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**IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

JEFFREY D. GASTON,

Plaintiff,

vs.

JASON HALL, an individual, NATALIE
HALL, an individual, GEORGE
SCHLIESSER, an individual, and
WOODCRAFT MILL & CABINET, INC., a
Utah corporation.

Defendants.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO JOINT MOTION TO
DISMISS THE SECOND AMENDED
COMPLAINT**

Civil No. 230905528

Judge Chelsea Koch

(HEARING REQUESTED)

Plaintiff Jeffrey D. Gaston ("Gaston"), by and through his counsel of record, Scott L. Sackett II of and for SCALLEY READING BATES HANSEN & RASMUSSEN, P.C., hereby responds to Defendants' Joint Motion to Dismiss Second Amended Complaint (the "Motion").

GROUND AND RELIEF REQUESTED

As grounds for this Memorandum in Opposition (the "Opposition"), Gaston requests that this Court deny the Motion in its entirety. Gaston states that based on the clear and concise

allegations establishing each of the requisite elements of his stated causes of action as pled in the Second Amended Complaint (the “SAC”), the reasonable inferences derived from those allegations, and based on Utah’s liberal pleading requirements, Gaston has properly pled each of the causes of action contained therein, and accordingly, and based on this Court’s inability to resolve questions of fact in the context of a motion to dismiss, dismissal of the SAC and the causes of action stated therein, is improper and the Motion should be denied.

In the alternative, should this Court determine that dismissal is proper, Gaston should be permitted leave to amend the SAC as dictated by Rule 15 of the Utah Rules of Civil Procedure, especially where the litigation is at the preliminary stages (with Defendants only recently filing a Counterclaim and Third-Party Complaints which have yet to be served).

In addition and for purposes of clarity, the Motion was filed prior to certain motion practice before this Court. While Defendant Natalie Hall still remains a defendant in this action, the specific claim for false light has been dismissed in connection with Bluffdale City’s Motion to Dismiss.

STANDARD OF REVIEW

Pursuant to Utah law, when reviewing a motion to dismiss, the Court is to assume “the truth of the allegations in the complaint... drawing all reasonable inferences therefrom in the light most favorable to [Gaston]”. *Aguila V. Planned Parenthood of Utah*, 2023 UT App 49, ¶13, 430 P.3d 959. “We will affirm dismissal of a complaint only where it clearly appears that the plaintiff would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim.” *Id.*

“A dismissal is a severe measure and should be granted by the trial court only if it is clear that a party is not entitled to relief under any state of facts which could be proved in support of its claim.” *Erickson v. Canyons School District*, 2020 UT App 91, ¶9, 467 P.3d 917. Dismissal should only be granted “if it clearly appears that [the plaintiff] can prove no set of facts in support of his claim.” *America West Bank Members, L.C. v. State*, 2014 UT 49, ¶7, 342 P.3d 224.

ARGUMENT

I. Each of the elements of Gaston’s claims for battery and assault can be proved by Gaston in a manner consistent with the facts alleged in the SAC and the reasonable inferences drawn from those facts, including Defendants’ intent, thereby precluding dismissal of Gaston’s claims.

Defendants argue that Gaston failed to sufficiently allege Defendants’ intent in relation to battery, unlawful contact, and assault. Utah law’s pleading requirements are liberal and permit a plaintiff to prove elements of a claim consistent with the allegations in its complaint and the reasonable inferences derived therefrom. “At the complaint stage of this litigation, the question is whether [Plaintiff] could prove a set of facts consistent with [its] complaint” that would preclude dismissal. *Erickson v. Canyons School District*, 2020 UT App 91, ¶9, 467 P.3d 917, (precluding dismissal on a claim under the UGIA).

Here, the SAC alleges facts from which Gaston could prove each element of a claim for civil battery and assault, including proof that Mr. Hall intended to strike Gaston with the signs (or knew that it was substantially likely that by throwing the signs he would strike Gaston) and to cause him imminent apprehension of such contact; allegations that would satisfy both Gaston’s

battery and assault claims¹.

Specifically, the SAC includes numerous allegations of conduct which include allegations such as “Mr. Hall began to act erratic”, that he “followed Gaston across the lawn of the OWD event even as Gaston attempted to retreat”, that “Mr. Hall attacked Gaston”, that “Mr. Hall threw... campaign signs at Gaston”, and that “Mr. Hall admitted to the attack and attempted to apologize for his actions”, among other things. (SAC at ¶¶74-82). The SAC further alleges that these actions, including the striking of Gaston, were done “deliberately”, that his actions were “willful”, and that Mr. Hall intended to cause harmful or offensive contact with Gaston, or at the very least, intended to cause imminent apprehension of harmful or offensive conduct to Gaston.” (SAC at ¶¶218-19, 224). Each of these allegations clearly evinces an intent to strike Gaston and at a minimum, certainly satisfy Utah’s liberal pleading requirements.

As dictated by Utah law, The Court is required to accept these factual allegations as true – that Mr. Hall pursued Gaston, threw campaign signs at Gaston, intended to cause harmful or offensive contact with Gaston, or intended to cause imminent apprehension of harmful or offensive conduct to Gaston, and consider *all reasonable inferences* to be drawn from those facts in a light most favorable to Gaston. *Hall v. Department of Corr.*, 2011 UT 34, ¶2, 24 P.3d 958 (**emphasis added**).²

In addition, this Court is required to draw all reasonable inferences from Gaston’s factual

¹ The elements of civil battery are that Mr. Hall’s striking of Gaston with the signs was deliberate, and that the contact was harmful or offensive at law. Restatement (Second) of Torts §13.

² The Motion improperly alleges “inferences” that are to be drawn related to Jason Hall’s behavior that benefit Mr. Hall’s position in this case. (Motion at p. 11).² Such an inference is not permitted under Utah law as all inferences are to be made in the light most favorable to Gaston. *Aguila* 2023 UT App 49 at ¶13

allegations including the inference that by intentionally and deliberately throwing the signs at Gaston, Mr. Hall intended to hit Gaston with the signs, or at the very least, cause him imminent apprehension of harm, exactly as Gaston has pled in the SAC, which again satisfies Utah's pleading requirements.

The elements of Gaston's claims for assault and battery are clearly described in the SAC and are within the scope of a "state of facts" that could be proved to support those claims. *Aguila*, 2023 UT App 49 at ¶13; (SAC at ¶224). In fact, Gaston could prove each of the elements of civil assault and battery in a manner entirely complicit with and identical to the factual allegations set forth in the SAC. See *Erickson v. Canyons School District*, 2020 UT App 91 at ¶9. As a result, the Hall Parties' request for dismissal of the assault and battery claims must be denied.

II. Dismissal of Gaston's assault and battery claims based on allegedly deficient pleadings is improper as Utah law generally requires only notice pleading.

Pursuant to Utah law, the SAC is sufficiently pled to put Defendants on notice of the nature of the claims against them. "Utah's notice pleading requirements are liberal and all that is required is that the pleadings be sufficient to give fair notice of the nature and basis of the claim asserted and a general indication of the type of litigation involved." *Berg v. Berg*, 2012 UT App 142, ¶10, 278 P.3d 1071 (citing *Gudmundson v. Del Ozone*, 2010 UT 33, ¶40, 232 P.3d 1059). "At the pleading stage, this merely requires the plaintiff to plead an 'adequate factual context to satisfy our notice pleading requirements.' In other words, the plaintiff must allege sufficient facts so that the defendant is reasonably aware of the conduct it allegedly engaged in and of how that

conduct allegedly injured the plaintiff.” *Southern Utah Wilderness Alliance v. San Juan County Commission*, 2021 UT 6, ¶18, 484 P.3d 1160.

Defendants are clearly aware of the nature and basis for Gaston’s claim for civil assault and battery, as they have attempted to defend those causes of action by claiming that Gaston failed to properly plead that Mr. Hall had the requisite intent to be liable for those claims and that Mr. Hall and Mr. Gaston were sufficiently separated by distance that a finding of apprehension of harmful contact would be unreasonable, among other things. (Motion at p. 11). While Defendants are free to raise these defenses in the proper context, Utah’s liberal pleading requirements, coupled with the requirement that the Court draw all reasonable inferences from the SAC’s factual allegations in favor of Gaston, preclude dismissal of these claims.

III. Dismissal of Gaston’s assault claim based on threatening communications is improper as the Second Amended Complaint relies on more than simply written communications for its assault claim and it contains sufficient factual allegations that support a reasonable inference that Gaston had immediate apprehension of harmful contact.

“An actor is subject to liability to another for assault if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such contact, and (b) the other is thereby put in such imminent apprehension.” Restatement (2d.) §21. Here, the Motion alleges that “written threats alone do not constitute assault as a matter of law”. (Motion at p. 13). In short, Defendants allege that Gaston’s claim for assault should be dismissed as it purportedly relies only on written communications as the basis for the claim of assault.

Yet Defendants ignore the specific allegations contained in the SAC. These include the

fact that in addition to the written communications, Mr. Hall physically attacked Gaston at a public event, that one or more of Defendants personally delivered threatening communications, including death threats, to Gaston's elected offices located at Bluffdale City Hall and that in doing so, one or more Defendants concealed their identity, and that multiple packages were delivered to Gaston's personal residence. (SAC at ¶¶78-80, 85-87, 91, 96, 106, 109, 218-219, 22-225, and 231)³. The SAC alleges that "Gaston, as a result of the Hall Defendants' conduct described herein, suffered imminent apprehension of significant bodily harm or death." (SAC at ¶232). The conduct described in the SAC which forms the basis for the assault claim includes conduct much greater than "assault claims based only on verbal or written threats", and that conduct, when coupled with the death threats, could reasonably lead to the imminent apprehension which Gaston alleges. Whether or not Gaston did in fact suffer a reasonable imminent apprehension of harmful or offensive contact is not a consideration appropriate at this stage of the litigation and is properly reserved for the trier of fact. Regardless, Gaston's pleadings and the conduct described therein, are sufficient to survive dismissal.

IV. The factual allegations in the Second Amended Complaint, coupled with all reasonable inferences derived therefrom, support a finding that Gaston could prove that Defendants' conduct was outrageous or intolerable as a matter of law.

To prevail on a claim for intentional infliction of emotional distress, Gaston must show "that the defendant's conduct was outrageous and intolerable in that it offended generally accepted standards of decency and morality." *A.W. v. Marelli*, 2024 UT App 8, ¶14, 543 P.3d

³ The Motion incorrectly claims that none of the Defendants personally delivered the communications to Plaintiff – the SAC alleges that the communications were delivered to his personal residence on more than one occasion. (Motion at p. 14, SAC at ¶¶85, 91).

786. While “it is for the court to determine, in the first instance, whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous to permit recovery”, where reasonable minds may differ, “it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability.” *Id.*

Here, Gaston has alleged numerous instances of outrageous and intolerable conduct, including Defendants’ delivery of death threats to Gaston’s home and his elected offices and instances of physical battery against him. (See generally, SAC). It is completely reasonable for this Court to conclude that Defendants’ threats to the life of Gaston coupled with actual physical battery, among other things, can be reasonably “said to violate the standards of decency and morality.” *Id.* at ¶16. Threats of death and violence against an individual are clearly indicative of behavior so extreme that it evokes “outrage or revulsion”.

Defendants attempt to analogize case law describing parking near someone’s home, merely visiting a facility where a person works “three times” and “threatening to sue” to the facts of this litigation and as support that the conduct described by Gaston in the SAC would not be considered outrageous and intolerable. (Motion at p. 19). Yet the conduct described in the SAC is entirely distinguishable from simple threat to sue, or an unwanted visit at a place of employment. Gaston has alleged that Defendants strategically and vindictively threatened his life with written communications, return addresses from axe throwing societies, indications that he would be “put down like a dog”, personal delivery of threats to Gaston’s home, and that he was physically attacked at a public event. (See generally, SAC). It is unreasonable to argue that this

type of egregious conduct is not exactly the type of conduct contemplated as “outrageous” or “intolerable”; conduct that “violates the standards of decency and morality”.

In fact, this Court has already ruled that certain allegations in the SAC could constitute “true threats” in its Ruling denying the Hall Parties’ Special Motion for Expedited Relief. As a result, this Court should conclude that Defendants’ conduct as alleged in the SAC is outrageous and intolerable as a matter of law, or at the very least, that reasonable minds could differ as to whether the conduct was outrageous and intolerable (especially where the Court has already determined that certain of the allegations and statements may constitute “true threats”), thereby reserving the matter for the trier of fact and precluding dismissal.

V. Based on Utah’s liberal pleading requirement, Gaston has sufficiently pled his claim for intentional infliction of emotional distress and is entitled to conduct discovery to determine the extent of each Defendant’s involvement.

The Motion further alleges that Gaston’s claim for intentional infliction of emotional distress fails as Gaston has not shown that each of the Defendants had the requisite intent to inflict emotional distress on Gaston. (Motion at pp. 20-22). On a claim for intentional infliction of emotional distress, Gaston must show:

(a) that a defendant intentionally engaged in some conduct toward the plaintiff considered outrageous and intolerable in that it offends the generally accepted standards of decency and morality; (b) with the purpose of inflicting emotional distress or where any reasonable person would have known that such would result; and (c) that severe emotional distress resulted as a direct consequence of the defendant’s conduct.

Keisel v. Westbrook, 2023 UT App 163, ¶73, 542 P.3d 536.

Here, the Motion ignores the plainly pled facts in the SAC, specifically that “**Defendants**

intended to cause or acted in reckless disregard of causing emotional distress to Gaston.” (SAC at ¶258 (*emphasis added*)). This allegation coupled with the allegation related to Defendants’ conduct as described herein, clearly satisfy the preliminary pleading requirement for this element of Gaston’s cause of action for intentional infliction of emotional distress – that the Defendants all intended to inflict emotional distress on Gaston. Further, Gaston is entitled to conduct discovery as to that intent and the conduct related thereto.

The Motion further seeks to argue Defendants’ positions, seeking a resolution of fact in their favor,, which is inappropriate at this stage of the litigation. (Motion at p. 21). The facts and all reasonable inferences derived therefrom are to be taken in a light most favorable to Gaston. *Aguila V. Planned Parenthood of Utah*, 2023 UT App 49, ¶13, 430 P.3d 959. The alleged counterarguments made by Defendants in the Motion in relation to Gaston’s claim for intentional infliction of emotion distress are not appropriate for this Court’s consideration and cannot form the basis for a dismissal of any portion of Gaston’s claims.

Based on the clearly pled allegations set forth in the SAC and Utah’s liberal pleading requirements, Gaston’s claim for intentional infliction of emotional distress as set forth in the SAC is sufficiently pled to survive dismissal. While the Motion seeks to have this Court make factual determinations about the complicity and intent of each Defendant in relation to “three separate categories” of conduct, and determinations as to which of the Defendants participated in which stage of the process of sending threatening communications, and to somehow rule that Mrs. Hall was not engaged in any of the aforementioned conduct despite specific allegations set forth in the SAC stating otherwise, such considerations are not proper in a motion to dismiss

setting. As a result, dismissal is improper.

VI. As dismissal of the claims in the Second Amended Complaint is improper for the reasons outlined above, Gaston’s conspiracy claim cannot be dismissed.

For the reasons described herein, dismissal of Gaston’s claims is improper. As a result, the Motion’s requested dismissal of the conspiracy claim based on the purported lack of an underlying tort claim fails.

Further, the SAC alleges that Defendants acted in concert, one with another, in furtherance of the actionable conduct. “Defendants had a common objective to cause injury to Gaston in the manner described herein...” (SAC at ¶265). “Each of Defendants understood and agreed to the objective and conduct causing injury to Gaston...” (SAC at ¶266). Each of these allegations is sufficient to overcome at a minimum, for purposes of the Motion, Defendants’ claim that “there are no facts to show that Defendants had a meeting of the minds...” (Motion at p. 25). Again, such a determination is inappropriate in this context, especially in light of the specifically pled allegations in the SAC to the contrary.

Accordingly, dismissal of Gaston’s conspiracy claim is improper.

VII. The determination of Woodcraft’s liability requires the resolution of factual questions which are improper in the context of a motion to dismiss, thereby precluding dismissal.

A company can be liable for the actions of its employees, even when that employee’s conduct constitutes an intentional tort. See *Aguila*, 2023 UT App 49. “Accordingly, an [employee] does not cease to act within the course of... employment merely because [the employee] engages’ in an illegal activity.” *Aguila*, 2023 UT App at ¶21 (see also *Phillips v. JCM*

Dev. Corp., 666 P.2d 876, 882-83 (Utah 1983) (concluding that an employee’s tortious conduct involving real estate fraud was within the scope of employment)). “Our supreme court has observed that ‘an employer is vicariously liable for an employee’s intentional tort if the employee’s purpose in performing the acts was either wholly or only in part to further the employer’s business, even if the employee was misguided in that respect.’” *Aguila* 2023 UT App at ¶21 (citing *Hodges v. Gibson Products Co.*, 811 P.2d 151, 156 (Utah 1991)). Finally, “rather than being a question of law, the inquiry of ‘[w]hether an employee is acting within the scope of... employment is ordinarily a question of fact.’” *Aguila* 2023 UT App at ¶22 (citing *Christensen v. Swenson*, 874 P.2d 125, 127 (Utah 1994); see also *M.J. v. Wisan*, 2016 UT 13, ¶¶61-62, 371 P.3d 21 (stating that it is the task of the “factfinder” to conclude whether an agent acted in the scope of employment when committing an illegal act.)).

In the SAC, it is alleged that both Defendant Schleisser and Mr. Hall were either employed by, managed, or owned Defendant Woodcraft. (SAC at ¶¶99, 101). The SAC alleges that Defendant Schleisser engaged in a variety of activities for Woodcraft, including mailing packages and delivering information. (SAC at ¶103). The tortious conduct in which it is alleged he also engaged involved the delivery of packages and information to Gaston. Defendant Schleisser’s purpose in performing these acts is a question of fact, and this Court must infer that Schleisser was engaged in the course and scope of his employment in the context of a motion to dismiss. In addition, where Mr. Hall, as an owner/manager of Woodcraft, instructed Defendant Schleisser to engage in the tortious conduct, Woodcraft may have ratified the conduct, thereby incurring liability for same.

As a result, the trier of fact is left to determine whether Defendant Schleisser and/or Mr. Hall acted in the course and scope of their employment at the time of the alleged conduct, or to determine whether Woodcraft ratified the conduct, both of which are improper determinations in the context of a motion to dismiss.

Accordingly, dismissal of Woodcraft is improper.

VIII. In the alternative, and pursuant to the Utah Rules of Civil Procedure, Gaston should be permitted to amend the Second Amended Complaint to the extent the Court finds a failure to adequately plead any of the causes of action contained therein.

In relation to amendments of pleadings, “[t]he court should freely give permission [to amend] when justice requires.” *Utah R. Civ. P.* 15(a). Here, the first responsive pleading served by Defendants was the subject Motion. No answer has been filed by any Defendant to this case. Defendants only recently filed a counterclaim against Gaston, and third-party complaints which have not yet been served. Based on the early stage of this litigation, should this Court determine that Gaston’s pleadings are insufficient as a matter of law, Gaston should be given leave to amend his pleadings in the interests of justice. No prejudice will result to any party due to the current stage of the litigation.

SUMMARY

This Court’s review of the Motion and the requests contained therein are governed by the requirement that it accept all Gaston’s factual allegations in the SAC as true, and also, that it draw all reasonable inferences therefrom in favor of Gaston. Here, the causes of action specifically allege intentional conduct, intentional contact, outrageous and intolerable conduct, and requisite theories of liability where appropriate. Defendants have been put on sufficient

notice to adequately understand the nature of Gaston's claims and to defend against them. The Motion itself is indicative of the sufficiency of the pleadings as Defendants have already begun to argue their own factual allegations in the Motion in purported defense of Gaston's claims. Such a position is inappropriate for a motion to dismiss and should carry zero weight.

Further, certain requests for dismissal by Defendants require that this Court resolve questions of fact; an endeavor not permitted in the context of a motion to dismiss. Where such a resolution is necessary, Utah law mandates that dismissal be denied.

Finally, in the event this Court determines that Gaston's pleadings are insufficient as a matter of law, Utah law provides that leave to amend should be freely granted, especially in this case where Defendants will suffer no prejudice at this stage of the litigation.

For the foregoing reasons, Gaston respectfully requests that this Court deny the Motion in its entirety.

Dated this 21st day of July, 2025.

SCALLEY READING BATES HANSEN & RASMUSSEN

By /s/ Scott L Sackett II
Scott L. Sackett II

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing was delivered via e-filing on July 21, 2025, on the following parties of record.

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