

**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.)	

**MOTION TO STRIKE DEFENDANTS’ ANTI-SLAPP MOTION MADE UNDER GA
CODE § 9-11-11.1**

Plaintiffs Ruby Freeman and Wandrea Moss, through their attorneys, move this Court to strike Defendants’ motion seeking dismissal of this case pursuant to Georgia’s anti-SLAPP law, GA Code § 9-11-11.1 (hereinafter the “anti-SLAPP motion”), as procedurally improper and self-evidently meritless. Should the Court deny this motion asking that it be stricken, Plaintiffs would intend to file a substantive factual response to Defendants’ motion and seek leave to pursue discovery on the issue of actual malice before filing their response, as provided for in the anti-SLAPP statute cited by Defendants, Ga. Code Ann. § 9-11-11.1(b)(2), and Missouri precedents involving early motions for summary judgment, *see, e.g., Sims v. Harmon*, 22 S.W.3d 256 (Mo. App. E.D. 2000). In support of their motion to strike, Plaintiffs state as follows:

1. From December 3, 2020, through at least May 4, 2022, Defendants published at least *fifty-eight* articles alleging that Plaintiffs committed election fraud by, among other things, conspiring to empty the room of poll watchers where election workers were counting ballots, producing secret “suitcases” full of illegal ballots, scanning “Biden-only ballots”, harvesting

ballots, and running the aforementioned “suitcases” full of ballots through vote counting machines multiple times.

2. Defendants’ reports were both false and consequential. They caused Ms. Freeman and Ms. Moss to be vilified on social media and subjected to an onslaught of violent, racist threats and harassment of all kinds.

3. On December 2, 2021, Plaintiffs filed this action seeking damages for Defendants’ serial publication of defamatory falsehoods.

4. On December 5, 2021, Defendants improperly removed the case to federal court, and on June 6, 2022, Judge Autrey remanded this case back to the 22nd Circuit Court for St. Louis, Missouri.

5. Now, seventeen months after this case was initiated and eleven months after remand, Defendants argue that a Georgia procedural anti-SLAPP law applies to both (1) stay discovery and (2) change the summary judgment standard.

6. Defendants’ anti-SLAPP motion should be rejected out-of-hand for two equally dispositive reasons: a) it seeks to apply a Georgia procedural rule in a Missouri state court case, and b) it does not meet the terms of the Georgia rule, even if that rule had any proper application in this Court.

7. The Georgia anti-SLAPP statute provides a *procedural* mechanism for the early disposition of certain cases involving the exercise of First Amendment rights. *Rogers v. Dupree*, 824 S.E.2d 823, 830 (Ga. Ct. App. 2019) (quoting *Denton v. Browns Mill Dev. Co.*, 561 S.E.2d 431 (Ga. 2002)); *see also, e.g., Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1348, 1350 (11th Cir. 2018) (concluding that, when invoked in federal court, the Georgia anti-SLAPP statute

“provides a special procedural mechanism for the defendant to move to strike the claim” that does not apply because it conflicts with Rules 8, 12, and 56 of the Federal Rules of Civil Procedure).

8. The Georgia anti-SLAPP procedural mechanisms include (1) a Defendant’s procedural right to move to strike the relevant claim under an evidentiary standard that differs from the evidentiary standard for other Missouri court motions (*i.e.*, a “probability that the nonmoving party will prevail on the claim”); and (2) a qualified stay on discovery while the motion is pending. *Carbone*, 910 F.3d at 1348 (citing Georgia Code § 9-11-11.1(b)(1) and (d)).

9. Neither of these procedural mechanisms which Defendants seek to import have any basis in Missouri procedural law.

10. Missouri courts apply Missouri procedural law, even when they apply substantive law of another state. *Kissinger v. Am. Family Mut. Ins. Co.*, 563 S.W.3d 765, 775 (Mo. App. W.D. 2018) (“Regardless of which state’s law governs the substantive issues involved in this case, ... procedural questions are determined by the state law where the action is brought.”) (quoting *Williams v. Silvola*, 234 S.W.3d 396, 399 (Mo. App. W.D. 2007)).

11. Accordingly, Defendants’ anti-SLAPP motion to apply Georgia’s procedural law has no place in this court, and the Court should strike Defendants’ anti-SLAPP motion.

12. Independent of the procedural nature of Georgia’s anti-SLAPP law, this law expressly recognizes that an early resolution via an anti-SLAPP motion to strike is *not* proper in defamation cases brought by public figures where discovery is inherently necessary to determine if the defendant acted with the knowledge of falsity or recklessness (also known as “actual malice”).

13. Defendants' motion contends that this case was brought by public figures and that this case hinges on whether defendants acted with actual malice. *See* Defs.' Mot. ¶ 8; Defs.' Mem. pp. 17-23.

14. Accordingly, Defendants' request for dismissal before discovery is improper under the very Georgia procedures they invoke, just as a pre-discovery dismissal would be improper under Missouri summary judgment standards as well.

15. Defendants' improper motion to strike follows several other improper actions Defendants have taken to delay discovery, create unnecessary expenses, and otherwise stymie the resolution of this action. Specifically, Defendants have (1) improperly removed this action to federal court; (2) required a court order before making substantive responses to Plaintiffs' requests for production beyond their initial production of posts and various categories of draft posts to their website; (3) failed to then comply with the Court's December 20, 2022, discovery orders, such failures being the subject of Plaintiffs' Motion to Compel Compliance currently pending before the Court; (4) sought to sideline Plaintiffs' counsel with a protective order that would have prevented attorneys from Protect Democracy and the Yale Media Freedom and Information Access Clinic from viewing Defendants' production in their offices; and (5) filed an improper counterclaim against Plaintiff and some of Plaintiffs' counsel in the nature of a claim for malicious prosecution.

16. Plaintiffs have expended considerable time and resources responding to these improper actions.

WHEREFORE, Plaintiffs respectfully request that this Court grant this motion; strike Defendants' anti-SLAPP motion and deny the relief requested therein; award Plaintiffs' attorneys fees; sanction Defendants for their repeated, improper motions; and enter any further relief the

Court deems just and proper. Should the Court deny Plaintiffs' motion to strike, Plaintiffs seek leave to file a substantive factual response to Defendants' anti-SLAPP motion.

Dated: May 5, 2023

Respectfully submitted,

By: /s/ Matt D. Ampleman

James F. Bennett, No. 46826
John C. Danforth, No. 18438
Matt D. Ampleman, No. 69938
Dowd Bennett LLP
7676 Forsyth Blvd, Suite 1900
St. Louis, MO 63105
Phone: (314) 889-7373
Fax: (314) 863-2111
jbennett@dowdbennett.com
jdanforth@dowdbennett.com
mampleman@dowdbennett.com

Von A. DuBose*
75 14th Street, NE
Suite 2110
Atlanta, Georgia 30309
Telephone: (404) 720-8111
dubose@dubosemiller.com

Brittany Williams*
UNITED TO PROTECT DEMOCRACY
15 Main St., Suite 312
Watertown, MA 02472
(202) 579-4582
brittany.williams@protectdemocracy.org

Shalini Goel Agarwal*
UNITED TO PROTECT DEMOCRACY
2020 Pennsylvania Ave. NW, Suite 163
Washington, DC 20006
(202) 579-4582
shalini.agarwal@protectdemocracy.org

John Langford*
Rachel Goodman*
UNITED TO PROTECT DEMOCRACY
82 Nassau Street, #601
New York, NY 10038
(202) 579-4582

john.langford@protectdemocracy.org
rachel.goodman@protectdemocracy.org

David A. Schulz*
Kelsey R. Eberly*
MEDIA FREEDOM & INFORMATION
ACCESS CLINIC
FLOYD ABRAMS INSTITUTE FOR
FREEDOM OF EXPRESSION
YALE LAW SCHOOL
127 Wall Street
P.O. Box 208215
New Haven, CT 06520
(203) 436-5827
david.schulz@yale.edu
kelsey.eberly@yale.edu

*Admitted *Pro hac vice*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon all parties electronically through the Court's electronic filing system on this 5th day of May, 2023.

/s/ Matt D. Ampleman