

IN THE CIRCUIT COURT OF ST. LOUIS CITY, MISSOURI  
TWENTY-SECOND JUDICIAL CIRCUIT

RUBY FREEMAN and WANDREA	)	
MOSS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2122-CC09815-01
	)	
JAMES HOFT, JOSEPH HOFT, and TGP	)	
COMMUNICATIONS LLC d/b/a <i>THE</i>	)	
<i>GATEWAY PUNDIT</i> ,	)	
	)	
Defendants.	)	

**PLAINTIFFS’ MOTION TO DISMISS DEFENDANTS’ IMPROPER COUNTERCLAIM  
PURSUANT TO RULE 55.27(a)(11) AND RULE 55.27(a)(6)**

Plaintiffs Ruby Freeman and Wandrea Moss, through their attorneys, move to dismiss Defendants’ Counterclaim pursuant to Rule 55.27(a)(11) and Rule 55.27(a)(6) because it is an improper, premature counterclaim in the nature of malicious prosecution, it alleges defamation based on statements that are absolutely privileged, and otherwise fails to state a claim upon which relief can be granted. In support of this motion, Plaintiffs incorporate by reference their Memorandum in Support of Plaintiffs’ Motion to Dismiss Defendants’ Counterclaim Pursuant to Rule 55.27(a)(11) and Rule 55.27(a)(6) (“Memorandum”), filed herewith, and state as follows:

1. The instant matter arises from defamatory statements published by Defendants James Hoft, Joseph Hoft, and TGP Communications LLC d/b/a *The Gateway Pundit* (collectively, “Defendants”).

2. Beginning on December 3, 2020, Defendants knowingly and repeatedly published false accusations that Ms. Freeman and Ms. Moss committed election fraud during the 2020 presidential election.

3. Among other things, Defendants alleged that Plaintiffs conspired to remove poll watchers from the room where they were counting ballots, produced secret suitcases full of illegal ballots, and counted those illegal ballots multiple times.

4. Through their defamatory statements, Defendants caused Ms. Freeman and Ms. Moss to be vilified on social media and subjected to an onslaught of violent, racist threats and harassment in their homes and neighborhoods.

5. To mitigate the harm caused by Defendants' false statements, Plaintiffs provided notice to Defendants on November 22, 2021, demanding that they retract no fewer than sixteen articles which defame Plaintiffs.

6. Defendants failed to correct or retract their demonstrably false statements concerning Plaintiffs, and on December 2, 2021, Plaintiffs filed the instant lawsuit against Defendants.

7. After Plaintiffs filed their original petition ("the Original Petition"), Defendants continued to publish articles repeating the lies that Plaintiffs had conspired to commit election crimes.

8. Upon discovering additional defamatory Articles, Plaintiffs prepared and filed a first (the "First Amended Petition") and second amended petition (the "Second Amended Petition") on January 14, 2022, and January 10, 2023, respectively.

9. The Second Amended Petition documents fifty-eight articles, published over a year and a half, which falsely accuse Ms. Freeman and Ms. Moss of committing election fraud during the 2020 presidential election. These articles have not been corrected or retracted and remain accessible to the public to this day.

10. On January 16, 2023, Defendants filed their Answer and affirmative defenses to the Second Amended Petition.

11. With their Answer, Defendants filed, for the first time, a counterclaim (the “Counterclaim”) against Plaintiffs and Plaintiffs’ counsel in this matter, John Langford, Brittany Williams, and David Schulz (collectively “Plaintiffs’ Counsel”), and the entities Protect Democracy Project and Yale University.<sup>1</sup>

12. The Counterclaim filed against Ms. Freeman and Ms. Moss is captioned as “defamation” and seeks to hold Plaintiffs personally liable for statements made by their attorneys after this lawsuit was filed which merely repeat the allegations included in the Original Petition.

13. Defendants’ Answer and Counterclaim make clear that the gravamen of the Counterclaim is Defendants’ contention that Plaintiffs filed the underlying action without an adequate basis. Therefore, the Counterclaim is, in essence, an action for malicious prosecution.

14. Defendants’ Counterclaim should be dismissed as an improper counterclaim pursuant to Rule 55.27(a)(11), because a counterclaim in the nature of malicious prosecution can be pursued only if Plaintiffs’ claims are terminated in Defendants’ favor. *See State ex rel. O’Basuyi v. Vincent*, 434 S.W.3d 517, 518 (Mo. banc 2014) (citing *Harris v. Steinem*, 571 F.2d 119, 124 (2d Cir.1978)); *Trachsel v. Two Rivers Psychiatric Hosp.*, 883 F. Supp. 442, 443, n.4 (W.D. Mo. 1995).

15. In the alternative, even if Defendants’ Counterclaim were not a premature claim of, in essence, malicious prosecution, which it clearly is, it still must be dismissed pursuant to Rule 55.27(a)(6) for failure to state a claim.

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<sup>1</sup> This motion to dismiss is solely directed towards the counterclaims against Ms. Freeman and Ms. Moss.

16. Defendants' Counterclaim fails to state a claim because it seeks to hold Ms. Freeman and Ms. Moss liable for statements by their counsel, made after this lawsuit was filed, that merely restate content in the Original, First Amended, and Second Amended Petitions. Such attorney statements are absolutely privileged, and this privilege extends to Ms. Freeman and Ms. Moss. *See Laun v. Union Elec. Co. of Mo.*, 166 S.W.2d 1065, 1068-69 (Mo. 1942); *Trachsel*, 883 F. Supp. 442, 443.

17. Finally, Defendants' Counterclaim also fails to state a claim because Defendants have not pleaded, and cannot plead, all the required elements of a defamation claim, including (i) that Plaintiffs or their counsel had knowledge of falsity or serious doubts as to the truth of their attorneys' statements, and (ii) that Defendants have suffered any damages as a result of the statements.

18. Should the Court rule for Plaintiffs on any of these grounds, Defendants Counterclaim must be dismissed.

WHEREFORE, for these reasons and those stated in the accompanying Memorandum, Plaintiffs respectfully request this Court dismiss Defendants Counterclaim and enter any further relief the Court deems just and proper.

Dated: March 23, 2023

Respectfully submitted,

By: /s/ James F. Bennett

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was served via the Court's electronic filing system this 23<sup>rd</sup> day of March, 2023.

*/s/ James F. Bennett*