

**COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT**

No. 2022-P-1105

RIAN WATERS,
Appellant

v.

AIDAN KEARNEY,
WORCESTER DIGITAL MARKETING LLC
Appellee

HAMPDEN COUNTY SUPERIOR COURT# 1879CV00344

Appellate brief

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Statement of issues

1 Whether it was an abuse of discretion for the Superior Court to conclusory deny an unopposed request for Rule 65(b)(2) consolidation, when the defendant consistently sent heinous threats directed at witnesses, and the defendant was unable to present specific facts indicating a triable issue.

2 Whether the Superior Court violated my constitutional rights to a fair trial by allowing a Defendant to suppress evidence by consistently threatening and attacking the livelihoods of my witnesses. 14th Amendment and Mass Const. Articles 10, 11, and 29

3 Whether the Superior Court violated my Article 114 constitutional right to reasonable accommodations, by dismissing the case because I was too preoccupied to answer questions unrelated to the misconduct, after the court denied an Art. 114 request to explain with fact or law why he approved of threats and crimes that were stressing my adjustment disorder and causing the preoccupation.

Statement of Case

Consolidation

Kearney wrote a book falsely accusing me of multiple crimes including selling and shipping drugs. (RA 171) In 2019 the Superior Court denied motions for preliminary injunctions (RA 24-25) that I said were necessary to present evidence (RA 25), and converted a motion to dismiss into a motion for summary judgment and ruled in Kearney's favor on all counts. (RA 26) This court reversed judgment for my libel claim that Kearney accused me of selling and shipping drugs. (RA 49) 2020-P-008

On June 9th, 2022, I filed an unopposed motion for a Rule 65(b)(2) preliminary injunction and consolidation with trial. (RA 133-136) Aidan Kearney never satisfied the burden of truth (or any other defense) by presenting any specific facts indicating that I could be a drug dealer. (RA 16 at 101)

I argued with support that the "Consolidation with a trial on the merits should be ordered because this is a 2018 case with a complete record as for liability, and Kearney has insufficient evidence to support his defense. Consolidation would disincentivize Aidan Kearney from harassing or causing damage to any more lives to obstruct the case, and to hopefully make it safe to present evidence of damages." RA 135

On June 28th the Lower Court denied my motion for an injunction and consolidation by sua sponte arguing that the case “has spun off its axis,” and that there was only one claim left to decide. (RA 16; RA 133; RA 185) The court did not identify any fact in the record or legal reason that the remaining claim should not be decided, or why Kearney’s threats are tolerable. In my timely notice of appeal, I included my unopposed motion for a Rule 65(b)(2) motion for a PI and consolidation with trial. (RA 189)

Kearney’s June 18th threats

Aidan Kearney explicitly threatened my main misconduct witness several times on June 18th, 2022, (RA 181-183) the day after he was served with a witness subpoena (RA 179) and ten days before a motion hearing addressing my witness’s evidence was scheduled. (RA 178) (RA 5)

“I don't know why you thought this was a smart idea, Chrissy, because you know me, and you know what I do, and you know I'm not gonna rest, you know that right, like you own a business, I am speaking to Chrissy right now cause I know she's listening. So, you a business, you have couple kids or whatever, and a family and it's called Royal

Thermal View, did you think I wasn't gonna make it like my mission to take all that away from you? Did you think that?” (RA 181 at 2)

“I'm not gonna stop, we're just beginning here. I'm not gonna stop destroying your life, just destroying it, like I am gonna take everything away from you that you love, I want you to feel as low as I did in early January when I found out that you betrayed me. I want you to feel that pain, and you're gonna feel it.” (RA 183)

“I will not stop until you beg for mercy, and then I'm going to do it twice as much, you're gonna feel the way I felt when I was in my garage when I wanted to kill myself.” (RA 183) (emphasis added)

“[Y]our business is going to severely suffer from this, when I contact every single one of your customers” RA 182 at C

Final hearing

On June 6th 2022 the court asked me to mark up for hearing my sanctions and or default motion. (RA 186) Aidan Kearney refused to schedule with me and demanded that he talk with the court directly. At Kearney's ex parte request that was founded on unverified facts, (RA 131-132) the Lower court cancelled the witness subpoena and

rescheduled the hearing for my Sanctions and or default motion addressing the misconduct to the same day he scheduled the final pretrial conference. (TRI/3 at 18) (TRI/2 at 2) (RA 16) (RA 187)

At the start of the hearing the court approved of all of Kearney's crimes denying a motion for sanctions and or default without discussion. (RA 186) (TRI/4 at 22)

Pursuant to Article 114 of the Massachusetts Constitution, I asked that the court provide an intelligible reason for his denial, because Kearney's crimes caused an adjustment disorder and preoccupation would prevent me from being able to fairly think about matters unrelated to the misconduct. (TRI/5 at 1-13) The Superior Court denied reasonable accommodations without any reason or factual finding. (TRI/5 at 14)

The Superior Court then asked how long I thought a trial would be. (TRI/6 at 12) I argued that Kearney's lack of "specific facts" as to his "burden of truth" that I was a drug dealer made it impossible to estimate. (TRI/6 at 14 - pg 7 at 3) The court asked how I intended to prove Kearney libeled me, but I was still too preoccupied with the court's unintelligible approval of obstruction.

“If the witness intimidation is not dealt with, I'm just appealing it right up to the, who, the Supreme Court. **I'm not going to participate in a charade** where he gets to send death threats the week before trial to every fricking witness I have. I can't list witnesses. If I can't have a fair trial, there's not going to be a trial. (emphasis added)

THE COURT: Okay. Are you asking me -- what are you asking me to do?

MR. WATERS: I guess if you're saying you're unwilling to deal with witness intimidation, then, fine, I guess this case is closed, where I'll appeal it up. I already reported it to the SJC, as you know, and we'll just take it from there.

THE COURT: So -- We're on the record. You're asking me to close the case so you can take whatever next steps you want to take to close this case out; is that right?

MR. WATERS: Well, if you're saying you're unwilling to deal with the witness intimidation in any way, shape, or form, you think the June 17th threats were all appropriate, then, yes. I mean you're saying those are appropriate, fine, so be it. Those are your words. Every single one of

those -- It's okay for him to say he's going to dedicate his life to destroying my livelihood to my witnesses and he's going to attack their customers of all their businesses and he's going to make sure that she wants to commit suicide just like he did when she released the evidence that he committed a crime.” (TRI/8)

The Superior Court dismissed the case the next day for failure to prosecute. (RA 187)

Motion to redetermine.

In 2019 I did not present evidence because I felt Kearney’s threats and harassment made it too dangerous to do so. (RA 25; RA 34; RA 45 at 30) This court affirmed the Superior Court’s judgment dismissing some of my libel claims deciding that truth had been established. During a deposition on April 15th, 2022, Samantha Cardin and Aidan Kearney indicated that they wanted to relitigate my libel claim that they said I killed my dog. (RA 79) I filed an unopposed motion requesting leave to seek summary judgment on the previously dismissed claim. (RA 77-78) The court never decided the motion, and when I inquired the Court said I needed to take it up with the Appeals court. (TRI/6 at 2)

Statement of Facts

Threats suppressing evidence

On June 23rd, 2019, Kearney discussed the case being reviewed, and then said if you participate in a court case against him that he will ruin your life, and that he would get pleasure doing so. (RA 43 at 18)

Kearney published articles before court hearings in 2019 that were filled with threats sent with fake accounts. (RA 45 at 29-32) (“I would love to slaughter Rian’s entire family down to the child.”) see also (RA 41 at 10-11; RA 44 at 22-25) Kearney admitted the goal of the articles was to destroy me. (RA 41 at 13-14) On January 23rd, 2019, Kearney threatened my roommate because I used her address. (RA 43 at 20) On July 11th, 2019, Kearney said he would harass anyone that hired me” (RA 42 at 17)

Kearney had an employee fabricate gay porn images of me and my first witness together in bed, and he repeatedly harassed both of us with the images before court hearings. (RA 43 at 19)

In 2019 the court denied injunctions I said were necessary in order to present evidence because it conclusory kept deciding I did not have a likelihood of success. (RA 24-25; RA 34)

On November 12th, 2020, Kearney said the best way to stop pro se lawsuits was to attack their families. “When we bombed Hiroshima and Nagasaki we knew that a bunch of ***** kids and women are going to die in that. Too ***** bad, then ***** surrender ***** surrender and then they ***** surrender didn't they? That's what you got to do unfortunately this collateral damage so I want to make sure the messages sent here if you **** with me if you try to sue me I'm not gonna go after you, I'm gonna go after your ***** family... I'm going to burn your family to the ground just understand that.” (RA 173 at 10)

Kearney teaches people that the best way to win lawsuits is to “[f]ind out everything about them. Learn what their vulnerabilities are. Attack that. Don’t even go after them – go after their employers, friends, and people they love. Those unrelated parties won’t want to deal with it and will begin to pressure them to stop. Ruin their lives as best you can and make them regret the day they ever thought it would be a good idea to poke you” (RA 144)

On the same day Kearney was served with my motion to attach his bank account, (RA 87) Kearney created a fake copy of my Facebook account and sent heinous threats directed at his own children. (RA 79) In a **private** Facebook group chat, Kearney asked coconspirators to **privately** send him screenshots of the threats. (RA 80 at A04-A06) Notably Kearney knew when the account got reported. (RA 80 at A4) Kearney implied he did the conspiracy to obstruct the court cases. (RA 110 F3)

A witness shared screenshots of the group chat, (RA 96) which led to the whole group getting identified by the police. (RA 91) Kearney has relentlessly harassed everyone who gave me evidence. (RA 97 8-18) (RA 164 at 2) On December 8th 2021, Kearney said the reason why he wasn't worried about getting in trouble for the November 19th 2021 conspiracy was because 90% of court clerk support him. (RA 172 at 4)

Attachment

Kearney cancelled Worcester Digital Marketing LLC (RA 59) but never wound down (RA 61) and is/was still using all of the companies' assets. (RA 56 at 2; RA 62) Kearney cannot get liability insurance, (RA 56 at 1) and has intentionally conveyed and or concealed assets,

specifically so that he will not have to pay any judgments against him.
(RA 56 at 3-4)

In opposition to attachment of his bank accounts, Kearney presented an affidavit from Samantha Cardin conclusory stating that I was a drug dealer. (RA 72) The court conclusory decided that Kearney had a high likelihood of success. (RA 76)

Argument

Summary of argument/ Direct response to court's judgment

The court claimed that I “indicated that [I] had ‘no witnesses’ and that I was unable to articulate [my] damages.” RA 187 “Mr. Waters has not prepared the case for trial. For instance, by way of example only, he stated during the hearing that he was unable to identify witnesses since he did not know the ‘drugs’ that Kearney claimed he sold.”

First off, the court knew that I was too preoccupied with his unintelligible approval of heinous obstruction to answer unrelated questions. (infra. 30-32) (TRI/5 at 3-13) The court had been informed of my damages that did not require witnesses multiple times. (RA 162-164; RA 172)

Second, the court knew that the primary reason I didn't have witnesses is not because I lacked a desire to go to trial, but because it was too dangerous. (Infra 26-27) (TRI/5) In 2019, and 2022 I told the court it was too dangerous to hold a deposition, the court allowed flagrant harassment before after and during Samantha Cardin's deposition on April 15th, 2022, leading her to cry and ask to stop her deposition. (RA 184 at 3) It would be reckless for me to name or try to depose another witness knowing Kearney's routine.

Third, "the burden of truth is on [Kearney]", TRI/ 6 at 24 Kearney has not presented any specific facts indicating that I was a drug dealer. (infra. 21) Yet the court keeps unintelligibly ruling in Kearney's favor. It's not my fault the court ignored the law and allowed Kearney to proceed without "specific facts." TRI/7 at 1-3

Forth, the court disincentivized me presenting witnesses by unintelligibly allowing Kearney to hide his assets and promise that he will never honor any judgment. Giving Kearney more targets to destroy would be idiotic when I know that even if I won a million-dollar judgment it would be worthless. (supra 16)(RA 160 at 30) (infra. 27-28)

Mass. R. Civ. P. 65 PI & Consolidation Legal Standard

“[I]n assessing whether a judge erred in granting or denying a request for preliminary injunctive relief, we must look to the same factors [that should have been] considered by the judge in the first instance. Evaluation of these factors turns on ‘mixed questions of fact and law. On review the trial court's conclusions of law are subject to broad review and will be reversed if incorrect...’ Furthermore, while weight will be accorded to the exercise of discretion by the judge below, if the order was predicated solely on documentary evidence [like the instant case,] we may draw our own conclusions from the record.” *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 615-616 (Mass. 1980)

“[T]he judge initially evaluates in combination the moving party's claim of injury and chance of success on the merits. If the judge is convinced that failure to issue the injunction would subject the moving party to a substantial risk of irreparable harm, the judge **must** then balance this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party. What matters as to each party is not the raw amount of irreparable harm the

party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits.” *I.d.*, at 617

I argued without opposition below that consolidation can be done pursuant to the same standard as summary judgment when the nonmoving party has adequate notice and insufficient evidence. [see “Mass. R. Civ. P. 56 (c)” *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 **n.10** (Mass. 1980) “When a party not having the burden of proof at trial demonstrates that the party having that burden has insufficient evidence to sustain it, the moving party is entitled to summary judgment.” *King v. Globe Newspaper Co.*, 400 Mass. 705, 706 (1987) “When a motion for summary judgment is made and properly supported, the non-moving party may not simply rest on pleadings, ‘but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.’” *Correllas v. Viveiros*, 410 Mass. 314, 317 (Mass. 1991) see Mass. R. Civ. P. 56 (e)

‘The risk that a party will suffer irreparable harm during the time between the hearing on the preliminary injunction and final adjudication on the merits may be minimized by consolidating the trial

on the merits with the preliminary hearing, as authorized by Mass. R. Civ. P. 65 (b) (2)... consolidation is generally desirable in an appropriate case” *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 617 n.10 (Mass. 1980)

Likelihood of success for liability

I never bought or sold drugs in California (RA 155 at 1) "An imputation of crime is defamatory per se.” *Waters v. Kearney*, No. 20-P-88, 10 (Mass. App. Ct. Aug. 19, 2021) quoting *Jones v. Taibbi*, 400 Mass. 786, 792 (1987) “An accusation purporting to rest on hearsay is none the less defamatory.” *Maloof v. Post Pub. Co.*, 306 Mass. 279, 279 (1940) *Kearney* did not argue any privileges this time around. “The burden of proof was on the defendants to maintain [the truth] defense by showing the substantial truth of the charge in all material respects.” *Id* at 280 *Kearney* did not file an opposition to consolidation or try to meet that burden.

Kearney failed to meet his burden even if the court had secretly sua sponte applied the affidavit *Kearney* presented in opposition to attachment of his bank account. (RA 55) “Neither vague allegations and conclusory statements, nor assertions of inferences not based on

underlying facts will suffice.” *First National Bank of Boston v. Slade*, 379 Mass. 243, 246 (Mass. 1979)

“Even assuming [arguendo] the facts stated in [Samantha Cardin’s] affidavit to be true, the affidavits must... set forth specific facts which introduce a triable issue.” *Ellis v. Safety Insurance Co.*, 41 Mass. App. Ct. 630, 636 (Mass. App. Ct. 1996) “[I]n the absence of the specific supporting facts required by Rule 56(e), the defendant’s personal belief is of little consequence.” *Gesualdi v. Nunes*, 2003 Mass. App. Div. 11, 12 (Mass. Dist. Ct. App. 2003) “If there were statements and conduct by the plaintiffs amounting to” drug dealing, “the defendant could have easily included them in his affidavit. He failed to do so.” *Id.*, at 12 See, e.g., *Polaroid Corp. v. Rollins r. Servs. (NJ), Inc.*, 416 Mass. 684, 696, 624 N.E.2d 959 (1993) (affidavit conclusory where it consisted of unsupported conclusions of law or fact)

Samantha’s affidavit “does not rise above a mere allegation or move sufficiently beyond the defendants’ pleading.” *Commonwealth v. Colonial Motor Sales, Inc.*, 11 Mass. App. Ct. 800, 805-6 (Mass. App. Ct. 1981) “The bare assertion of possible inferences raises no genuine issue

of material fact sufficient to avoid summary judgment.” Gesualdi v. Nunes, 2003 Mass. App. Div. 11, 12 (Mass. Dist. Ct. App. 2003)

Likelihood of success for damages

“In a case of defamation, the plaintiffs recovery is limited to actual damages, which are compensatory for the wrong done by the defendant.” Stone v. Essex County Newspapers, Inc., 365 Mass. 246, 256 (Mass. 1974) “Actual injury includes not only out-of-pocket expenses, but also harm inflicted by impairment of reputation and standing in the community, personal humiliation, and *mental anguish and suffering*.” Draghetti v. Chmielewski. 416 Mass. 808. 815-16 (Mass. 1994)

While there is no incentive to list my business partners or my therapist as a witness, I don’t need witnesses because in this case I have a diagnosis for adjustment disorder. (RA 47; RA 155 at 2) The defamation in the book was the first major stressor to my adjustment disorder that caused significant cognitive impairment, (RA 16 at 1) and in an affidavit for a motion to reconsider the removal of the default, I cited the cognitive impairment stemming from the defamation in the book as the reason the court should reconsider. (RA 19 at 4 and 5)

Plaintiffs have recovered significant sums for mental suffering with less evidence in other defamation cases. *e.g.*, *Van Liew v. Eliopoulos*. 92 Mass. App. Ct. 114. 115 (2017) (concluding \$250,000 emotional distress award not excessive); *Borne v. Haverhill Golf & Country Club, Inc.* • 58 Mass. App. Ct. 306. 319-321 (2003) (concluding \$424,000 emotional distress award not excessive); *Shafir v. Steele*. 431 Mass. 365. 373 (Mass. 2000) ("feelings of being 'bludgeoned,' 'stunn[ed],' and then 'outrage' and 'anger...' are the 'natural result' of the defamation, sufficient to prove mental suffering.")

Aidan Kearney is effectively in default

It would be unfair to let Kearney make arguments in this court that neither he nor the Lower Court thought worth to make below. Kearney did not oppose my motion for an injunction and consolidation with trial on the merits. (RA 13) Kearney never presented any specific facts indicating that I could be a drug dealer, and Kearney has never come up with an excuse or opposing argument for why he should not be defaulted for his obstructive behavior including the heinous threats he sent on June 18th. Arguments not raised below are waived on appeal. *e.g.*, *Campbell Hardware, Inc. v. R.W. Granger & Sons, Inc.*, 401 Mass.

278, 280-281 (1987) (court need not consider issues argued for first time in reply brief); *Carrel v. National Cord & Braid Corp.*, 447 Mass. 431, 442-443 (2006)

The Lower Court did not sua sponte argue any facts or law to support its pre-judgment decisions, (RA 13) and the court misrepresented my arguments to support a red herring dismissal. Kearney did not appeal the court's failure to use fact or law. Even if the court had legitimate reasons to sua sponte oppose summary judgment and approve of misconduct, the court waived those arguments by failing to inform the parties. Which is logical because if the court identified a perceived deficiency, I could have cured it or explained his miscomprehension. “[A] court should let the parties and an appellate court know why it acts, and on what factual basis.” *Ben David v. Travisono*, 495 F.2d 562, 563 (1st Cir. 1974) “Where no judicial resources have been spent on the resolution of a question, trial courts must be eroding the principle of party presentation so basic to our system of adjudication.” *Arizona v. California*, 530 U.S. 392, 412-13 (2000)

My injury cannot be tolerated

The Court knew that I would “not be able to present more evidence of damages without any protection, and ‘an eventual trial that reflects witness intimidation... is as bad as [or worse than] not trial at all.’ United States v. Acevedo-Ramos, 755 F.2d 203, 206 (1st Cir. 1985)”

A motion to redecide some of the dismissed claims went unopposed, (RA 60-62) and I presented evidence that proves I am innocent of those allegations. (RA 157 12-17; RA 160 at 29) “It is the general rule that issue preclusion attaches only ‘when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment.’ ‘In the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated. Therefore, the rule of this Section [describing issue preclusion's domain] does not apply with respect to any issue in a subsequent action.’” Arizona v. California, 530 U.S. 392, 414 (2000) quoting Restatement (Second) of Judgments § 27, p. 250 (1982)

While this court could and should allow me to argue those claims under plain error as witness intimidation hampered my presentation and prevented me from presenting evidence in 2019, (RA 45 at 3; RA 25; RA 34) there is still no incentive for me to relitigate those claims

without witness protection. Relitigating the claims would just encourage Kearney to send more threats to more witnesses for an epically pyrrhic victory.

Samantha's testimony was influenced, and her deposition was cut short by Kearney's ruthless behavior before and during the deposition. "[T]he judge should seek to minimize the harm that final relief cannot redress, by creating or preserving, in so far as possible, a state of affairs such that after the full trial, a meaningful decision may be rendered for either party." *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 616 (Mass. 1980)

The Court did not cite any facts or law explaining why consistent threats to destroy my witnesses' livelihoods, and threats to make them want to commit suicide is a tolerable injury.

It is absurd to sua sponte argue Kearney's June 18th, 2022, threats are acceptable, and then sua sponte dismiss the case arguing that I should have given Kearney my new therapist as cannon fodder knowing that Kearney would destroy her livelihood if I named her.

Kearney would not have suffered irreparable harm from consolidation or an injunction.

The court did not sua sponte argue that Kearney would suffer any harm by denying me relief.

Below I argued that “Kearney has no interest in the injunction as my Ninth Amendment right to a fair trial and protection in the court nullifies Kearney’s right to free speech. ‘The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.’ Ninth Amendment” (RA 133)

Additionally, Kearney fraudulently cancelled his businesses that legally should still own the social media accounts that he is still using to threaten witnesses. (RA 39 at 2; RA 42-45)

Aidan Kearney publicly admits that he is uncontrollably vindictive. (RA 156 at 9) Kearney never would have committed heinous crimes if I was given a fair opportunity to present evidence in 2019.

Alter ego allegations established.

In my complaint I noted numerous facts indicating Kearney’s business Worcester Digital Marketing was an alter ego, including that

he was the sole member, sole manager. (RA 59) Now its undeniable as Kearney cancelled the business but has continued all the same business using all of the same assets. (RA 61-62)

Article 114 Legal Standard Reasonable Accommodations

“No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity within the Commonwealth.” MA Constitution Article 114

The SJC applied the same standard for requests of reasonable accommodations for pro se litigants as it did for witnesses in McDonough, Petitioner, 457 Mass. 512, (Mass. 2010) “We see no reason to limit these aspects of the McDonough holding to witnesses” Adjarte v. Cent. Div. of Hous. Court Dep't, 481 Mass. 830, 848 (Mass. 2019) (“(1) ‘where a [pro se litigant] with a disability requests accommodation in order to [stop preoccupation and fairly muster arguments], MERA requires that the court provide such accommodation, so long as it is ‘reasonable’ ‘ and (2) ‘where there is a dispute concerning such a [pro se litigant]'s request for accommodation, a judge should conduct a hearing to resolve the dispute, preferably before trial, and the [pro se litigant]

should be provided with reasonable accommodation, if available, during the pretrial hearing. The [SJC] also concluded that in order to facilitate appellate review of decisions concerning requests for accommodation, judges ‘**should make findings adequate to permit such review.**’”)

The court should have granted reasonable accommodations and provided findings.

I have stated several times under penalties of perjury that I have an adjustment disorder, and that Aidan Kearney’s harassment is the identified cause and stressor of it. When Kearney attacks my witnesses it is extremely difficult for me to think about anything besides the threats and their consequences. Just because I am still capable of producing a compliant brief, does not mean that I am fairly presenting my arguments. It should be obvious that a pro se litigant is not being fairly heard if the opposing party is intentionally preventing him from reasonably sleeping at night. “Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68, 208 L. Ed. 2d 206 (2020) see also *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982)

I orally asked pursuant to Article 114 for the court to explain his decision approving of Kearney's threats with law, noting that if he did not, I would not be able to fairly think about matters unrelated to the threats. The Lower court denied my Article 114 request and did not provide an intelligible reason for denying reasonable accommodations. Had the court provided accommodations, I would have cited the evidence I already provided in past motions. (RA 172 at 2; RA 57 at 5-7; RA 64)

It is reasonable for me to request that the court explain with fact or law why he is allowing an opposing litigant to send heinous threats that are violating my constitutional rights, and neither Kearney nor the court argued otherwise.

Adjustment disorder would qualify under MERA and Mass. Cons. Article 114, as it causes sleep disturbances and significant impairment to occupational functioning. "General Laws c. 151B, § 1 (17), defines 'handicap' to mean '(a) a physical or *mental* impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment..." McDonough, Petitioner, 457 Mass. 512, 514 n.5 (Mass. 2010) The SJC relied "on MERA, on the

Massachusetts Constitution, and on [their] own superintendence power to confirm Massachusetts courts' obligation to provide reasonable accommodations” *Adjarkey v. Cent. Div. of Hous. Court Dep't*, 481 Mass. 830, 848 n.25 (Mass. 2019)

“It is not enough that we know ourselves to be fair and impartial or that we believe this of our colleagues. Our power over our fellow citizens requires that we appear to be so as well” *In the Matter of Brown*, 427 Mass. 146, 149 (Mass. 1998)

I have a Constitutional right to safety in the court

I argue that because the Superior Court's decision was devoid of supporting fact or law that my 14th Amendment right to a fair trial supersedes the typical injunction standard and compels this court to right the wrongs caused by the Lower Court with inherent power to the extent necessary.

“Due process’ requires, at minimum, that absent countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given meaningful opportunity to be heard. U.S.C.A. Const. Amend. 14.”

Boddie v. Connecticut, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)

There are “fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature. Those requirements relate not only to the taking and consideration of evidence but also to the concluding, as well as to the beginning and intermediate, steps in the procedure.” Morgan v. United States, 304 U.S. 1, (1938) “[A] provision of the Bill of Rights which is ‘fundamental and essential to a fair trial’ is made obligatory upon the States by the Fourteenth Amendment.” Gideon v. Wainwright, 372 U.S. 335, 342 (1963)

“It is essential to the preservation of the rights of every individual, his *life, liberty*, property, and *character*, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.” Mass. Const. Pt. 1, art. XXIX (emphasis added)

“Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws.” Mass. Const. Pt. 1, art. X

“Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. *He ought to obtain right and justice freely*, and without being obliged to purchase it; completely, and **without any denial**; promptly, and without delay; ***conformably to the laws.***” Mass. Const. Pt. 1, art. XI

“From these provisions, it necessarily follows that courts of general jurisdiction have the inherent power to do whatever may be done under the general principles of jurisprudence to insure to the citizen a fair trial, whenever his *life, liberty*, property or *character* is at stake.” O'Coin's, Inc. v. Treasurer of the County of Worcester, 362 Mass. 507, 509-10 (Mass. 1972)

I also have a Ninth Amendment and or Fourteenth Amendment right to protection in the courts. The Massachusetts Constitution says that this specific right was already included in the Massachusetts Constitution, even though it had not yet been specifically mentioned. “No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition... the right of access

to *and protection in courts of justice...*” Massachusetts Constitution 48, Init., Pt. 2, § 2 Because this right was included by implication in the Mass. Constitution, I argue it was one of the obvious rights that “were retained by the people” that are protected by the Ninth Amendment.

“The purpose for which courts are established is to do justice. A fundamental principle of free institutions was stated by Hamilton in these words: ‘Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained or until liberty be lost in the pursuit. In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker individual is not secured against the violence of the stronger.’” Crocker v. Justices of the Superior Court, 208 Mass. 162, 179-80 (Mass. 1911) quoting (The Federalist, ed. 1864, No. 51, p. 401.)

Conclusion

While I should have had a fair opportunity to have witnesses free from heinous threats, as noted above I did not need any more witnesses to prove my case. This court should reverse judgment and enter summary judgment in my favor as to liability.

Respectfully submitted,

Pro se, Rian Waters

/s/ Rian Waters dated 12/15/2022

(530) 739-8951 Watersrian@gmail.com

Certificate of Compliance

The brief was written with proportionally spaced font point 14 Century schoolbook with 6605 words (with everything including the cover) is less than 11,000 words.

Rian Waters

/s/ Rian Waters dated 12/15/2022

(530) 739-8951 Watersrian@gmail.com

Certificate of Service

I Rian Waters will serve Kearney today with the Appellate brief and record Appendix by email at TurtleboySports@gmail.com, I will also serve Kearney by mail at 111 Mason rd. Jefferson MA 01522 as soon as possible, by end of week.

Rian Waters

/s/ Rian Waters dated 12/15/2022

(530) 739-8951 Watersrian@gmail.com

COMMONWEALTH OF MASSACHUSETTS

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

JUN 27 2022

James E. Flannery
CLERK OF COURTS

**MOTION FOR TRO, PRELIMINARY INJUNCTION, AND
CONSOLIDATION WITH TRIAL ON MERITS**

Pursuant to Mass. R. Civ. P. 65, I pro se Plaintiff Rian Waters move for the court to order the listed requests for relief. On May 10th 2022 Judge: Flannery, Hon. Francis E, approved a 30 page memorandum for a TRO motion. (docket # 98)

The court should grant an injunction because I will succeed on the merits as the evidence makes it clear that Samantha Cardin tried to frame me, and she is not a credible witness, and I will continue to be irreparably harmed until I can fairly present evidence, and Kearney will not suffer any harm if the injunction issues as his rights to speech may not deny or disparage my Ninth Amendment right to a fair trial.

6/28/22 Denied. See endorsement on pleading # 103
en. 6/28/22 (28)

Date Filed 6/28/2022 2:40 AM
Superior Court - Hampden
Docket Number 1879CV00344

6/28/22 DENIED First, this is not an emergency, more importantly, this 4 year old case has spun off its axis. The only remaining claim in this case is Count 4 alleging a claim for libel based on statements in Kearney's book that Waters sold drugs. First PTC on 8/30/22 in pursuant to the date to be set.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.
AIDAN KEARNEY,
Defendant

Michael Collier
em-0/28/22. vs.

06/28/2022

EMERGENCY MOTION FOR AN INJUNCTION

I Rian Waters move for this court to issue an emergency injunction enjoining Aidan Kearney from harassing Cristina Yakimowsky on the internet until further court order. I also move for the court to allow me to submit the entire June 18th 2022 threatening video, and noteworthy clips of Kearney threatening Cristina and admitting that his intent is to punish her for her leaking evidence from his conspiracy group chat.

This court should grant the motion, because the newest threats are exceptionally explicit promising to "destroy" her, and to take away everything she ever loved, and this court has a duty to make sure that Kearney does not "destroy" a witness before trial. The First Amendment's right to litigation, the Ninth Amendment's reservation of unenumerated rights to the people, and the Fourteenth Amendment's rights to due process and equal protection imply a concomitant right to protection in the courts.

COMMONWEALTH OF MASSACHUSETTS

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

MAY 17 2022

[Signature]
CLERK OF COURTS

8/30/22

Denied

Michael K. Callahan

MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS AND OR
DEFAULT

Kearney should be defaulted as Fraud on the court is proven with clear and convincing evidence, particularly Exhibit F.

Legal Standard:

"A 'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Choi v. Toyota Motor Sales USA, Inc., 93 Mass. App. Ct.

6/6/22 Enclosed to mark up for hearing

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

**SUPERIOR COURT
CIVIL ACTION
No. 18CV344**

RIAN WATERS

vs.

AIDAN KEARNEY

ORDER OF DISMISSAL

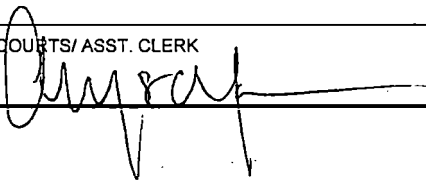
On August 30, 2022, at 2:00 PM this matter was called for Final Pretrial Conference.

Both parties appeared self-represented. Neither party filed a Joint Pretrial Conference Memorandum. The only remaining claim in this case is so much of Count 4 alleging libel based on alleged statements in defendant Kearney's book that Mr. Waters sold drugs. During a brief colloquy Mr. Waters indicated that he had "no witnesses"; and that he was unable to articulate his damages. Mr. Waters repeated several times his dissatisfaction with prior rulings from the Court and indicated a desire to appeal prior rulings of this court. Mr. Waters was either unwilling or unable to proceed with the case, notwithstanding the Court's invitation to set a trial date for the remaining claim. This matter is well over four years old, and Mr. Waters has not prepared the case for trial. For instance, by way of example only, he stated during the hearing that he was unable to identify witnesses for trial since he did not know the "drugs" that Mr. Kearney claimed he sold.

This case is DISMISSED without prejudice for failure to prosecute and without costs to either party

8/31/22


MICHAEL K. CALLAN
Justice of the Superior Court

JUDGMENT		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER 1879CV00344		Laura S Gentile, Clerk of Courts	
CASE NAME Rian Waters vs. Aidan Kearney et al		COURT NAME & ADDRESS Hampden County Superior Court Hall of Justice - 50 State Street P.O. Box 559 Springfield, MA 01102	
This action came before the Court, Hon. Michael K Callan, presiding, and upon consideration thereof, It is ORDERED and ADJUDGED: This case came on before the Court for a Final Pre-Trial Conference on 8/30/22 and the Plaintiff was not prepared to proceed with the case, therefore, the case is DISMISSED without prejudice for failure to prosecute and without costs to either party.			
DATE JUDGMENT ENTERED 08/31/2022		CLERK OF COURTS/ ASST. CLERK X 	

Article XI.

Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Article XXIX.

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

Article CXIV.

No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth.

MA Rule civil procedure 65(b) Preliminary injunction

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

Rule 56 (c) Motion and proceedings thereon

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under [Rule 36](#), together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party.

Rule 56 (e) Form of affidavits; further testimony; defense required

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.