

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS)
Plaintiff)
vs.)
AIDAN KEARNEY,)
WORCESTER DIGITAL MARKETING, LLC)
TURTLEBOY ENTERPRISES, LLC)
Defendants)

HAMPDEN COUNTY
SUPERIOR COURT
FILED

JAN 16 2019

[Signature]
CLERK OF COURTS

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

The defendants, Aidan Kearney, Worcester Digital Marketing, LLC, and Turtleboy Enterprises, LLC ("Defendants"), respectfully submit this memorandum in opposition to Plaintiff's Motion for Preliminary Injunction (hereinafter "Motion for PI"). As grounds therefor and in support thereof, Defendants state that Plaintiff has failed to support his Motion for PI. As further grounds, Defendants state the following:

FACTS AND PROCEDURAL HISTORY

Solely for the purpose of the instant motion, Defendants accept as true the facts as distinguished from conclusory allegations as set forth in the Complaint. Defendants do not give any credence to the allegations contained in the Motion for PI as they are not made under oath, and contradict what has actually occurred in this action.

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, that occurred on or about December

31, 2016. Said charges were subsequently blogged about on Defendant, Worcester Digital Marketing, LLC's social media platforms on or about January 6, 2017.

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 pending Motion for Preliminary Injunction. (Dkt. No. 25). The Defendants were granted leave to file their Answer late and filed their Answer to Plaintiff's Amended Complaint on or about December 10, 2018. The Defendants have moved to dismiss Plaintiff's Second Amended Complaint. A true and accurate copy of Defendants' Motion to Dismiss is annexed hereto as Exhibit "1". All counts against Samantha Cardin were dismissed by Rian Waters on January 9, 2019, in court.

On or about December 31, 2016, the Plaintiff, Rian Waters, did physically assault Samantha Cardin leaving a black eye and bruises on her body. See Exhibit "A" of Defendants' Motion to Dismiss, a true and accurate copy of the Affidavit of Samantha Cardin. Samantha Cardin believes that on or about December 31, 2016, the Plaintiff, Rian Waters, did physically assault her dog, leading to the dog's death a few hours later. Exhibit A. Shortly after December 31, 2016, Samantha Cardin posted to her Facebook page photographs of her injuries and statements concerning the assault on her and her dog. Exhibit "A".

On December 31, 2016 the Plaintiff was arrested for animal cruelty and assault battery upon the Defendant, Samantha Cardin. Exhibit A. At times relevant to the allegations in Plaintiff's Second Amend Complaint the Defendant, Aidan Kearney, was an employee and/or officer of Worcester Digital Marketing, LLC. See Exhibit "B" of Defendants' Motion to Dismiss, a true and accurate copy of the Affidavit of Aidan Kearney. Worcester Digital Marketing, LLC owns all publications using the name Turtleboy Sports and operates social

media platforms known as Turtleboy Sports. Exhibit "B". Third party bloggers are permitted to post their own blogs to the Turtleboy Sports social media platforms. Exhibit "B". Turtleboy Enterprises, LLC, is a defunct company which has no involvement with regard to the allegations in Plaintiff's Second Amended Complaint. Exhibit "B".

On January 6, 2017 a third-party posted a blog re-publishing several of Samantha Cardin's Facebook posts which stated that she was assaulted by the Plaintiff and her dog was gravely injured and subsequently died. See Exhibit "C" of Defendants' Motion to Dismiss, a true and accurate copy of Turtleboy Sports blog dated January 6, 2017. Mr. Water's Facebook posts were also added to the blog. Exhibit "C". Samantha Cardin's Facebook posted were accurately detailed in the blog. Exhibit "A". The blogger also provided his/her own commentary and opinions on the subject incident. Exhibit "C".

On or about November 13, 2018, Worcester Digital Marketing, LLC published a book entitled "I am Turtleboy." See Exhibit "B". The subject lawsuit is discussed on several pages in that book. See Exhibit "D" of Defendants' Motion to Dismiss, a true and accurate copy of the relevant pages of I am Turtleboy.

On January 17, 2019, Defendants served a Motion to Dismiss Plaintiff's Second Amended Complaint and filed notice pursuant to Superior Court Rule 9E.

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).

ARGUMENT

Plaintiff is seeking a preliminary injunction "remove all, and refrain from posting any other articles/blogs referencing the Plaintiff". Defendants submit that Plaintiff cannot meet any of the foregoing criteria so as to obtain the injunctive relief sought. First, for the reasons set forth in the Defendants' Motion to Dismiss, Plaintiff's Motion for PI should be denied.

Secondly, the Plaintiff is now seeking to limit the Defendants' protective speech. The rule protecting expressions of opinion based on disclosed or assumed nondefamatory facts is by now an integral part of our common law. See Fleming v. Benzaquin, 390 Mass. 175, (1983). See also Pritsker v. Brudnoy, 389 Mass. 776, 778 (1983). While we have traced the "constitutional roots" of this rule to the First Amendment, e.g. Myers, supra at 338, such constitutional underpinning may be found also in art. 16 of our Declaration of Rights. "From the fact that we rest [a] decision wholly upon the Federal Constitution and its construction by the Supreme Court of the United States no inference should be drawn that the Declaration of Rights of the Constitution of this Commonwealth is less capable of protecting the essentials of freedom of speech, of the press, and of assembly than is the Federal Constitution. See arts. 16 and 19." Commonwealth v. Gilfedder, 321 Mass. 335, 343 (1947). Our cases protect expressions of opinion based on disclosed information because we trust that the recipient of such opinions will reject ideas which he or she finds unwarranted by the disclosed information. See note 5, *supra*.

The suppression of ideas that would be occasioned by allowing the courts, rather than the "marketplace of ideas," to judge expressions of opinion such as those challenged in the present case is repugnant to this constitutional guarantee of free speech. Lyons v. Globe Newspaper Co., 415 Mass. 258 (1977).

CONCLUSION

WHEREFORE, based upon the foregoing, Defendants respectfully request that the Court deny the Motion for PI.

AIDAN KEARNY,
WORCESTER DIGITAL MARKETING, LLC
TURTLEBOY ENTERPRISES, LLC
By their attorney,



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CERTIFICATE OF SERVICE

I, Kevin Chrisanthopoulos Esq., hereby certify that on this 17th day of January 2018, I served a copy of the above upon the parties in the action in hand, to the plaintiff:

Rian Waters
199 Allen Street
East Longmeadow, MA 01028

Subscribed under the penalties of perjury.



Kevin Chrisanthopoulos, Esq.