



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JOHN PAUL MAC ISAAC,)
)
Plaintiff,)
)
v.)
)
CABLE NEWS NETWORK, INC.,)
et.al.,)
)
Defendants.)

C.A. No. S22C-10-012 RHR

**PLAINTIFF/COUNTERCLAIM DEFENDANT JOHN PAUL
MAC ISAAC'S OPENING BRIEF IN SUPPORT OF HIS MOTION TO
DISMISS DEFENDANT/COUNTERCLAIM
PLAINTIFF'S COUNTERCLAIMS**

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PRELIMINARY STATEMENT

The counterclaim filed by Defendant/Counterclaim Plaintiff Robert Hunter Biden (“Biden”) seeks to impose liability on John Paul Mac Isaac (“Mac Isaac”) (1) for doing what Biden hired him to do, and (2) for turning the information over to law enforcement and the attorney for the President of the United States. Mac Isaac had no part in what came next, nor could he have even anticipated the events that followed.

Biden either refuses or cannot confirm whether he even visited The Mac Shop, despite Mac Isaac presenting evidence that he dropped off his Laptop computer (“Laptop”) at Mac Isaac’s store. Biden interprets passages from Mac Isaac’s book in ways that obfuscate the true meaning of the passages. Biden seemingly does this with the hope that this Honorable Court will not read Mac Isaac’s book and glean the true meaning of the passages.

First, Biden lost his ability to argue that Mac Isaac invaded his privacy in any way because Delaware’s two-year statute of limitations has passed since the purported events. Further, even if the statute of limitations had not passed, all the allegations presented by Biden demonstrate that Biden authorized Mac Isaac to access the data. Biden fails to adequately show otherwise. Next, Biden states no facts that Mac Isaac shared the data with anyone other than a small group of

individuals. Absent a valid tort and the lack of other parties to the counterclaim, the aiding and abetting, and conspiracy counts fail.

For these reasons, Mac Isaac respectfully requests that the Court dismiss all of Biden's counterclaims against him with prejudice.

FACTUAL BACKGROUND

I. PARTIES

Mac Isaac is a private citizen who resides in Wilmington, Delaware, and owned a computer repair shop named “The Mac Shop.”

Biden, who currently resides in California, is the son of the President of the United States, Joseph R. Biden, Jr., and was a customer of The Mac Shop who sought Mac Isaac’s assistance with retrieving data from a Laptop after damaging the Laptop with a liquid.

II. FACTS ALLEGED IN COUNTERCLAIMS

For the purpose of this motion, Plaintiff must accept Defendant’s well-pleaded facts in the counterclaims. Biden’s invasion of privacy claims center on a few specific dates. Biden claims that Mac Isaac accessed Biden’s data as early as April 13, 2019. (¶9 of Biden’s Counterclaims) Mac Isaac made a “clone” of the data that he then loaded onto a MacBook of his own in July 2019. (¶17 of Biden’s Counterclaims) In or around September 2019, Mac Isaac sent a hard drive containing the data from Wilmington, Delaware to his father, Steve Mac Isaac, in Albuquerque, New Mexico. (¶18 of Biden’s Counterclaims) In that same month, Mac Isaac composed a letter to send to President Trump’s attorney Rudy Giuliani. (¶19 of Biden’s Counterclaims) In November 2019, Mac Isaac printed out materials from the data he maintained to assist then-President Trump to defend

against the impeachment proceedings in the U.S. House of Representatives. (¶20 of Biden's Counterclaims)

Mac Isaac gave another copy of the data in his possession (either electronic or printed) to his uncle, Ronald J. Scott, Jr., who in May 2020 was sending at least summaries of the data he received from his nephew to journalists and Republican members of Congress. (¶21 of Biden's Counterclaims)

On August 27, 2020, Mac Isaac made contact with Rudy Giuliani's lawyer, Robert Costello, regarding the data in his possession. (¶23 of Biden's Counterclaims) On August 28, 2020, Mac Isaac sent another copy of the data in his possession to the home of Mr. Costello in New York. (¶25 of Biden's Counterclaims)

On September 24, 2020, Mac Isaac informed Senator Ron Johnson's staff that he had possession of data that he claimed came from a laptop left at his business by Mr. Biden. (¶30 of Biden's Counterclaims)

On October 14, 2020, the New York Post published an article about the data Mac Isaac had accessed and copied that he claimed belonged to Mr. Biden. (¶33 of Biden's Counterclaims)

ARGUMENT

I. STANDARD OF REVIEW

For the purpose of judging a motion to dismiss for failure to state a claim pursuant to Superior Court Civil Rule 12(b)(6), all well-pleaded allegations in the complaint must be accepted as true. *Spence v. Funk*, Del.Supr., 396 A.2d 967 (1978); *Nix v.* 396 A.2d 967 (1978); *Nix v. Sawyer*, Del.Super., 466 A.2d 407 (1983) *Heller v.* 466 A.2d 407 (1983) *Heller v. Dover Warehouse Market, Inc.*, 515 A.2d 178, 179-80 (Del. Super. Ct. 1986)

II. BIDEN’S CLAIMS ARE BARRED BY 2-YEAR STATUTE OF LIMITATIONS

In Delaware, claims of invasion of privacy are subject to a two-year statute of limitations period. *Ciabattoni v. Teamsters Local 326*, No. N15C-04-059 VLM, 2017 Del. Super. LEXIS 362, at *11 (Super. Ct. July 25, 2017). Further, Delaware follows the “time of discovery” rule which starts the clock for the statute of limitations. See *White v. Riego*, No. 04C-10-015 PLA, 2005 Del. Super. LEXIS 67, at *5 (Super. Ct. Mar. 3, 2005).

Here, Biden originally filed his Answer with Counterclaims in Federal Court against Mac Isaac on March 17, 2023. Any actions by Mac Isaac concerning Biden prior to March 17, 2021, are not actionable.

First, Biden claims that Mac Isaac intruded upon Biden's seclusion by accessing the data on Biden's Mac. Here, according to the counterclaim, Mac Isaac first accessed the information on Biden's Mac computer (with Biden's authorization) on or around April 13, 2019. Biden also alleges that Mac Isaac created a "clone" of the data in July 2019. Biden states in September 2019, Mac Isaac sent a hard drive containing the data to his father, Steve Mac Isaac. The latest date alleged in Biden's claim that Mac Isaac arguably accessed Biden's data was when Mac Isaac sent a copy of the data to Rudy Giuliani's lawyer, Robert Costello on August 28, 2020. Therefore, the statute of limitations period for these acts expired at the earliest on April 12, 2021 (when he first accessed the data) and at the latest August 28, 2020, when the data was sent to Costello. Either way, any plausible claim expired on August 28, 2022.

Secondly, Biden claims that Mac Isaac intruded on Biden's privacy by publication of private matters/facts. Although disputed, any liability by Mac Isaac concerning the publication of private matters took place at the latest on October 14, 2020, in the New York Post article. Biden also inserts a footnote about a YouTube video published on December 11, 2020, which would also fall outside of the statute of limitations. Biden's conspiracy and aiding and abetting claims would also be time-barred as they are inextricably connected to the tort claims.

III. INCONSISTENCIES BETWEEN ANSWERS TO AMENDED COMPLAINT AND ALLEGATIONS IN COUNTERCLAIM.

Biden refuses to admit that the laptop was his. It is noteworthy that, in Biden's answer to Mac Isaac's Amended Complaint, many responses were "Mr. Biden is without knowledge sufficient to admit or deny the allegations..." In Paragraph 6 of the counterclaim, Biden walks right up to the line but refuses to admit that it was he who requested assistance from Mac Isaac. Counterclaim ¶ 6. Yet, in Paragraphs 19 and 169 of his Answer, Biden says he is without sufficient knowledge to admit or deny asking Mac Isaac for assistance with his Mac. Answer ¶¶ 19 & 169. Biden is also without sufficient knowledge to admit or deny whether he returned to Mac Isaac's shop a second time. Answer ¶¶ 20 & 170. However, Biden denies that the information contained in the NY Post article came from Biden, who voluntarily left his Mac with Mac Isaac and failed to return to retrieve it. Answer ¶ 67. Biden's confused responses prove fatal to any facts alleged in the counterclaims.

Further, Paragraph 31 of the Amended Complaint shows that Biden's own attorney contacted Mac Isaac to ask about the Laptop the day before the NY Post story broke. However, in Paragraph 31 of the Answer, while Biden admits that George Mesires was his attorney, Biden is "without knowledge sufficient to admit or deny the allegations." If Biden's response is to be believed, Mesires, his

personal attorney, is in the business of representing clients without being asked to do so.

Biden refuses to admit or deny even the most basic allegations in the Amended Complaint, yet files counterclaims falsely alleging Mac Isaac committed torts against Biden. Biden had sufficient knowledge to deny Mac Isaac's allegation in Paragraph 18 of his Amended Complaint that someone referred Biden to Mac Isaac's shop. *See Answer ¶ 18*. He also had sufficient knowledge to admit that "if he ever had visited before, he did not return" to Mac Isaac's shop after the initial two visits. *See Answer ¶ 171*.

For the reasons stated above and below, Biden's counterclaims should be dismissed with prejudice.

IV. INVASION OF PRIVACY BY INTRUSION

To state a claim for intrusion upon seclusion, Biden must show that Mac Isaac intentionally intruded, physically or otherwise, upon his solitude or seclusion or his private affairs or concerns in a manner that would be highly offensive to a reasonable person. *Dayton v. Collison*, No. N17C-08-100 CLS, 2020 Del. Super. LEXIS 310, at *29 (Del. Super. Ct. June 22, 2020). The key element to this tort is that there must be an act of intrusion. *See Lee v. Picture People, Inc.*, 2012 Del. Super. LEXIS 159, *7-8 (Del. Super. Ct. March 19, 2012). "To intrude means to enter without invitation." *Id.*

A. Intrusion

While Biden claims he did not give consent to Mac Isaac to access the data on his Laptop, the evidence shows otherwise. The work order, shown as Exhibit A of the Amended Complaint, demonstrates “Biden’s signature inviting Mac Isaac to recover the data from Biden’s Laptop.” One cannot recover data without first accessing the data. This was all the invitation Mac Isaac needed to access Biden’s files. Biden signed the work order giving Mac Isaac authorization to access the files.

The fact that the “boilerplate terms of the Repair Authorization” were “well below the signature line” does not impact the fact that Biden, a trained attorney, signed the document. *See* Counterclaim ¶ 7. Further, Biden refers to the Repair Authorization as a “typical small-print adhesion clause for which there was no proper notice or opportunity to bargain or negotiate.” *See* Counterclaim ¶ 9. First, the text is not abnormally small. In fact, the text seems to be the same size as the description of the work to be performed. Next, Mac Isaac had the authority to modify the contract if he was asked by Biden to do so. Biden did not ask for any revisions to the contract. Biden was also free to seek assistance from another repair shop. The fact that Biden, an attorney, did not ask for any modification of the contract and transacted business with Mac Isaac argues against Biden’s claim that the contract was unenforceable.

Biden gave Mac Isaac permission to access his data. Biden breached the agreement by failing to pay Mac Isaac for his services. Now, Biden has failed to allege the essential element that Mac Isaac intruded upon Biden's privacy.

B. Highly Offensive to a Reasonable Person

While many of the files on Biden's Laptop seem to be of the kind that "would be highly offensive to a reasonable person," Biden, himself, seemed to share the information with others. Much of what is the most offensive material (sexually explicit photos of himself and others) was apparently voluntarily shared with others through the website "Pornhub."¹ Additionally, other information discovered on Biden's Laptop shows Biden's lack of concern about using his father's political ties to close deals with foreign countries, some of whom are considered adversaries with the United States (i.e., People's Republic of China).² One must question whether an analysis using the "reasonable person" standard, while unnecessary, is fitting in this scenario.

Since Biden invited Mac Isaac to access the files, he cannot now claim that Mac Isaac intruded upon his privacy and that the intrusion was highly offensive to him. The invitation to access the files itself negates the claim of intrusion. Further, the fact that Biden may have suffered some embarrassment because of his

¹ See <https://www.thetimes.co.uk/article/hunter-biden-uploaded-videos-of-himself-having-sex-p3vjkw0k>.

² <https://oversight.house.gov/release/comer-reveals-biden-family-members-receiving-payments-from-chinese-energy-company%EF%BF%BC/>

actions does not give him a cause of action for invasion of privacy by intrusion. *See Beckett v. Trice*, 1994 Del. Super. LEXIS 599 (Del Super. Ct. November 4, 1994). He invited Mac Isaac in with full knowledge of what data Mac Isaac would see.

Biden has failed to properly allege key elements of the tort of invasion of privacy by intrusion and Mac Isaac respectfully requests that this Honorable Court dismiss Count I with prejudice.

V. INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS/MATTERS.

To state a claim for invasion of privacy by publication of private facts/matters, Biden must show that the facts/matter “publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.” *Spence v. Cherian*, 135 A.3d 1282, 1288 (Del. Super. Ct. 2016) (citing *Restatement (Second) of Torts § 652D*).

A matter has been given publicity when it is “made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.”

Restatement (Second) of Torts § 652D cmt. a. “It is not an invasion of privacy to communicate a fact concerning one’s private life to just one person, or even to a small group.” *Spence* at 1288.

A. Disclosure

Originally, Mac Isaac disclosed the information to the FBI with the intent that the information be used solely by the FBI. After recognizing that President Trump did not seem to have the information from Biden's Laptop available for his defense, despite being in the possession of the FBI, Mac Isaac then disclosed the information to Mr. Costello with the expressed intent that the information be disclosed solely to Mr. Giuliani, the President's attorney.³

Prior to the publication of the NY Post article, Mac Isaac only disclosed the information to the FBI and Mr. Costello. That disclosure, to a small group for specific purposes, does not rise to the level required by the tort of intrusion by publication.

B Highly Offensive to a Reasonable Person

As Biden has failed to adequately allege that Mac Isaac "published" the information on the Laptop to a large enough group of people to trigger this tort, one must not even delve into the discussion of whether the information disclosed (by others, not Mac Isaac) would be considered "highly offensive to a reasonable person." If this Court must analyze this element of the tort, as discussed above,

³ Isaac discussed the information on the laptop with his father and his uncle in order to seek advice and get assistance from them. The Biden family is very powerful, and Isaac is a private citizen so he became concerned about what the Biden's would/could do to him and sought advice from his family.

such an analysis might not be the appropriate standard considering Biden's previous actions and lifestyle.

C. Legitimate Public Concern

Even if Biden properly alleged the other elements of the tort of invasion of privacy by publication, which he has not, the information that was published by others is certainly of "legitimate public concern." As discussed above, the information discovered on Biden's Laptop seems to clearly show Biden's use of his father's political contacts to close deals with foreign countries with whom the U.S. shares an adversarial relationship.

Despite the overwhelming evidence of information that constitutes "legitimate public concern," that analysis does not matter in the case of Mac Isaac since he did not disclose the information to the "public at large." He solely shared the information with a small group of individuals, those with the authority to investigate whether the data held criminal information and/or information that should have been available to the U.S. President during his impeachment trial. Mac Isaac had no control over what those individuals chose to do with it thereafter.

D. True Statements of Fact

"[U]nder § 652D, not only must the communications at issue be publicized, but they must also represent *true statements of fact*." *Atamian v. Gorkin*, 1999 Del. Super. LEXIS 666, *9 (Del. Super. Ct. August 13, 1999). Is Biden claiming the

information disclosed by others (again, not by Mac Isaac) is true? He only tacitly mentions in line 5 and in footnote 1 of his counterclaim that “some of the information” obtained by Mac Isaac belonged to Biden. Counterclaim ¶5. In order for a claim of invasion of privacy by publication of facts/matters to be successful, the information disclosed must be true. Nowhere in the counterclaim does Biden identify which of the information that was publicly disclosed (by others – not by Mac Isaac), was true. With this glaring omission coupled with the fact that Mac Isaac *did not* disclose the information to the public and that the information disclosed by others was clearly of *legitimate public concern*, Biden has failed to properly allege key elements of the tort of invasion of privacy by publication of private facts/matters and Mac Isaac respectfully requests this Honorable Court to dismiss Count II with prejudice.

VI. CONSPIRACY AND AIDING AND ABETTING COUNTS

Biden’s remaining claims of conspiracy (Counts Three and Four) and aiding and abetting (Counts Five and Six) fail along with his claims of invasion of privacy by intrusion and invasion of privacy by publication of private facts/matters.

Neither conspiracy claims nor aiding and abetting claims are independent causes of action. There must be some underlying tortious conduct. *See Cousins v. Goodier*, 2021 WL 3355471, at *7 (Del. Super. Ct. July 30, 2021). For these claims to survive a motion to dismiss, Biden must have stated a valid claim for invasion of

privacy by intrusion and invasion of privacy by publication of private facts/matters – which he has not done. Because the statements in the counterclaim are not actionable as invasions of privacy, they are not actionable as “conspiracy, or aiding and abetting.” *Id.* With that said and in recognition that a tort could have conceivably been committed by someone else, although no other party is included in this counterclaim, for the reasons set forth below, Biden’s counts for conspiracy and aiding and abetting fail.

A. Conspiracy

Delaware follows the language of the *Restatement (Second) of Torts* when determining whether the civil conspiracy was present. Specifically, *Restatement* § 876(a) defines civil conspiracy as “the combination of two or more persons or entities either for an unlawful purpose or for the accomplishment of a lawful purpose by unlawful means, resulting in damage.” *Anderson v. Airco, Inc.*, No. 02C-12-091 HdR, 2004 Del. Super. LEXIS 393, at *10 (Super. Ct. Nov. 30, 2004).

One cannot be part of a conspiracy without the specific intent to cooperate with the other conspirators. *See Triplex Communications v. Riley*, 900 S.W.2d 716, 720, 38 Tex. Sup. Ct. J. 765 (Tex.) 1995). While the agreement need not be expressed in words, “it has been recognized that ‘accidental, inadvertent, or negligent participation in a common scheme does not amount to a

conspiracy.” *Anderson* at *19 (citing *In re Methyl Butyl Ether Prods. Liab. Litig.*, 175 F. Supp.2d 593, 634 (S.D.N.Y. 2001)).

At no point in the counterclaim does Biden provide any factual allegations that support a claim that Mac Isaac’s intent was to get the information on the hard drive released to the public. Mac Isaac has been very clear and has never deviated about why he contacted the FBI and Mr. Costello, which has been expressed throughout this opposition as well.

B. Aiding and Abetting

In Delaware, liability for aiding and abetting requires proof of three elements: (1) underlying tortious conduct, (2) knowledge, and (3) substantial assistance or encouragement. *See Anderson v. Airco, Inc.*, No. 02C-12-091 HdR, 2004 Del. Super. LEXIS 393, at *22 (Super. Ct. Nov. 30, 2004). Biden has not properly alleged that there was any underlying tortious conduct.

Biden has not alleged that Mac Isaac had knowledge of any tortious conduct that would arise from his actions. While Delaware recognizes that a negligent act can create liability for aiding and abetting tortious conduct, the aider and abettor must still be generally aware that he is providing substantial assistance or encouragement to the tortfeasor. Biden’s counterclaims are replete with conclusory allegations masquerading as facts and fail to present any facts that Mac Isaac knew that he would be aiding a tort. Perhaps in Biden’s overly politicized world, it

would make sense. To a common citizen, however, he was just trying to get the information to the authorities and had no idea it would be used as part of a political attack.

Mac Isaac never expressed any type of loyalty to President Donald Trump, nor did he express any dislike for President Joseph Biden, despite what Biden attempts to say in his counterclaim. Mac Isaac respects the office of the President and would have done the same thing if Donald Trump, Jr. had dropped off a laptop with incriminating information on it and that information could be used by President Biden in his defense. Biden's counterclaim assumes that everyone thinks like he does and, in doing so, Biden fails to properly allege any cause of action.

CONCLUSION

For the foregoing reasons, John Paul Mac Isaac respectfully requests that the Court dismiss the counterclaims against John Paul Mac Isaac with prejudice.

Respectfully submitted,

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