

**IN THE STATE COURT OF HENRY COUNTY**

**STATE OF GEORGIA**

  
 Lynne M. Policaro, Clerk of State Court  
 Henry County, Georgia

<b>COREN RANDAZZO,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION FILE</b>
	)	<b>NO. 2021-STSV-0998-DBB</b>
<b>v.</b>	)	
	)	
<b>SUSAN CLOWDUS,</b>	)	
<b>SUSAN CLOWDUS AND</b>	)	
<b>ASSOCIATES REALTORS, INC.,</b>	)	
<b>EAGLES LANDING EDUCATIONAL</b>	)	
<b>RESEARCH COMMITTEE, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**DEFENDANT SUSAN CLOWDUS AND ASSOCIATES REALTORS, INC.'S MOTION**  
**TO STRIKE COMPLAINT, OR IN THE ALTERNATIVE TO DISMISS COMPLAINT,**  
**AND MOTION FOR ATTORNEY'S FEES**

COMES NOW, Susan Clowdus and Associates Realtors, Inc. (hereinafter "SC&A"),  
 Defendant in the above-styled matter, and moves this Court to strike the Plaintiff's Complaint  
 pursuant to O.C.G.A. § 9-11-11.1 or, in the alternative, to dismiss the Plaintiff's Complaint  
 pursuant to O.C.G.A. § 9-11-12(b)(6), and for an award of attorney's fees pursuant to O.C.G.A.  
 §§ 9-11-11.1(b.1) and 9-15-14. In support of these motions, the Defendant SC&A shows this  
 Court as follows:

**BACKGROUND FACTS**

Based on the allegations of the Complaint filed in the matter by the Plaintiff, the  
 following facts are undisputed:

- (a) The Defendant Susan Clowdus was an outspoken advocate for the proposed City of  
 Eagles Landing and worked with the Defendant Eagles Landing Educational

Research Committee, Inc., a committee charged with supporting the creation of the City of Eagles Landing. Pl.'s Compl., ¶¶ 10-11 (June 18, 2021).

- (b) The Plaintiff placed at least one phone call to the Defendant Susan Clowdus on the morning of March 30, 2018 in retaliation of her support of the proposed City of Eagles Landing. Id. at ¶ 18.
- (c) The Defendant Susan Clowdus made statements to the Henry County Police Department concerning multiple calls she received on the morning of March 30, 2018, one of which the Plaintiff admits he made to Ms. Clowdus. Id. at ¶ 25.
- (d) The Henry County Police Department obtained a warrant for the arrest of the Plaintiff on May 4, 2018 for the charges of harassing phone calls under O.C.G.A. § 16-11-39.1 and terroristic threats under O.C.G.A. § 16-11-37. Id. at ¶ 44.
- (e) The criminal charges filed against the Plaintiff were formally dismissed on May 2, 2019. Id. at ¶ 47.

While the Defendant disputes many of the factual allegations set forth by the Plaintiff in his Complaint, these facts that serve the basis for the Plaintiff's claims against the Defendants are not in dispute. The Plaintiff set forth fifty-three (53) separate paragraphs of factual allegations to support the claims he asserted in his Complaint. Id. at ¶¶ 8-60. Of those fifty-three paragraphs, only two paragraphs in any manner mentioned SC&A: (1) The Plaintiff alleged that Defendant Susan Clowdus works with SC&A as a real estate agent; and (2) that SC&A "stood to benefit financially from the press coverage and by [Susan Clowdus'] public appearances on the cityhood issue". Id. at ¶¶ 8, 13. In the three counts of claims that the Plaintiff asserted in his Complaint, SC&A was only noted once in "Count One", where Plaintiff claims with no supporting factual allegations that "Clowdus' tortious actions were undertaken within the scope of her duties to

SC&A and ELERC because the purpose was to increase revenue to her real estate business and to further the politics of Eagles Landing’s cityhood push”. Id. at ¶ 59.

Ms. Clowdus has confirmed that despite the unfounded assertions made by the Plaintiff in his Complaint, she never called the police in response to receiving the phone calls at issue. Aff. Clowdus, ¶ 13 (Aug. 13, 2021). Instead, a colleague contacted the Henry County Sheriff’s office after learning about the calls and officers with the Henry County Police Departments came to Ms. Clowdus to ask about the phone calls. Id. at ¶ 15. Ms. Clowdus never asked for charges to be brought in reference to the phone calls at issue and simply explained the events to the officers and provided them with the phone number that she was able to obtain from one of the phone calls. Id. at ¶¶ 16-17. Ms. Clowdus never intended for the Plaintiff to be arrested and could not have intended for the police to pursue the Plaintiff because she did not know the Plaintiff and had never even heard his name until after he was arrested. Id. at ¶¶ 19-20.

Ms. Clowdus has also confirmed that no one associated with or acting on behalf of SC&A was involved in any manner with Ms. Clowdus’ decision to speak with the police and any other statements she made about the calls that she received that are the subject of the Plaintiff’s Complaint. Aff. Clowdus, ¶¶ 5, 7 (August 19, 2021). Ms. Clowdus’ decision to discuss the calls with the police and others was not in any way related to any duty that she had with SC&A and SC&A did not and was never set to benefit in any manner financially as a result of any statements made by Ms. Clowdus concerning the calls she received. Id. at ¶¶ 6-7.

#### ARGUMENT AND CITATION TO AUTHORITY

- I. The Court should strike the Plaintiff’s Complaint pursuant to O.C.G.A. § 9-11-11.1(b)(1).**

The General Assembly of Georgia has found and declared that “it is in the public interest to encourage participation by the citizens of Georgia in matters of public significance and public interest through the exercise of their constitutional rights of petition and freedom of speech” and “that the valid exercise of the constitutional rights of petition and freedom of speech should not be chilled through abuse of the judicial process”. O.C.G.A. § 9-11-11.1(a) (2021). Georgia’s anti-SLAPP statute provides that a claim against an entity based on an act of said entity reasonably construed as an act in furtherance of the entity’s right of petition or free speech in connection with an issue of public interest shall be subject to a motion to strike unless the non-moving party establishes that there is a probability that he will prevail on the claim. O.C.G.A. § 9-11-11.1(b) (2021).

Statements to police or statements made in furtherance of an ongoing investigation regarding alleged criminal activity is the type of speech that the anti-SLAPP statute is designed to protect. Hindu Temple and Community Center of the High Desert, Inc. et al. v. Raghunathan et al., 311 Ga. App. 109, 114 (2011). “Indeed, it is hard to imagine a more clear example of the type of “abuse of judicial process” that O.C.G.A. § 9-11-11.1 aims to deter than the serial filing of civil complaints against individuals lawfully reporting alleged unlawful activity”. Id.

In order to prevail on a malicious prosecution claim, the Plaintiff must prove: (1) he was prosecuted for a criminal offense; (2) which was instigated without probable cause; (3) with malice; (4) under a valid warrant, accusation or summons; (5) which was terminated favorably to the Plaintiff; and (6) which caused damages to the Plaintiff. McKissick v. S.O.A., Inc., 299 Ga. App. 772, 774 (2009). When it comes to the instigation of the prosecution, a distinction exists between “actually instigating or procuring the institution of criminal proceedings, and merely providing information to a law enforcement official without in any way attempting to influence

his judgment.” Turnage v. Kasper, 307 Ga. App. 172, 180 (2010). In malicious prosecution cases, Georgia “draws a fine line of demarcation between cases where a party directly or indirectly urges a law enforcement official to begin criminal proceedings and cases where a party merely relays facts to an official who then makes an independent decision to arrest or prosecute.” Wolf Camera v. Royter, 253 Ga. App. 254, 257-258 (2002).

Here, the Plaintiff was subjected to prosecution as a result of a warrant being obtained by the Henry County Police for charges of harassing phone calls under O.C.G.A. § 16-11-39.1 and terroristic threats under O.C.G.A. § 16-11-37. Pl.’s Compl., ¶ 44 (June 18, 2021). Assuming all the of the allegations set forth in Plaintiff’s Complaint are true, Ms. Clowdus simply reported the receipt of harassing phone calls to the local police and to a local media outlet and never in any way referenced the Plaintiff. Ms. Clowdus has confirmed that she did not even know who the Plaintiff was until she learned of his arrest by the police. This further substantiates the fact that she did not in any way instigate the arrest of the Plaintiff or act with any malice towards him.

Moreover, it is also undisputed that Ms. Clowdus did not initiate the contact with the police concerning the phone calls and that she only made a statement after the police reached out to her and came to see her. Despite this, Ms. Clowdus had the right to report the phone calls that she received to the police without having to fear that the person that the evidence directed the police to would come back and sue her. Allowing suits to stand based on the facts presented in this case will provide a deterrence for any individual to speak to the police about crimes that have occurred as a result of the fact that the person the police ultimately arrest may sue them.

In reviewing the allegations made by the Plaintiff and the evidence of record in this case, it is clear that the statements made by Ms. Clowdus stand as “Exhibit A” as the type of speech that the General Assembly intended to protect under Georgia’s anti-SLAPP law. Moreover, it is

clear that the Plaintiff cannot prevail on his claim for malicious prosecution against the Defendants as a result of the fact that Ms. Clowdus did not maliciously instigate the criminal charges that were ultimately brought against the Plaintiff by the Henry County Police Department. As noted below, it is also clear that no claim can be made directly against SC&A for malicious prosecution even if the allegations asserted by the Plaintiff are all true. Consequently, the Court must strike the Plaintiff's Complaint in its entirety.

**II. The Defendant is entitled to an award of attorney's fees pursuant to O.C.G.A. § 9-11-11.1(b.1).**

When a motion to strike is granted pursuant to O.C.G.A. § 9-11-11.1(b), the prevailing party shall be granted the recovery of attorney's fees and expenses of litigation related to the action in an amount to be determined by the Court. O.C.G.A. § 9-11-11.1(b.1) (2021). As noted in the preceding paragraph, the Complaint filed by the Plaintiff should be dismissed pursuant to O.C.G.A. § 9-11-11.1(b)(1). Consequently, the Defendant should be awarded attorney's fees and expenses of litigation from the Plaintiff in an amount to be shown at a hearing on this matter.

**III. Even if the Plaintiff's Complaint could survive the Defendant's motion to strike, the Plaintiff's Complaint against Defendant SC&A should be dismissed because it fails to state a claim upon which relief can be granted.**

A motion to dismiss for failure to state a claim upon which relief may be granted should only be sustained when: (1) allegations of the complaint disclose with certainty that claimant would not be entitled to relief under any state of provable facts asserted in support thereof, and (2) movant establishes that claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant granting of the relief sought. Osprey Cove Real Estate, LLC v. Towerview Construction, LLC, 343 Ga. App. 436, 437 (2017). The main consideration

of this motion is whether, under the assumed set of facts, a right to some form of legal relief would exist. Cumberland Contractors, Inc. v. State Bank and Trust Co., 327 Ga. App. 121, 126 (2014).

A corporation is not liable for the malicious acts of its agent or officer unless the same are authorized, or were within the scope of her duties, or were in themselves a violation of a duty owed by the corporation to the party injured, or such acts were ratified by the corporation. Southern Ry. Co. v. Chambers, 126 Ga. 404 (1906). A corporation is not liable for damages resulting from a purported false statement maliciously and willfully made unless it affirmatively appears that the officer of said corporation making the statement had authority from the corporation to make the statement and it affirmatively authorized the officer to engage in the purported malicious prosecution. King v. Citizens Bank of DeKalb, 88 Ga. App. 40, 48 (1953). “A corporation will not be liable for any slander uttered by an officer, even though he be acting honestly for the benefit of the company, and within the scope of his duties, unless it can be proved that the corporation expressly ordered and directed that officer to say those very words, for a slander is the voluntary and tortious act of the speaker.” Behre v. National Cash-Register Co., 100 Ga. 213 (1897). “No matter how much authority a general agent may have, it is not to be presumed that she has the authority to commit a tort, and, in order to hold the defendant corporation liable for the act of its officer, such tort must have been committed during the prosecution of the business of the corporation as part thereof or by authority of the corporation or be ratified by it or assented to.” Id. at 45.

Here, the Complaint filed by the Plaintiff limits its allegations concerning SC&A’s involvement with the prosecution of the Plaintiff to the fact that Ms. Clowdus works with the company and that the company could benefit from the press coverage concerning the Eagles

Landing cityhood movement. The Plaintiff tried to unsuccessfully argue in his claim for malicious prosecution that these facts conclude that Ms. Clowdus was acting within the scope of her duties with SC&A when she committed the “tortious” acts. As noted by the well-established case law noted above, Ms. Clowdus’ mere employment with SC&A is not enough to rise to the level of making a claim against the corporation for malicious prosecution. The Plaintiff has set forth no facts showing that SC&A in any way authorized the actions of Ms. Clowdus at issue. Moreover, the Plaintiff has neglected to show how the reporting of the harassing and threatening phone calls received by Ms. Clowdus was somehow an action that was within the scope of Ms. Clowdus’ duties as “a real estate agent in her family run company SC&A”.

Beyond the fact that the Plaintiff’s Complaint does not set forth a claim for malicious prosecution against SC&A, Ms. Clowdus has confirmed that the company was not involved in any manner with her decision to report the phone calls that she received. The entity did not in any manner authorize or encourage the statements made by Ms. Clowdus about the phone calls and SC&A was not in a position to benefit financially and did not in fact benefit financially from the statements made by Ms. Clowdus. The calls received by Ms. Clowdus were directed at her personally and her decision to report the phone calls to the proper authorities was made by her individually and not under her authority as an officer of SC&A.

Taking the allegations on the face of the Plaintiff’s Complaint as true, SC&A cannot be held liable for the actions taken by Ms. Clowdus that serve as the basis for the malicious prosecution claim presented by the Plaintiff. Moreover, since the claims for punitive damages and for attorney’s fees are ancillary claims not independent of the claim for malicious prosecution, these claims against SC&A should be dismissed as well.



**IV. SC&A is entitled to an award of attorney's fees against the Plaintiff pursuant to O.C.G.A. 9-15-14 for the fees incurred in defending against this action.**

Georgia law allows for reasonable and necessary attorney's fees and expenses of litigation to be awarded against a party that: (1) asserted a claim "with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim"; and (2) brought an action "that lacked substantial justification", meaning it was "frivolous, substantially groundless, or substantially vexatious". O.C.G.A. § 9-15-14 (2021).

Here, as noted above, the Plaintiff brought a claim against SC&A that, based on the allegations he set forth in his own Complaint, lacks justification. Moreover, the Plaintiff elected to not only sue Ms. Clowdus individually to punish her for reporting the phone calls that she received to the police but sued her company as well without even alleging that SC&A had any part in Ms. Clowdus' decision to report what happened to her. This conduct can only be seen as an attempt to harass Ms. Clowdus and force her to pay the Plaintiff money instead of having to put her business and employees in the middle of litigation. Fortunately, this Court must strike the Plaintiff's Complaint and has the authority to award SC&A the attorney's fees it incurred in having to defend against this frivolous lawsuit.

Therefore, in the event the Court does not grant SC&A's motion to strike and award attorney's fees pursuant to O.C.G.A. § 9-11-11.1(b.1), the Court should grant SC&A's motion to dismiss and award attorney's fees pursuant to O.C.G.A. § 9-15-14.

**CONCLUSION**

As noted in the arguments set forth herein by SC&A, the Court should strike the Plaintiff's Complaint against SC&A pursuant to O.C.G.A. § 9-11-11.1(b) and order the Plaintiff

to pay SC&A attorney's fees in an amount to be shown in a hearing pursuant to O.C.G.A. § 9-11-11.1(b.1). In the alternative, the Court should dismiss the Plaintiff's Complaint for failure to state a claim against SC&A and require the Plaintiff to pay SC&A's attorney's fees in an amount to be shown at a hearing pursuant to O.C.G.A. § 9-15-14.

**WHEREFORE**, Defendant prays for the following relief:

- (a) That the Court strike the Plaintiff's Complaint against SC&A;
- (b) That, in the alternative, the Court dismiss the Plaintiff's Complaint against SC&A;
- (c) That the Court require the Plaintiff to pay the Defendant SC&A the attorney's fees and expenses of litigation that it has incurred in defending against this action and pursuing these motions; and
- (d) That the Court provide the Defendant SC&A such other and further relief as this Court may deem equitable and just.

This 23<sup>rd</sup> day of August, 2021.



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**CERTIFICATE OF SERVICE**

This is to certify that I have served the within and foregoing DEFENDANT SUSAN CLOWDUS AND ASSOCIATES REALTORS, INC. MOTION TO DISMISS, TO STRIKE AND FOR ATTORNEY'S FEES upon all parties by statutory electronic service or by placing the same in the United States mail, addressed to:

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This 23<sup>rd</sup> day of August, 2021.



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