Park v. Brahmbhatt

Superior Court of the District of Columbia, Civil Division

January 19, 2016, Decided

Civil Action No. 2015 CA 005686 B

Reporter
2016 D.C. Super. LEXIS 16 *

SHINOK PARK, Plaintiff, v. MILAN BRAHMBHATT, Defendant.

Core Terms

Counterclaim, abuse of process, public interest, allegations, blackmail, lawsuit, motion to dismiss, Anti-SLAPP Act, advocacy, failure to state a claim, ulterior motive, special motion, discovery, argues, facie

Case Summary

Overview
HOLDINGS: [1]-Where plaintiff sued defendant for assault and other torts, the trial court denied her motion to dismiss defendant's counterclaims under the D.C. Strategic Lawsuits Against Public Participation Act because plaintiff did not allege that she had undertaken any advocacy on issues of public interest, and her claims, which alleged improper sexual conduct by defendant, her supervisor, involved a private interest and did not arise out of the type of advocacy protected by the Act; [2]-Defendant stated a claim for blackmail by alleging that plaintiff threatened to report their affair to his superiors and his wife if he did not extend her employment contract; [3]-Defendant failed to state a claim for abuse of process because there was no evidence of a perversion of the judicial process.

Outcome
Plaintiff's motion to dismiss was granted in part and denied in part.

LexisNexis® Headnotes

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Civil Procedure > ... > Pleadings > Complaints > Requirements for Complaint

Civil Procedure > Appeals > Standards of Review

HN1[] **Motions to Dismiss, Failure to State Claim**

On a motion to dismiss for failure to state a claim, in considering the sufficiency of the complaint, an appellate court --like the trial court--is obliged to accept its factual allegations and construe them in a light most favorable to the plaintiffs. If the complaint adequately states a claim when thus viewed, it may not be dismissed based on a trial court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder. And a motion to dismiss for failure to state a claim may not rely on any facts that do not appear on the face of the complaint itself.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Civil Procedure > ... > Pleadings > Complaints > Requirements for Complaint

HN2 **Motions to Dismiss, Failure to State Claim**

With respect to a motion to dismiss for failure to state a claim, the complaint's factual allegations must be enough to raise a right to relief above the speculative level. Furthermore, dismissal under D.C. Super. Ct. R. Civ. P. 12(b)(6) is appropriate where the complaint fails to allege the elements of a legally viable claim. To be sure, complaints need not plead law or match facts to every element of a legal theory, but the pleader must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist. Despite the liberality of modern rules of pleading, a complaint still must contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory. However, any uncertainties or ambiguities involving the sufficiency of the complaint must be resolved in favor of the pleader, and generally, the complaint must not be dismissed because the court doubts that plaintiff will prevail.

Civil Procedure > Dismissal > Involuntary Dismissals

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

Evidence > Burdens of Proof > Burden Shifting

Civil Procedure > Discovery & Disclosure > Discovery > Subpoenas

Evidence > Burdens of Proof > Initial Burden of Persuasion

HN3 **Dismissal, Involuntary Dismissals**

To establish the grounds for either of the two procedural protections afforded by the D.C. Strategic Lawsuits Against Public Participation Act, D.C. Code § 16-5501 to 16-5505 (2012 Repl.)--dismissal of the suit or quashing of a subpoena--the moving party must show that his speech is of the sort that the statute is designed to protect. Specifically, the moving party must make a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest. D.C. Code § 16-5502(b). Upon such a showing, the motion will be granted unless the opposing party demonstrates a likelihood of success on the merits of his or her underlying claim. § 16-5502(b).

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

Governments > Legislation > Statutory Remedies & Rights

HN4 **Freedom of Speech, Strategic Lawsuits Against Public Participation**

A "strategic lawsuit against public participation" or "SLAPP" is a lawsuit filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view. SLAPPs masquerade as ordinary lawsuits, but a SLAPP plaintiff's true objective is to use litigation as a weapon to chill or silence speech. The District of Columbia has enacted the D.C. Strategic Lawsuits Against Public Participation Act, D.C. Code § 16-5501 to 16-5505 (2012 Repl.), to protect the targets of such suits.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

HN5 **Freedom of Speech, Strategic Lawsuits Against Public Participation**

With respect to strategic lawsuits against public participation, D.C. Code § 16-5501(1) defines an "act in furtherance of the right of advocacy on issues of public interest" as: (A) any written or oral statement made: (i) in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or (ii) in a place open to the public or a public forum in connection with an issue of public interest; or (B) any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest. An "issue of public interest" is an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market

place. The term "issue of public interest" shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance. *§ 16-5501(3)*.

Torts > Intentional Torts > Abuse of Process > Elements

HN6[] **Abuse of Process, Elements**

The tort of abuse of process lies where the legal system has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be required to do. The fact that a plaintiff has an ulterior motive in filing suit is not enough to sustain a claim for abuse of process if there is no showing that the process was, in fact, used to accomplish an end not regularly or legally obtainable. A party's ulterior motive does not make the issuance of process actionable; in addition to ulterior motive, one must allege and prove that there has been a perversion of the judicial process.

Torts > Intentional Torts > Abuse of Process > Elements

Torts > ... > Malicious Prosecution > Elements > Lack of Probable Cause

Torts > ... > Malicious Prosecution > Elements > Favorable Termination

HN7[] **Abuse of Process, Elements**

A claim that a lawsuit was brought for the unlawful purpose to extort money is not sufficient to support an abuse of process suit because it amounts to no more than an allegation that the suit was based on an unfounded claim. To permit the use of abuse of process in such a situation would blur a critical distinction between the tort of abuse of process and the tort of malicious prosecution, which lies where the action was brought without probable cause and terminated successfully in favor of the aggrieved party.

Counsel: **[*1]** Matthew F. Mihalich, Esq., Washington, DC, Counsel for Plaintiff.

Peter Hansen, Esq., Washington, DC, Counsel for Defendant.

Judges: Jeanette J. Clark, Judge.

Opinion by: Jeanette J. Clark

Opinion

Next Event:

Exchange Lists of Fact Witnesses

ORDER GRANTING, IN PART, AND DENYING, IN PART, COUNTER-DEFENDANT'S MOTION TO DISMISS COUNTERCLAIMS

Upon consideration of Counter-Defendant's Motion to Dismiss Counterclaims ("Motion") that was filed on December 1, 2015, Counter-Plaintiff's Opposition to Counter-Defendant's Motion to Dismiss ("Opposition") that was filed on December 7, 2015, Counter-Defendant's Reply to Counter-Plaintiff's Opposition to Counter-Defendant's Motion to Dismiss Counterclaims ("Reply") that was filed on December 14, 2015, and the record herein, the Motion is granted, in part, and denied, in part, for the reasons stated below.

I. FACTUAL AND PROCEDURAL HISTORY

On July 28, 2015, Plaintiff filed a Complaint against Defendant alleging "Count One: Assault and Punitive Damages," "Count Two: Battery and Punitive Damages," "Count Three: Intentional Infliction of Emotional Distress and Punitive Damages," Count Four: Extortion," "Count Five: Blackmail," and "Count Six: Tortious Interference with Contract." On August **[*2]** 27, 2015, Plaintiff filed "Plaintiff's First Amended Complaint," making grammatical corrections and alleging the same counts. On October 27, 2015, in the Order Granting, in

Part, and Denying, in Part, Defendant's Motion to Dismiss for Failure to State a Claim, this Court dismissed Count Four: Extortion of Plaintiff's Complaint. On November 10, 2015, Defendant filed his Answer and Counterclaim, denying any wrongful conduct. In Defendant's Counterclaim, he alleges "Count One-Blackmail" and "Count Two-Abuse of Process."

Plaintiff argues that the two Counterclaims should be dismissed pursuant to the District of Columbia Strategic Lawsuits Against Public Participation Act ("Anti-SLAPP Act"), D.C. Code § 16-5502 and because they fail to state claims under Super. Ct. Civ. R. 12(b)(6). Furthermore, Plaintiff asserts

> [t]he present counterclaims are obviously an attempt to retaliate against Park, as well as to intimidate her. Both counterclaims seek to retaliate against an individual seeking good-faith redress in the courts for wrong she suffered as a victim of a prolonged campaign of sexual and economic exploitation.

Mot. Mem. at 2.

Contrarily, Defendant argues that he has established *prima facie* cases for his two counterclaims and they do not **[*3]** fall under the Anti-SLAPP Act.

II. STANDARD OF REVIEW

HN1[] On a motion for failure to state a claim, the District of Columbia Court of Appeals has stated that "[i]n considering the sufficiency of the complaint [ ], we—like the trial court—are obliged to 'accept its factual allegations and construe them in a light most favorable to' the plaintiffs. If the complaint 'adequately states a claim' when thus viewed, 'it may not be dismissed based on a . . . court's assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder.' And [ ] a motion to dismiss for failure to state a claim 'may not rely on any facts that do not appear on the face of the complaint itself.'" Luna v. A.E. Eng'g Servs., LLC, 938 A.2d 744, 748 (D.C. 2007).

The District of Columbia Court of Appeals explained that "[i]n reviewing the complaint, the court must accept its factual allegations and construe them in a light most favorable to the non-moving party. Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co., 870 A.2d 58, 62 (D.C. 2005); Stancil v. First Mt. Vernon Indus. Loan Ass'n, 131 A.3d 867, 869 (D.C. 2014). However,

HN2[] [f]actual allegations must be enough to raise a right to relief above the speculative level . . . . 'Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929 (2007). Furthermore, dismissal under Rule 12(b)(6) is appropriate where the complaint fails to allege the **[*4]** elements of a legally viable claim. *See* Jordan Keys & Jessamy, 870 A.2d at 62 (affirming dismissal for failure to state a claim; "'We agree with the trial judge that Jordan Keys' amended complaint, viewed in the light most favorable to the pleader, does not allege the elements of an implied-in-fact contract.); Taylor v. FDIC, 328 U.S. App. D.C. 52, 60, 132 F.3d 753, 761 (1997) ("'Dismissal under Rule 12(b)(6) is proper when, taking the material allegations of the complaint as admitted, and construing them in plaintiffs' favor, the court finds that the plaintiffs have failed to allege all the material elements of their cause of action.') (citations omitted)). To be sure, 'complaints need not plead law or match facts to every element of a legal theory," Krieger v. Fadely, 341 U.S. App. D.C. 163, 165, 211 F.3d 134, 136 (2000) (internal quotation marks and citation omitted), but 'the pleader must set forth sufficient information to outline the legal elements of a viable claim for relief or to permit inferences to be drawn from the complaint that indicate that these elements exist.' 5B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL 3D § 1357, at 683 (2004). *See* In re Plywood Antitrust Litigation, 655 F.2d 627, 641 (5th Cir. 1981) ('Despite the liberality of modern rules of pleading, a complaint still must contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery **[*5]** under some viable legal theory.').

Chamberlain, et al. v. American Honda Finance Corp., 931 A.2d 1018, 1023 (D.C. 2007).

However, the Court of Appeals has cautioned that "[a]ny uncertainties or ambiguities involving the sufficiency of the complaint must be resolved in favor of the pleader, and generally, the complaint must not be dismissed because the court doubts that plaintiff will prevail." Atkins v. Industrial Telecommunications Ass'n, Inc., 660 A.2d 885, 887 (D.C. 1995) (citing McBryde v. Amoco Oil Co., 404 A.2d 200, 203 (D.C. 1979)); *see also* Washkoviak v. Sallie Mae, 900 A.2d 168, 177 (D.C. 2006).

III. ANALYSIS

The Anti-SLAPP Act, D.C. Code § 16-5502, states:

> (a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.[1]
>
> (b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.
>
> (c) (1) Except as provided in paragraph (2) of this subsection, upon the filing of a special motion to dismiss, discovery **[*6]** proceedings on the claim shall be stayed until the motion has been disposed of.
>
> (2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.
>
> (d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

The Court of Appeals has informed that:

> HN3[] To establish the grounds for either of the two procedural protections the Anti-SLAPP statute affords—dismissal of the suit or quashing of a subpoena—the moving party must show that his speech is of the sort that the statute is designed to protect. Specifically, the moving party must "make[] a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest." D.C. Code § 16-5502 (b); *see also* D.C. Code § 16-5503 (b). Upon such a showing, the motion will be granted unless the opposing party demonstrates **[*7]** a likelihood of success on the merits of his or her underlying claim. *Id.*

Doe No. 1 v. Burke, 91 A.3d 1031, 1036 (D.C. 2014).

A. The Anti-SLAPP Act Does Not Apply

As an initial matter, the Court agrees with Defendant that Plaintiff's allegations do not fall under the Anti-SLAPP Act because "Ms. Park has not undertaken any 'advocacy on issues of public interest'" and her claims do not arise out of the type of advocacy protected by the Anti-SLAPP Act. Opp'n at 2. Indeed, the controversy between the parties allegedly took place when a supervisor (Defendant)/subordinate (Plaintiff) relationship existed between the parties. Therefore, Plaintiff does not enjoy the protections of the Anti-SLAPP Act, and Defendant's two Counterclaims shall not be dismissed on that ground.

> HN4[] A "strategic lawsuit against public participation" or "SLAPP" is a lawsuit "filed by one side of a political or public policy debate aimed to punish or prevent the expression of opposing points of view." D.C. Council, Comm. on Pub. Safety and the Judiciary, Report on Bill 18-893 ("Comm. Report") at 1 (Nov. 18, 2010). SLAPPs "masquerade as ordinary lawsuits," Batzel v. Smith, 333 F.3d 1018, 1024 (9th Cir. 2003) (internal quotation marks omitted), but a SLAPP plaintiff's true objective is to use litigation as a weapon to chill **[*8]** or silence speech. The District recently enacted the D.C. Anti-SLAPP Act to protect the targets of such suits. D.C. Code § 16-5501 to -5505 (2012 Repl.).

Doe No. 1, supra at 1033.

HN5[] D.C. Code § 16-5501(1) defines an "act in furtherance of the right of advocacy on issues of public interest" as:

> (A) Any written or oral statement made:
> (i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or
> (ii) In a place open to the public or a public forum in connection with an issue of public interest; or
> (B) Any other expression or expressive conduct that

[1] Defendant's Answer and Counterclaim was filed on November 10, 2015. Plaintiff filed the instant Motion on December 1, 2015, which was within the 45-day time period.

> involves petitioning the government or communicating views to members of the public in connection with an issue of public interest.

An "issue of public interest" is:

> an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term "issue of public interest" shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance. **[*9]**

D.C. Code § 16-5501(3)

Plaintiff failed to allege any facts that constitute an "act in furtherance of the right of advocacy on issues of public interest" within the meaning of *D.C. Code § 16-5501*. Plaintiff has not demonstrated any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or in a place open to the public or a public forum in connection with an issue of public interest; or any other expression or expressive conduct that involves petitioning the government or communicating views to members of the public in connection with an issue of public interest. Lastly, Plaintiff failed to demonstrate that the issues she alleges are protected under the Anti-SLAPP Act are issues related to health or safety; environmental, economic or community well-being; the District government; a public figure; or a good, product, or service in the market place. Rather, Plaintiff's allegations involved alleged improper sexual conduct by Defendant, her supervisor, in the context of private instead of public interest. Indeed, *D.C. Code § 16-5501* informs that "[t]he term 'issue of public interest' shall not be construed to include private **[*10]** interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance." Lastly, there is no evidence in the record that the sharing of the allegations in the Complaint is a matter of public significance.

B. Plaintiff's Super. Ct. Civ. R. 12(b)(6) Motion to Dismiss Is Granted, in Part, and Denied, in Part

With respect to Plaintiff's claim that the two counterclaims should be dismissed pursuant to Super. Ct. Civ. R. 12(b)(6), the Court grants, in part, and denies, in part, Plaintiff's Motion. The Motion to Dismiss the Counterclaim for Blackmail is denied, and the Motion to Dismiss the Counterclaim for Abuse of Process is granted.

1. Defendant Established a *Prima Facie* Case for Blackmail

D.C. Code § 22-3252(a) provides that:

> (a) A person commits the offense of blackmail, if, with intent to obtain property of another or to cause another to do or refrain from doing any act, that person threatens:
>
> (1) To accuse any person of a crime;
>
> (2) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or
>
> (3) To impair the reputation of any person, including a deceased person. **[*11]**

Defendant alleges in his Counterclaim for blackmail that "Ms. Park demanded a contract extension from Mr. Brahmbhatt while threatening: (a) to approach Mr. Brahmbhatt's wife about the affair; and (b) to denounce Mr. Brahmbhatt before the Bank's authorities, the alleged misconduct violations in question being the international administrative equivalent of crimes." Ans. & Counterclaim, at ¶ 61.

On the other hand, Plaintiff argues that the January 23, 2015 email statement "I see. This is your game plan from the beginning. Let me consult with your wife," does not constitute blackmail because Defendant's wife was aware of the affair. Mot. at 8-9. Plaintiff contends that "[t]he second tortious act this email is alleged to constitute regards the alleged threat to report Counter-Plaintiff to Bank authorities [ ] cannot constitute blackmail, as it lies under the absolute privilege accorded quasi-judicial proceedings." Mot. at 9.

Here, Defendant has alleged sufficient facts to support a claim for blackmail. Defendant correctly argues that Plaintiff threatened to report their affair to his superiors and his wife if he did not extend her employment contract. Defendant asserts that "[b]y demanding and receiving **[*12]** benefits while threatening: (a) formal accusations to the Bank; and (b) uninvited communications with Mr. Brahmbhatt's wife about the affair, Ms. Park blackmailed Mr. Brahmbhatt." Ans. & Counterclaim, at ¶ 63.

Therefore, Count One, Blackmail, of Defendant's Counterclaim is not dismissed.

2. Defendant Has Not Established a *Prima Facie* Case for Abuse of Process

It is well established that

> ***HN6***[] [t]he tort of abuse of process "lies where the legal system has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be required to do." *Bown v. Hamilton, 601 A.2d 1074, 1079 (D.C. 1992)* (citations and internal quotation marks omitted). The fact that a plaintiff has an ulterior motive in filing suit is not enough to sustain a claim for abuse of process if "there [i]s no showing that the process was, in fact, used to accomplish an end not regularly or legally obtainable." *Id. at 1080*; see also *Morowitz v. Marvel, 423 A.2d 196, 198-99 (D.C. 1980)* (explaining that an action against patient for abuse of process did not lie where, in response to a lawsuit by physicians to obtain payment of patient's outstanding debt, the patient filed a malpractice suit with the ulterior motive **[*13]** of coercing a settlement).

Wood v. Neuman, 979 A.2d 64, 77 (D.C. 2009); *Bolton v. Crowley, 110 A.3d 575, 585 (D.C. 2015)* (quoting *Epps v. Vogel, 454 A.2d 320, 324 (D.C. 1982)* ("[A] party's ulterior motive does not make the issuance of process actionable; in addition to ulterior motive, one must allege and prove that there has been a perversion of the judicial process") (internal quotation marks and citation omitted)").

Defendant alleges in his Counterclaim for abuse of process that:

> Ms. Park has used the Bank's investigative authorities, as well as the District of Columbia police, to harass Mr. Brahmbhatt and to create public records that would diminish his excellent reputation as a respected Bank staff member. No authority has found rape, sexual assault or even sexual harassment. The only prosecution begun against Mr. Brahmbhatt has been a disciplinary action within the Bank that was taken solely on the basis that Mr. Brahmbhatt did not disclose his entirely consensual affair with Ms. Park to his management in order to avoid any (legally presumed) conflict of interest. Even in the present action, Ms. Park has sought anonymity for herself while leveling startling and demonstrably false and mendacious allegations against Mr. Brahmbhatt. Ms. Park's misuse of the right to complain to public authorities—done in order to **[*14]** harm Mr. Brahmbhatt and to bolster her wild claims—has caused Mr. Brahmbhatt great stress and expense, entitles him to substantial compensation.

Id. at ¶ 69.

Contrarily, Plaintiff argues that Defendant has failed to state a claim because he "cannot show that Park used the legal process to accomplish an improper or unrelated end outside of the relief sought in this action. . . [and he] fails to demonstrate either of the elements of an Abuse of Process Claim." Mot. at ¶¶ 13-14.

Consistent with the Court of Appeals rulings, the United States District Court for the District of Columbia has stated that:

> ***HN7***[] "a claim that a lawsuit was brought for the unlawful purpose to extort money was not sufficient to support an abuse of process suit because it 'amount[ed] to no more than an allegation that the . . . suit was based on an unfounded claim'. To permit the use of abuse of process in such a situation would blur a critical distinction between the tort of abuse of process and the tort of malicious prosecution, which lies where the action was brought without probable cause and terminated successfully in favor of the aggrieved party. *See Bown, 601 A.2d at 1080 n.14* (stating that "to the extent that the alleged tort is based upon a lack **[*15]** of sound foundation for the instigation of the possession action recovery would appear best determined within the limits of malicious prosecution.").

Houlahan v. World Wide Ass'n of Specialty Programs & Sch., 677 F. Supp. 2d 195, 200 n.6 (D.D.C. 2010). The Court went on to state that '"the usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it.' (quoting *RESTATEMENT (SECOND) OF TORTS § 682 cmt. b* (1977))); *Scott v. Dist. of Columbia, 101 F. 3d 748, 755-56, 322 U.S. App. D.C. 75 (D.C. Cir. 1996)* (quoting same language). No reasonable juror could find that defendants took any specific action in connection with their filing of the Utah

suit which can be characterized as unlawful or not 'proper in the regular prosecution of the proceedings.' Therefore, Houlahan is unable to establish the essential elements of an abuse of process claim." *Id. at 201*.

Moreover, in *Houlahan, supra*, the court stated that "[i]n an attempt to satisfy the 'act' element of the abuse of process claim, Houlahan . . . point[ed] to several acts that the defendants engaged in prior to the filing of the Utah lawsuit. The Court, however, does not consider these acts because an action for abuse of process 'lies in the improper use *after* issuance.' *Morowitz, 423 A.2d at 198*." *Id.* at n.7.

Likewise, here, Defendant's Count Two, Abuse of Process is based on alleged acts that **[*16]** Plaintiff had engaged in prior to the filing of the lawsuit. The record is devoid of any allegations regarding Plaintiff's actions that were taken after the lawsuit was filed or that Defendant was required to do some collateral thing, which he could not legally and regularly be required to do. Lastly, Plaintiff's ulterior motives in filling the lawsuit do not support facts to establish the elements of the tort, abuse of process and there is no evidence that there has been a perversion of the judicial process.

Therefore, Count Two, Abuse of Process, of Defendant's Counterclaim is dismissed for failure to state a claim upon which relief can be granted.

IV. CONCLUSION

The Motion is granted, in part, and denied, in part, for the reasons stated above.

WHEREFORE, it is the 13th day of January 2016,

ORDERED, that the Motion is **GRANTED, in part, and DENIED, in part**; and it is

FURTHER ORDERED, that Count Two of Defendant's Counterclaim is **DISMISSED**; and it is

FURTHER ORDERED, that for each Motion filed, the parties shall e-mail a copy of the proposed order in Microsoft Word Format to the following e-mail addresses pursuant to this Court's General Order: Clarkjj2@dcsc.gov and Clarkjj3@dcsc.gov.

SO ORDERED [*17] .

/s/ Jeanette J. Clark

Judge Jeanette J. Clark

D.C. Superior Court

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