

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS
Plaintiff

vs.

AIDAN KEARNEY,
Defendant

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12/02/2021

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S AMENDED
EX PARTE MOTION TO ATTACH DEFENDANT’S BANK ACCOUNTS**

The defendant, Aidan Kearney, (“Defendant”), respectfully submits this memorandum in opposition to Plaintiff’s Amended Ex Parte Motion to Attach Defendant’s Bank Accounts (hereinafter “Motion for Attachment”). As grounds therefor and in support thereof, Defendant states that Plaintiff has failed to support his Motion for Attachment. As further grounds, Defendant states the following:

FACTS AND PROCEDURAL HISTORY

This action arises out of an underlying arrest of the Plaintiff, Rian Waters, for an animal cruelty charge and assault and battery upon Samantha Cardin (a prior defendant), that occurred on or about December 31, 2016. Said charges were subsequently blogged about on Defendant’s social media platforms on or about January 6, 2017. The Defendant also published a book on or about November, 2018 referencing the incident.

Plaintiff filed this action on May 16, 2018. (Dkt. No. 3). Plaintiff subsequently filed an Amended Complaint, then a Second Amended Complaint on December 26, 2018. (Dkt. No. 24). The Plaintiff has also filed numerous other pleadings including a prior Motion for Preliminary

Injunction. (Dkt. No. 25). On February 8, 2019, this court denied Plaintiff's Motion for Preliminary Injunction, undertaking the same analysis as required with regard to Plaintiff's Motion for Attachment. This that decision, this court found, "after hearing and careful thorough consideration of the parties, the court finds neither a likelihood of success on the merits nor that irreparable harm will result from the denial of the injunction". See Exhibit 1. The Defendant was granted leave to file his Answer late and filed his Answer to Plaintiff's Second Amended Complaint on or about December 10, 2018. On February 4, 2019, the Defendants moved to dismiss Plaintiff's Second Amended Complaint. (Dkt. No. 43).

On March 18, 2019, Plaintiff filed another Motion for Leave to Amend the Complaint, seeking to add a personal injury claim of "adjustment disorder", which is the basis for his damages in the current Motion for Attachment. (Dkt. No. 45). Plaintiff's Motion was denied on June 18, 2019. See Exhibit 2.

On April 25, 2019, the Plaintiff filed a Motion to Reconsider his request for Preliminary Injunction. On June 13, 2019, Judge Mulqueen, again denied the Motion for the same reasons. See Exhibit 3. On June 27, 2019, Judge Mulqueen entered Summary Judgment for all Defendants. (Dkt. No. 51).

The Plaintiff appealed the decision. The Appeals Court affirmed the decision, aside from two statements contained within Count four of the Plaintiff's Second Amended Complaint. (Dkt. No. 68, page 11). Said two statements essentially stated that the Plaintiff had sold drugs in California and also had them shipped to Massachusetts.

On or about November 13, 2018, a book entitled "I am Turtleboy." Was published with the aforementioned two statements. Those allegations came directly from first hand knowledge

of Samantha Cardin, and were not a mere “truthful preface that someone else has so stated”.

Ricci v. Venture Magazine, Inc., 574 F. Supp 1563, 1572 (D. Mass. 1983).

On December 28, 2021, Plaintiff filed this Motion for Attachment, seeking to attach the defendant’s personal bank account and a bank account of a company, Turtleboy Digital Marketing, LLC, that is no longer a party to this litigation.

STANDARD OF REVIEW

“To succeed in an action for preliminary injunction the plaintiff must show: 1) a likelihood of success on the merits; 2) that irreparable harm will result from denial of the injunction; and 3) that, in light of the plaintiff’s likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction.” *Tri-Nel Mgt., Inc. v. Bd. of Health of Barnstable*, 433 Mass. 217, 219 (2001); see also *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). “In an appropriate case, the risk of harm to the public interest also may be considered.” *Brookline v. Goldstein*, 388 Mass. 443, 447 (1983).

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24, (2008). To the contrary, “the significant remedy of a preliminary injunction should not be granted unless the plaintiffs had made a clear showing of entitlement thereto.” *Student No. 9 v. Board of Educ.*, 440 Mass. 752, 762, (2004). As the party seeking injunctive relief, the Plaintiff bears the burden of demonstrating a likelihood of success on the merits, and that irreparable harm—i.e., harm of a peculiar nature not capable of redress after final judgment—will result from denial of the injunction. *Tri-Nel Mgmt. v. Board of Health*, 433 Mass. 217, 219, 741 N.E.2d 37 (2001), citing *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617, 405 N.E.2d 106 (1980) (emphasis added). If the Plaintiff proves that he is likely to succeed on the merits of his claims, this Court must balance the irreparable harm the Plaintiff faces

"against any similar risk of irreparable harm which granting the injunction would create for the opposing part[ies]." *Packaging Indus. Group, Inc.*, 380 Mass. at 617. "Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue." *Amos v. Town of Westford*, 2016 Mass. Super. LEXIS 824, *7-8; 34 Mass. L. Rep. 10

To obtain attachments under Mass. R. Civ. P. 4.1 and 4.2 the plaintiff need show a reasonable likelihood that he will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance shown to be available to satisfy the judgment.

Clay Corp. v. Colter, 2012 Mass. Super. LEXIS 357.

ARGUMENT

Plaintiff is seeking a preliminary injunction to attached Defendant's bank accounts. The Defendant submits that Plaintiff cannot meet any of the required criteria so as to obtain the injunctive relief sought. For the reasons set forth below, Plaintiff's Motion for Attachment should be denied.

I. Plaintiffs Likelihood of Success on the Merits Defamation Claim

Under Massachusetts law, a plaintiff alleging libel must ordinarily establish five elements: (1) that the defendant published a written statement; (2) of and concerning the plaintiff; that was both (3) defamatory, and (4) false; and (5) either caused economic loss, or is actionable without proof of economic loss. *Noonan v. Staples*, 556 F.3d 20 (1st Cir. 2009); *Stanton v. 2 Metro Corp.*, 438 F.3d 119, 124 (1st Cir. 2006) (citing *White v. Blue Cross & Blue Shield of Mass., Inc.*, 442 Mass. 64, 809 N.E.2d 1034, 1036 (Mass. 2004)).

Truth is a complete defense to slander and is a defense to libel unless actual malice is proved by the plaintiff. *McAvoy v. Shufrin*, 401 Mass. 593, 597, 518 N.E.2d 513 (1988). The burden of

proving the truth of statements is upon defendant, who must show that the statement is true in all material aspects. *Maloof v. Post Pub. Co.*, 306 Mass. 279, 280, 28 N.E.2d 458 (1940). Substantial, not literal, truth is required. *Conner v. Standard Pub. Co.*, 183 Mass. 474, 478, 67 N.E. 596 (1903).

Defendant fully expects to prove the statements made were true and accurate. The Defendant expects to call witness, Samantha Cardin, who will testify consistent with her attached affidavit. See Exhibit 3, Affidavit of Samantha Cardin. Ms. Cardin has first-hand knowledge that the Plaintiff sold drugs in California and that the Plaintiff had drugs shipped to Massachusetts. She will further testify that she relayed these facts to the Defendant. This witness is credible, and previously provided an affidavit to this court testifying that the Plaintiff did assault her and kill their dog. This court found that testimony credible in dismissing the Plaintiff's Second Amended Complaint. These allegations, as with all the previous allegations outlined in the Plaintiff's Second Amended Complaint including the statement concerning the drugs, have yet to be denied by the Plaintiff. The Appeals Court noted, "Waters did not produce a counter affidavit or offer any evidence to show that the statements were false." (Dkt. No. 68, pg. 10)

Given the above, the Defendant has set forth significant evidence the statements in questions were substantially true. The Plaintiff can not meet the burden of showing a likelihood of success on the merits with the evidence proffered.

II. No Evidence of Irreparable Harm

Even if the Plaintiff has demonstrated a likelihood of success on his claims, he has not demonstrated that he will suffer irreparable harm in the absence of a preliminary injunction - attachment. Irreparable harm exists where "money damages would not adequately redress any harm the Plaintiff might suffer prior to a final judgment should they prevail on the merits . . .

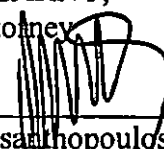
" *Packaging Indus. Group, Inc.*, 380 Mass. at 621. See also *Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co.*, 399 Mass. 640, 643, 506 N.E.2d 140 (1987) ("Economic loss alone does not usually rise to the level of irreparable harm which a party must establish to obtain a preliminary injunction"). Here, the harm claimed by the Plaintiff is damages resulting from the diagnosis of an "adjustment disorder." Plaintiff previously attempt to add this claim to his Complaint which was denied by this Court: (Dkt. No. 45). Exhibit 2. The Plaintiff has failed provide evidence of any damages, let alone indicate how irreparable harm exists.

Because there have been no legitimate damages alleged, there is no evidence that Plaintiff will suffer irreparable harm if Plaintiff is not awarded injunctive relief.

CONCLUSION

WHEREFORE, based upon the foregoing, Defendant respectfully request that the Court deny Plaintiff's Motion for Attachment.

AIDAN KEARNY,
By their attorney



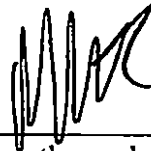
Kevin Chrisanthopoulos, Esq.
BBO # 643734
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Westfield, MA 01085
(413) 251-1010
(413) 372-1610 fax
Kevin@KCTrialAttorney.com

CERTIFICATE OF SERVICE

I, Kevin Chrisanthopoulos Esq., hereby certify that on this 2nd day of December 2021, I served a copy of the above upon the parties in the action in hand, to the plaintiff:

Rian Waters – Via Email

Subscribed under the penalties of perjury.

A handwritten signature in black ink, consisting of several vertical strokes followed by a large, sweeping flourish that extends to the right.

Kevin Chrisanthopoulos, Esq.

EXHIBIT

1

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,)
Plaintiff)
vs.)
AIDAN KEARNEY,)
WORCESTER DIGITAL MARKETING, LLC)
TURTLEBOY ENTERPRISES, LLC)
SAMANTHA CARDIN,)
JOHN DOES 1-10,)
Defendants)

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN - 2 2019

[Signature]
CLERK OF COURTS

PLAINTIFF RIAN WATERS EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Now Comes the Plaintiff, Rian Waters, and respectfully requests that pursuant of MRCP 65, this court issue a temporary restraining order on Defendant Aidan Kearney, and hold a hearing to issue a preliminary injunction against Defendants Aidan Kearney, Turtleboy Enterprises LLC, and Worcester Digital Marketing LLC. As grounds therefore, the Plaintiff refers to and incorporates the memorandum of law attached hereto.

Wherefore, based upon the foregoing, the Plaintiff respectfully requests that this court enter

the following:

*5w
2/1/19
(m)*
2/1/19 After hearing and careful and thorough consideration of the submissions and arguments of the parties, the court finds that a likelihood of success on the merits, not that irreparable harm will result from denial of the injunction, Accordingly, the motion is DEVED.
Mulqueen, J.
Short Order to issue for 1/12/19
1/15/19 @ 2pm.
Mulqueen, J.

EXHIBIT

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A

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,)
Plaintiff)
vs.)
AIDAN KEARNEY,)
WORCESTER DIGITAL MARKETING, LLC)
TURTLEBOY ENTERPRISES, LLC)
JOHN DOES 1-10,)
Defendants)

HAMPDEN COUNTY
SUPERIOR COURT
FILED

MAR 18 2019

[Signature]
CLERK OF COURTS

MOTION FOR LEAVE
Superior Rule 9A(6)

PLAINTIFF RIAN WATERS'S MOTION FOR LEAVE TO AMEND THE COMPLAINT.

ATTN: Session Judge

The Plaintiff moves for an order permitting him to amend his complaint. The Plaintiff wants to add his diagnosis of Adjustment Disorder to the Intentional Infliction of Emotional distress claim, and request relief for the mental condition. If granted the Plaintiff would also list the recent actions and dates when the defendants attempted to cause the Plaintiff emotional distress. Justice requires that the order prayed for be granted so that the Plaintiff's claim may be fully and fairly presented.

If the Defendant's attorney confers and stipulates the Plaintiff will also simplify and dismiss parts of the complaint.

"The decision whether to grant a motion to amend is within the discretion of the judge, but leave should be granted unless there are good reasons for denying the motion." Goulet v. Whitin Mach.

Works, Inc., 399 Mass. 547, 549 (1987).

6/18/19 DENIED
[Signature]
J.W.
6/20/19
(M)

EXHIBIT

3

COMMONWEALTH OF MASSACHUSETTS
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HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS
Plaintiff

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Defendant

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AFFIDAVIT OF SAMANTHA CARDIN

1. My name is Samantha Cardin, I was a former defendant in the above-captioned action.
2. I have first-hand knowledge that Rian Waters did personally sell drugs in California, as well as shipped drugs to Massachusetts.
3. In 2018, I had on several occasions spoken with the defendant, Aidan Kearney, with regard to my relationship with the Plaintiff.
4. During the course of those conversations, I informed Aidan Kearney that Rian Waters did sell drugs in California, as well as shipped drugs to Massachusetts.

Signed under the pains and penalties of perjury.

Samantha Cardin

Samantha Cardin

EXHIBIT

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COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT
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Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC
Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

APR 25 2019

[Signature]
CLERK OF COURTS

File # 25
(Melgareo, J)

EMERGENCY MOTION TO RECONSIDER PRELIMINARY INJUNCTION

The Plaintiff Rian Waters humbly asks this court reconsider the Preliminary injunction motion.

The Defendants actions have made it too dangerous to bring any witnesses in the case or discuss merits that could bring harassment to other parties. Plaintiff was unaware that he had a diagnosis of Adjustment Disorder at the time of the motin. The Plaintiff incorporates the attached memorandum as reason.

Wherefore, I Rian Waters the Plaintiff requests an injunction protecting me and my witnesses from harassment and intimidation.

6/12/19 DENIED. After review, the court finds that the additional submission does not alter the courts original finding that there is no likelihood of success on the merits.

Jane E. Melgareo
JS M. 6-13-19

Respectfully submitted,

Rian Waters

Rian Waters

I'll start putting the address again when it's safe to do so

(530)739-8951

Watersrian@gmail.com Dated: April 25th, 2019

Certificate Of Service

I, Rian Waters, hereby certify that on April 25th, 2019, I served the above motion by

mailing U.S. first class, to:

Kevin Chrisanthopoulos, Esq.
KC Law
30 Court Street, Suite 1
Westfield, MA 01085

Subscribed under the penalties of perjury.

Dated 4/25/2019

Rian Waters