IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS

LUTHER SUTTER PLAINTIFF/COUNTERDEFENDANT

v. Case No. 16JCV-25-76

THURSTLE MULLEN DEFENDANT/COUNTERCLAIMANT

BRIEF IN SUPPORT OF MOTION TO DISMISS

BRIEF IN SUPPORT OF MOTION TO DISMISS COUNTERCLAIM

Counter-Defendant Luther Sutter, individually, submits this Brief in Support of his Motion to Dismiss the Counterclaim and states:

I. INTRODUCTION

Mullen's Counterclaim purports to assert a cause of action for tortious interference with a business expectancy arising out of a relationship with Meta Platforms, Inc. (formerly Facebook). However, the Counterclaim fails as a matter of law and pleading. It should be dismissed pursuant to Ark. R. Civ. P. 12(b)(6) for three reasons:

1. The Counterclaim fails to attach or sufficiently allege the terms of the supposed contractual relationship with Meta;

2. There are no facts alleged to support tortious interference with contract.

3. Mullen fails to plead facts showing actual damages.

II. FAILURE TO ATTACH OR PLEAD TERMS OF THE CONTRACT

Mullen alleges in paragraph 4 of the Counterclaim that "he had a contract with Meta (formerly Facebook) to promote and support his social media platform, Conservative Stand." However, he fails to attach any written contract or specify its terms, duration, consideration, or obligations. He further alleges that "Meta had paid Mullen $30,000" and later terminated the contract (¶¶ 4, 5), but again, he does not explain the nature of the agreement, how the payments were structured, or what triggered termination.

Arkansas law requires more. Arkansas Rule of Civil Procedure 10(d) (2008) provides that a copy of any written instrument upon which a claim is based shall be attached as an exhibit to the pleading in which such claim is averred unless good cause is shown for its absence in such pleading. Here Mullen did not include the contract as an attached exhibit nor did the Martins proffer a good-cause explanation for not attaching the contract. Under these circumstances, compliance with Rule 10(d) is mandatory under *Ray & Sons Masonry Contractors, Inc. v. U.S. Fidelity & Guaranty Co*., 353 Ark. 201, 114 S.W.3d 189 (2003), Without the essential terms, Mullen's claim is purely conclusory and cannot survive dismissal.

III. No Intentional Interference with Contract

Even if Mullen had a contract with Meta, he alleges that Meta "terminated the contract" after receiving a complaint from Sutter (¶ 5). This confirms that the relationship was terminable at Meta's discretion—i.e., an at-will relationship. The elements of tortious interference are: (1) the existence of a valid contractual relationship; (2) knowledge of the relationship on the part of the interfering party; (3) intentional interference inducing or causing a breach or termination of the relationship; and (4) resultant damage to the party whose relationship has been disrupted. *Dodson v. Allstate Ins. Co.*, *supra*. (citing *Brown v. Tucker*, 330 Ark. 435, 954 S.W.2d 262 (1997); *Cross v. Arkansas Livestock & Poultry Comm'n*, 328 Ark. 255, 943 S.W.2d 230 (1997); *United Bilt Homes,*

Inc. v. Sampson, 310 Ark. 47, 832 S.W.2d 502 (1992)). A fifth requirement has been added by this court: the conduct of the defendant must be "improper." *Mason v. Wal-Mart Stores, Inc.*, 333 Ark. 3, 969 S.W.2d 160 (1998). All Luther Sutter did was exercise his right to allege that Mullen had violated Facebook's community standards, and Facebook agreed. Mullen did not have a contractual right to create a page that violated Meta' standards. Under Arkansas law, a claim for tortious interference cannot lie where the alleged expectancy arises under these circumstances. As argued above, this matter should be dismissed for failure to attach the contract. Even if the Court declines to dismiss the Counterclaim for failure to attach the Counterclaim, the Counterclaim still fails to state a claim because there are no facts to support that Luther Sutter had an improper purpose or that Meta terminated its relationship with Mullen.Meta's unilateral termination of the alle ged contract after receiving a complaint proves that any relationship was inherently uncertain and not legally protectable. Without a non-terminable contract or other enforceable right, Mullen has failed to state a valid expectancy capable of legal interference.

IV. FAILURE TO PLEAD FACTS SUPPORTING DAMAGES

Mullen's Counterclaim asserts that he "lost his platform and business relationship" (¶ 6) and that he was "damaged" (¶ 8), but these allegations are vague and unsupported by any facts. He does not allege how long the Meta payments would have continued, how much future income was expected, or the specific impact on his business. *See, e.g., Faulkner v. Ark. Children's Hosp*., 347 Ark. 941, 957, 69 S.W.3d 393, 403 (2002). One of Mullen's claims in this case is for defamation, which requires proof of the following elements: (1) the defamatory nature of the statement of fact; (2) that statement's identification of or reference to the plaintiff; (3) publication of the statement by the defendant; (4) the defendant's fault in the publication; (5) the statement's falsity; and (6) damages. *Dodson v. Allstate Ins. Co*., 345 Ark. 430, 444, 47 S.W.3d 866, 875 (2001). In *Faulkner*,

our supreme court affirmed a dismissal under a right-result-wrong-reason analysis, holding that the plaintiff in that defamation case did not plead sufficient facts demonstrating that she had suffered actual damage to her reputation but pleaded "only a conclusion to that effect." *Faulkner*, 347 Ark. at 957, 69 S.W.3d at 403. The *Faulkner* court noted that actual damages were an element of defamation, that Arkansas no longer recognized the doctrine of defamation per se, and that plaintiff's failure to plead facts supporting actual damage to her reputation warranted dismissal. In *Robertson*,, the plaintiff, like here, alleged that he suffered damage by "being cast as untruthful and not being trusted to serve," and he pleaded for an award of $1,000,000 from each appellee for injury to his reputation in the community and in his profession, for mental distress, and for embarrassment publicly on live television and in the newspaper caused by their slander. Just like Mullen, he alleged no specific facts demonstrating actual damage to his reputation or profession. This is not enough to withstand a Rule 12(b)(6) motion. *Robertson v. Daniel*, 2013 Ark. App. 160, ¶¶ 5-6 (Ct. App.). Here, Mullen's damages are entirely speculative. The bare assertion that he lost a relationship with Meta or suffered other damages, with no supporting facts or calculations, does not meet Arkansas's pleading standards.

V. CONCLUSION

Mullen's Counterclaim fails as a matter of law. He does not attach or adequately plead the terms of the alleged contract; he relies on a business relationship that was terminable at will; and he provides no factual basis for damages. As a result, the Counterclaim should be dismissed without prejudice under Rule 12(b)(6).

WHEREFORE, Counter-Defendant respectfully requests that the Court dismiss the Counterclaim in its entirety and grant such other relief as is just and proper.

Respectfully submitted,

/s/ Luther Oneal Sutter
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2025, a true and correct copy of the foregoing was served via U.S. Mail upon:

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/s/ Luther Oneal Sutter
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