liccione alleges that he was one of five candidates in an August 2024 Democratic primary election, and that the Democratic Party

did not invite him to participate in a July 2024 debate that featured the other four candidates. AC ¶¶ 1, 12, 13, 43.

2. The Amended Complaint mentions Loper in only four paragraphs. AC ¶¶ 8, 43, 44, 45. The Amended Complaint alleges that Loper is the owner and editor of a newspaper that published an article the day before the debate, and that the article did not mention him. AC ¶¶ 12, 43-45.¹

3. Apparently because the newspaper's article about the debate listed the debate participants and not Liccione, Plaintiff has included Loper in this lawsuit. The Amended Complaint includes Loper by reference as one of the "Defendants" in counts alleging (1) violation of Section 104.041 of the Florida Statutes, (2) a conspiracy to commit election fraud, (3) violation of 52 U.S.C. Section 20511, (4) violation of 42 U.S.C. Section 1983, (5) violation of 18 U.S.C. Section 1030, and (6) intentional interference with prospective economic advantage. AC ¶¶ 49-54. An eighth count seeks "an emergency injunction to prevent further unlawful activities by the Defendants," which by reference includes Loper, and a tenth count states that Plaintiff seeks compensatory and punitive damages from "Defendants," which likewise by reference includes Loper. AC ¶¶ 63, 75.

Discussion

4. The Amended Complaint is a classic "shotgun" pleading. Each count incorporates all of the preceding paragraphs, and Loper is joined with all other Defendants in eight of the ten

¹ The news report did not mention Liccione because he was not among the debate's scheduled participants. A.C. ¶ 12. See also "July 13th Congressional District 13 Democratic Candidate Primary Debate," Pinellas Democratic Party News Release (July 6, 2024) (available online at <https://us3.campaign-archive.com/?e=44ecd8245f&u=184627293a6f977c78f8e83b7&id=4a77ab680b>). Prior to the filing of this action, the newspaper offered to cover Liccione's campaign in a separate article. He did not accept the offer.

counts. The Amended Complaint, however, never explains why Loper is included in these counts. For these reasons alone, the counts against Loper fail to state a cause of action against her and are without merit.

5. Each individual count also against Loper also fails and is meritless for other reasons.

6. Count One alleges a violation of a Florida statute, Section 104.041, that prohibits fraud in connection with the casting of a vote in an election. This count fails and is without merit because Section 104.041 is a criminal statute and does not provide a private right of action. *See Torres v. Shaw*, 345 So. 3d 970, 974 (Fla. 1st DCA 2022) (no private right of action under election-related statute); *Shiver v. Apalachee Pub. Co.*, 425 So. 2d 1173, 1175 (Fla. 1st DCA 1983) (criminal statute that prohibits corruptly influencing voters does not “confer a right of action on defeated candidates”). “Private citizens ... are not empowered to sue under a criminal statute, which involves an executive function.” *Hall v. Cooks*, 346 So. 3d 183, 189 (Fla. 1st DCA 2022), *reh’g denied* (Sept. 2, 2022).

7. Count Two, for conspiracy to commit election fraud, fails and is without merit because “Florida does not recognize civil conspiracy as a freestanding tort.” *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). The failure of Count One means that the conspiracy count fails as well.

8. Count Three, for federal election fraud, fails and is without merit because the cited statute, 52 U.S.C. Section 20511, provides criminal penalties in narrow circumstances not alleged here. Section 20511 authorizes fines for intimidation, threats or coercion of voters; procuring or submitting false voter registration applications; or procuring, casting or tabulating false ballots. Loper is not accused of any of those things. Moreover, Section 20511 does not

provide a private right of action. *See Hall v. Valeska*, 509 Fed. Appx. 834, 837 (11th Cir. 2012) (finding that statute authorizing fine did “not provide for a private right of action”; dismissal affirmed).

9. Count Four, a claim for a civil rights violation under 42 U.S.C. Section 1983, fails against Loper and is without merit because the Amended Complaint does not allege Loper was a “state actor” and does not attribute any “state action” to her. Nor would the facts support such allegations. *See Emmanuelli v. Priebus*, 500 Fed. Appx. 886, 888 (11th Cir. 2012) (affirming dismissal of Section 1983 case challenging primary election rules, because political party’s national committee chair was not state actor); *Idema v. Wager*, 120 F. Supp. 2d 361, 371 (S.D.N.Y. 2000) (“Actions by journalists in publishing a newspaper article do not constitute the requisite ‘state action’ to support state action claims.”), *aff’d*, 29 Fed. Appx. 676 (2d Cir. 2002).

10. Count Five, for computer fraud, fails against Loper and is without merit because Loper is merely lumped in with other “Defendants” in a claim that they, “or those acting in concert with them, knowingly and unlawfully accessed Plaintiff’s computer,” allegedly in violation of the Computer Fraud and Abuse Act (“CFAA”). *See* A.C. ¶ 53 (citing 18 U.S.C. § 1030). The CFAA, however, provides a civil cause of action against only “the violator” of that law. *See* 18 U.S.C. § 1030(g). The few facts alleged concerning Loper (A.C. ¶¶ 43-45) do not remotely relate to any CFAA violation. Because Count Five does not identify Loper as “the violator” of any CFAA provision, this claim fails to state a cause of action. *See Agilysys, Inc. v. Hall*, 258 F. Supp. 3d 1331, 1344 (N.D. Ga. 2017) (dismissing CFAA claim against company, because complaint alleged former employee of plaintiff “was the individual who acted, or was the violator,” not the company); *Trademotion, LLC v. Marketcliq, Inc.*, 857 F. Supp. 2d 1285, 1287 (M.D. Fla. 2012) (“Plaintiffs’ allegations do not show an adequate connection between the

acts of the alleged violator (Anderson) and the actual Defendants in this suit to support a cause of action”).

11. Count Six, for intentional interference with a prospective economic advantage, fails against Loper and is without merit because the tort of interference does not apply to “communications to the public at large.” *Ozyesilpinar v. Reach PLC*, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Loper is accused of nothing more than editing a newspaper that communicated an article to the public at large. As a matter of law, this is not interference.

12. Count Eight, for injunctive relief, fails against Loper and is without merit because this count seeks an injunction relating to management of future elections and a special election in the Democratic Congressional primary. A.C. ¶ 63. The Amended Complaint does not attribute to Loper any role or authority to manage elections, and of course she has none.

13. Moreover, if Count Eight is intended to seek injunctive relief restraining the speech of Loper or her newspaper, such relief is unavailable as a matter of law. *See Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976) (“prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.”); *Palm Beach Newspapers, LLC v. State*, 183 So. 3d 480, 482 (Fla. 4th DCA 2016) (reversing trial court order requiring newspaper to remove published materials from its website and explaining that injunctions are prior restraints that are “presumptively unconstitutional under the First Amendment.”).

14. Finally, Count Ten presents merely a general plea for damages and does not state a cause of action. Count Ten, therefore, should be dismissed against Loper and is without merit.

Anti-SLAPP Motion

15. Plaintiff should be ordered to pay Loper’s attorneys’ fees under the Florida anti-SLAPP law, Section 758.295(3) of the Florida Statutes.

16. Section 758.295 prohibits “fil[ing] ... any lawsuit ... against another person or entity *without merit* and primarily because such person or entity has *exercised the constitutional right of free speech in connection with a public issue* ... as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.” Fla. Stat. § 758.295(3) (emphasis added). Where these two criteria are satisfied, the statute provides for a mandatory award of attorneys’ fees. *Id.* § 768.295(4). Plaintiff’s claims against Loper fall squarely within the statute’s prohibition.

17. First, Plaintiff’s claims against Loper were filed “primarily” – indeed, exclusively – as a result of Loper’s exercise of “free speech in connection with public issues.” The statute provides that such speech includes any “statement that is protected under applicable law and ... is made in or in connection with a ... *news report*, or other similar work.” *Id.* § 768.295(2)(a) (emphasis added). This protection applies to Loper because, as the Amended Complaint alleges, she “is sued in her capacity as owner and editor” of a newspaper that published a news report about an election. A.C. ¶¶ 8, 43. Loper is being sued over statements in a news report that does not mention Plaintiff.

18. Second, the instant suit was filed “without merit.” As detailed above, the Complaint fails to state a cause of action against Loper.

19. Because Plaintiff’s claims against Loper violate the anti-SLAPP statute, they should be dismissed. *See, e.g., Goodwin v. Michelini*, 371 So. 3d 973 (Fla. 2d DCA 2023) (trial court departed from essential requirements of law in denying defendants’ motion to dismiss

pursuant to the anti-SLAPP law); *Davis v. Mishiyev*, 339 So. 3d 449 (Fla. 2d DCA 2022) (same). For the same reason, the anti-SLAPP law mandates an award of Loper’s attorneys’ fees and costs. *See* Fla. Stat. § 768.295(4).

Conclusion

The Complaint fails to state a cause of action and should be dismissed with prejudice. And, pursuant to the anti-SLAPP statute, Loper should be awarded her costs and fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 3, 2024, the foregoing document was electronically with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: /James B. Lake/ _____
Attorney