

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

John D. Haywood)

Plaintiff,)

v.)

St. Michael’s College, Logan R. Spillane, and)
Christopher Hardy,)

CIVIL ACTION NO. 2:12-CV-164

Defendants.)

DEFENDANTS’ REPLY IN SUPPORT OF ITS SPECIAL MOTION TO STRIKE

NOW COMES Defendant, Saint Michael’s College, by and through its attorneys, the law firm of Dinse, Knapp & McAndrew, P.C., and hereby files this Reply In Support Of Its Special Motion to Strike.

As explained in Defendant’s Memorandum of Law in support of its Special Motion to Strike, Plaintiff’s Complaint should be stricken where Plaintiff has filed a lawsuit in violation of Vermont’s anti-SLAPP statute. The Statute provides that a defendant may file a Special Motion to Strike where a lawsuit is filed “arising from the defendant’s exercise, in connection with a public issue, of the right to freedom of speech or to petition the government for redress of grievances under the United States or Vermont Constitution.” 12 V.S.A. § 1041(a).

In accordance with the statute, the Special Motion to Strike will be granted unless the plaintiff can show the following: (1) that the defendant’s exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support *and* any arguable basis in law; and (2) the defendant’s acts caused actual injury to the plaintiff. 12 V.S.A. § 1041(e)(emphasis added). The Statute shifts the burden of persuasion to Plaintiff, and Plaintiff has failed to meet that burden.

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Plaintiff argues that Defendant “has no right to appeal an interlocutory order dismissing the motion under 12 V.S.A. 1041(g) as the federal courts are governed by the Interlocutory Appeals Act.” However, the Defendant’s Special Motion to Strike is not an appeal and § 1041(g) is not relevant at this time. To the extent Plaintiff is arguing that 12 V.S.A. § 1041 is a state statute that incorporates aspects of state procedure, the Federal District Court of Vermont has already ruled that this is no bar to bringing an anti-SLAPP motion to strike in federal court. *Bible & Gospel Trust v. Twinam*, 2:07-CV-17, 2008 WL 5216845 (D. Vt. July 18, 2008) report and recommendation adopted in relevant part, rejected in part, 1:07-CV-17, 2008 WL 5245644 (D. Vt. Dec. 12, 2008) (“Because there is no direct conflict between the Vermont anti-SLAPP statute and the Federal Rules, and because the state interest outweighs any federal interest, the Vermont anti-SLAPP statute should apply in federal courts.”).

CONCLUSION

Plaintiff has failed to meet his burden of persuasion that the Complaint falls outside of Vermont’s anti-SLAPP statute. Accordingly, Plaintiff’s Complaint should be stricken, and Defendant awarded attorney’s fees with respect to this matter.

Dated at Burlington, Vermont this 16th day of October, 2012.

DINSE, KNAPP & MCANDREW, P. C.

By /s/ W. Scott Fewell, Esq.

W. Scott Fewell, Esq.
Jeffrey J. Nolan, Esq.
David A. Scherr, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2012, I electronically filed with the Clerk of Court the following documents using the CM/ECF system: **Defendant's Reply In Support of It's Special Motion To Strike**. The CM/ECF system will provide service of such filing(s) via Notice of Electronic Filing (NEF) to the following NEF parties:

William B. Towle, Esq.

I hereby further certify that I also made service upon the *pro se* Plaintiff by placing a copy of the Defendant's Reply In Support of It's Special Motion To Strike in the U.S. Mail, postage prepaid, and mailed to:

John D. Haywood
3116 Cornwall Road
Durham, NC 27707-5102.

Dated at Burlington, Vermont this 16th day of October, 2012.

DINSE, KNAPP & MCANDREW, P. C.

By /s/ W. Scott Fewell, Esq.

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