

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

RODERIC BOLING,

Plaintiff,

Case No.: 2017-CA-6488

vs.

WFTV, LLC; WFTV, INC.;  
and TODD ULRICH,

Defendants.

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**ORDER DISMISSING AMENDED COMPLAINT WITH PREJUDICE**

This cause came to be heard on February 22, 2018 on the Defendants' Motion to Dismiss First Amended Verified Complaint and Incorporated Memorandum of Law. Having reviewed the motion, heard argument of the parties, and being fully advised in the premises, the Court hereby finds as follows:

1. Plaintiff, Roderic Boling, has sued Defendants, WFTV, LLC and Todd Ulrich, for defamation and tortious interference over a news report broadcast on WFTV on July 14, 2015 and accompanying web article on wftv.com titled "Action 9: Consumers burned by solar energy company."

2. The same day as the broadcast, Plaintiff alleges he served notice on Defendants in compliance with Section 770.01, Florida Statutes. A copy of the notice is attached as Exhibit A to Plaintiff's First Amended Verified Complaint and this Order. The notice does not specify any allegedly false and defamatory statement concerning the Plaintiff but instead generally avers that Defendants made false and defamatory statements about Mr. Boling.

3. Section 770.01, Florida Statutes, contains a five-day notice provision that must be fulfilled before commencing a defamation action against a media defendant. Specifically, Section 770.01 requires a plaintiff to specify the article or broadcast and the statements therein which he or she alleges to be false and defamatory. Compliance with Section 770.01 is a condition precedent to filing suit.

4. Florida courts have repeatedly found that merely asserting that a media defendant published false statements about the Plaintiff is not enough to satisfy Section 770.01's requirements. See, e.g., Gannett Fla. Corp. v. Montesano, 308 So. 2d 599 (Fla. 1st DCA 1975).

5. This Court previously determined that the notice attached as Exhibit A to Plaintiff's Amended Complaint failed to specify the statements within the broadcast that Plaintiff now claims are false and defamatory and, therefore, did not comply with Section 770.01.

6. Because Plaintiff failed to serve notice in accordance with Section 770.01, no cause of action existed at the time of filing the complaint. Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So. 2d 607, 610 (Fla. 4th DCA 1975). This defect cannot be cured by an amendment of the pleading. Rather, the proper remedy is dismissal with leave to refile. Gifford v. Bruckner, 565 So. 2d 887, 888 n.1 (Fla. 2d DCA 1990).

7. Plaintiff's failure to provide proper notice is fatal to both his defamation claim and his tortious interference claim. Plaintiff's tortious interference claim is based upon the same operative facts as his defamation claims and it is subject to the same privileges, protections and defenses as the defamation claim. Orlando Sports Stadium, 316 So. 2d at 609; see also Callaway Land & Cattle Co. v. Banyon Lakes C. Corp., 831 So. 2d 204, 208 (Fla. 4th DCA 2002). Therefore, Plaintiff's tortious interference claim is subject to the same notice requirement and

statute of limitations as his defamation claim and fails for the same reason as his defamation claim.

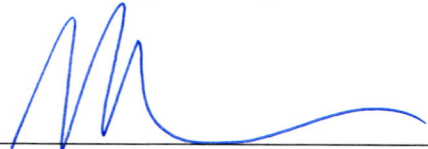
8. In this case, any attempt to refile the Amended Complaint would be futile. Plaintiff filed his initial complaint on the last day of the limitations period. § 95.11(4)(g), Fla. Stat. Because that period has now expired, Plaintiff cannot satisfy Section 770.01's condition precedent by giving sufficient notice within the statute of limitations. Accordingly, his Amended Complaint is dismissed with prejudice.

9. Finally, WFTV is entitled to attorneys' fees and costs pursuant to Florida's anti-SLAPP law, which prohibits anyone from bringing a lawsuit (a) that is "without merit," and (b) because the defendant "has exercised the constitutional right of free speech in connection with a public issue," which the statute defines as any written or oral statement "made in or in connection with a . . . news report, or other similar work." § 768.295(2)(a), (3), Fla. Stat. The statute prioritizes the "expeditious resolution" of anti-SLAPP motions and instructs that "[t]he court shall award the prevailing party reasonable attorneys' fees and costs incurred in connection with a claim that an action was filed in violation of this section." Id. § 768.295(4).

10. This case meets both requirements of Florida's anti-SLAPP law. First, as detailed above, Plaintiff's lawsuit is "without merit." § 768.295(3), Fla. Stat. Second, this lawsuit arises out of WFTV's exercise of its "constitutional right of free speech in connection with a public issue, because the challenged publication constitutes a "written or oral statement that is protected under applicable law" and was "made in or in connection with" an "audiovisual work . . . news report, or other similar work." Id. § 768.295(2)(a). Under the anti-SLAPP law, an award of reasonable attorneys' fees and costs is mandatory in these circumstances. Id. § 768.295(4).

11. Accordingly, Plaintiff's Amended Complaint is hereby **DISMISSED WITH PREJUDICE**. The Court retains jurisdiction to determine the proper amount of an award of attorneys' fees and costs.

DONE AND ORDERED, in Chambers, at Orlando, Orange County, Florida this 27th day of Feb. ~~March~~, 2018.

  
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HONORABLE KEVIN B. WEISS  
Circuit Judge

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