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15 UNITED STATES DISTRICT COURT
16 CENTRAL DIVISION OF CALIFORNIA
17 WESTERN DIVISION

18 MONIQUE BUNN
19 Plaintiff,

20 vs.

21 DAMON ANTHONY DASH, DAME
22 DASH STUDIOS, POPPINGTON LLC,
23 THE DASH GROUP LLC AND
24 RAQUEL HORN
25 Defendants.

CASE NO. 20-CV-07389-DMG
CASE NO. 20-CV-11633-DMG

PLAINTIFF’S RULE 16.4
MEMORANDUM OF CONTESTED
FACTS

Judge: Hon. Dolly Gee
Time: N/A
Courtroom: 8C

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I. INTRODUCTION

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2 Monique Bunn (“Bunn” of “Plaintiff”) file the instant Memorandum
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4 pursuant to L.R. 16-4. Bunn contends that Damon Dash (“Dash”), Raquel
5 Horn (“Horn” or “Dash”), Poppington LLC d/b/a Damon Dash Studios
6 (“Poppington”) (collectively “Defendants”) have liability for conversion, sexual
7
8 assault and emotional distress under California law. Bunn also contends that
9
10 defendants have liability for defamation and emotional distress to the Plaintiff
11
12 under Pennsylvania law.

13 The Court has granted summary judgment on the issue of conversion
14
15 relating to the 100,000 photographs against the defendants.

16 After being sued for sexual assault and conversion in December 2019 by
17
18 Bunn, the defendants posted numerous posts and a video on Dash’s and
19
20 Poppington’s (damedashstudios) social media and provided the video to news
21
22 outlets stating that Bunn was a thief and tried to rob Dash. These postings lead
23
24 to Bunn filing another lawsuit for defamation. Dash and Poppington are
25
26 responsible for defamation and Dash and Horn own Poppington. The video and
27
28 postings were intended to defame Plaintiff. Plaintiff never tried to “rob”
Defendants and was never “caught” doing so. Defendants simply retaliated
against Bunn for refusing Dash’s sexual advances and for the filing of the initial
lawsuit.

1
2 In April 2019, Dash assaulted Bunn in his residence. Dash sexually
3 touched Bunn without her consent. After leaving California in April 2019, Bunn
4 subsequently contacted California authorities to make her claim. Bunn was
5 informed during the covid pandemic, that she needed to return to California to
6 make the claim. Bunn was unable to do so.
7

8
9 After the defendants were sued in December 2019, Defendants posted a
10 video on Dash’s and Poppington’s (damedashstudios) social media and
11 provided it to news outlets. Dash, Horn (who took part in the video) and
12 Poppington are all responsible for defamation. Dash and Horn own Poppington.
13 The video and posting were intended to defame Plaintiff. Plaintiff never tried to
14 “rob” Defendants and was never “caught” doing so. Defendants simply
15 retaliated against Bunn for refusing Dash’s sexual advances.
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17

18
19 Bunn has suffered emotional distress claims under both California and
20 Pennsylvania law.
21

22
23 **II. PARTIES CLAIMS AND DEFENSES**

24 The Court has granted Bunn summary judgment on her claim for
25 conversion. The Court also ruled that Bunn’s claims for defamation and
26 sexual assault will proceed to trial against the defendants.
27
28

1 **Summary:** Through social media and emails to the Court, the defendants have
2 defamed Bunn and Dash has sexually assaulted Bunn. All the defendants have
3 been found responsible for converting the property of Bunn.
4

5 **Elements and Identification Of Applicable Law:**
6

7 **California law for Sexual Battery**
8

9 Under California law, to establish a claim of sexual battery, a plaintiff must
10 prove the following: (1) that the defendant intended to cause offensive contact with
11 the plaintiff's sexual organs, and a sexually offensive contact results, either directly or
12 indirectly; (2) the plaintiff did not consent to the touching; and (3) the plaintiff was
13 harmed by the defendant's conduct. Cal. Civ. Code, §1708.5 (Although not expressly
14 included in the language of the statute, Civil Code §1708.5 has been interpreted to
15 require that the person battered did not consent to the contact. Angie M. v. Superior
16 Court, 37 Cal.App.4th 1217, 1225 (1995)). "Offensive contact" means contact that
17 offends a reasonable sense of personal dignity. Cal. Civ. Code, §1708.5(d)(2).
18
19
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21

22 The elements of a sexual assault claim under California law are as follows:
23

- 24 1. That the defendant(s) (persons against whom the action is
25 brought, intended to cause a harmful or offensive contact with
26 plaintiff's "sexual organ, anus, groin, buttocks or breast", and
27 a sexually offensive contact with plaintiff resulted, either
28 directly or indirectly; [OR]

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That defendant(s) intended to cause a harmful or offensive contact with plaintiff by use of defendant(s)’s sexual organ, anus, groin, buttocks, or breast, and a sexually offensive contact with plaintiff resulted, either directly or indirectly; [OR]

That defendant(s) “caused an imminent fear of a harmful or offensive contact” with plaintiff’s sexual organ, anus, groin, buttocks or breast ...

- 2. Plaintiff did not consent to the touching; and
- 3. Plaintiff was harmed or offended by defendant’s conduct.

Cal. Civ. Code, §1708.5

A cause of action for sexual battery under Civil Code section 1708.5 requires the batter intend to cause a “harmful or offensive” contact and the batteree suffer a sexually offensive contact. Moreover, the section interprets to require that the batteree did not consent to the contact. Angie M. v. Superior Court, (1995) 37 Cal. App. 4th 1217, 1225.

Pennsylvania law on Defamation

Under Pennsylvania law, to establish a claim for defamation, a plaintiff must prove the following elements: (1) the defamatory character of the communication; (2) its publication by the defendant; (3) its application to the plaintiff; (4) the understanding by the recipient of its defamatory meaning; (5) the understanding by the recipient of it as intended to be applied to the plaintiff; (6) special harm resulting to the plaintiff from its publication; and (7) abuse of a conditionally privileged occasion.

1 42 Pa.C.S. § 8343(a)(1-7); Weaver v. Lancaster Newspapers, Inc., 592 Pa. 458, 465-
2 66 (Pa. 2007).

3
4 Under Pennsylvania defamation law, a communication will be considered
5 defamatory if it “tends so to harm the reputation of [the complaining party] as to lower
6 him in the estimation of the community or to deter third persons from associating or
7 dealing with him.” MacElree v. Philadelphia Newspapers, 544 Pa. 117, 124-125 (Pa.
8 1996). Pennsylvania has a one-year statute of limitations for defamation. See 42 Pa.
9
10 Cons. Stat. § 5523(1).
11

12 **California law of Intentional Infliction of Emotional Distress**

13
14 Under California law, to prove a claim for intentional infliction of emotional
15 distress, a plaintiff must prove that: (1) the defendant’s conduct was outrageous; (2)
16 the conduct was intended to cause plaintiff emotional distress; or the defendant acted
17 with reckless disregard of the probability that plaintiff would suffer emotional distress,
18 knowing that plaintiff was present when the conduct occurred; (3) the plaintiff
19 suffered severe emotional distress; and (4) the defendant’s conduct was a substantial
20 factor in causing the plaintiff’s severe emotional distress.
21
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23

24
25 A defendant’s conduct is ‘outrageous’ when it is so ‘extreme as to exceed all
26 bounds of that usually tolerated in a civilized community.’ The defendant’s conduct
27
28

1 must be ‘intended to inflict injury or engaged in with the realization that injury will
2 result.’” Hughes v. Pair, 46 Cal.4th 1035,1050-1051 (2009).

3
4 “The trial court initially determines whether a defendant’s conduct may
5 reasonably be regarded as so extreme and outrageous as to permit recovery. Where
6 reasonable men can differ, the jury determines whether the conduct has been extreme
7 and outrageous to result in liability. Otherwise, the court determines whether severe
8 emotional distress can be found; the jury determines whether on the evidence it has, in
9 fact, existed.” Plotnik v. Meihaus, 208 Cal.App.4th 1590, 1614 (2012).

12 **Pennsylvania law on Intentional Infliction of Emotional Distress**

13
14 Under Pennsylvania law, to prove a claim for intentional infliction of emotional
15 distress, a plaintiff must prove: (1) extreme and outrageous conduct; (2) that is
16 intentional or reckless; (3) emotional distress resulting from the conduct; and (4) that
17 the emotional distress is severe. Hoy v. Angelone, 691 A.2d 476, 456 Pa. Super. 596
18 (Pa. Super. Ct. 1997). Extreme and outrageous conduct is that which goes beyond all
19 possible bounds of decency and would be regarded as atrocious and utterly intolerable
20 in a civilized community. Hunger v. Grand Central Sanitation, 670 A.2d 173 (Pa.
21 Super. 1996). Severe means that it is such that no reasonable person could be expected
22 to endure it. In determining whether the emotional distress suffered by the plaintiff
23 was severe, you may consider both the intensity of the distress and its duration.
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1 In this case, Dash engaged in a battery, and Bunn suffered emotional distress as
2 a result. Bunn explains in her Declaration that the trauma of the event has caused her
3 stress, sleepless nights and anxiety. She has sought medical attention from Dr. Jeffrey
4 Pinsk. Dr. Pinsk, an internist and the author of a book relating to PTSD and anxiety,
5 has noted that Bunn suffers from PTSD, anxiety and other conditions as a result of the
6 sexual assault.
7

8
9 It is undisputed that Defendants defamed Plaintiff.¹ Under Pennsylvania law,
10 “[d]efamation per se may consist of words imputing (1) criminal offense, (2)
11 loathsome disease, (3) business misconduct, or (4) serious sexual misconduct.”
12 Mallory v. S & S Publishers, 260 F. Supp. 3d 453, 465 (E.D. Pa. May 9, 2017),
13 aff’d sub nom. Mallory v. Simon & Schuster, Inc., No. 17-2239, 2018 WL
14 1559926 (3d Cir. Mar. 29, 2018) (quoting Clemente v. Espinosa, 749 F. Supp.
15 672, 677 (E.D. Pa. 1990)). A defendant can only escape liability if he shows
16 that his statements were “substantially true.” See 42 Pa. Cons. Stat. Ann. §
17 8343(b)(1).²
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23 A plaintiff is the direct victim of negligent infliction of emotional distress if (1) the
24 defendant was negligent, and (2) as the result of the defendant's negligence, the
25

26
27 ¹ In December, 2019-Janury 2020 after Dash was sued by Bunn, Dash published a video and post
alleging that Bunn attempted to steal and rob from him. Bunn was in her home state when Dash
posted the video on his social media.

28 ² The analysis would be substantially the same under California law.

1 plaintiff suffered emotional distress. Molien v. Kaiser Foundation Hospitals, 27
2 Cal.3d 916 (1980).

3
4 Words that are challenged as defamatory "must be construed in the context of
5 the entire statement or publication as a whole, tested against the understanding
6 of the average reader" Aronson v. Wiersma, 65 NY2d 592, 594 (1985).

7
8 All relevant factors may be considered in determining whether a word or
9 statement is defamatory. Farber v. Jefferys, 33 Misc 3d 1218[A], 2011 NY Slip
10 Op 51966[U], *15 [Sup Ct, NY County 2011], affd 103 AD3d 514 (1st Dept
11 2013), lv denied 21 NY3d 858(2013), citing Steinhilber v. Alphonse, 68 NY2d
12 283, 291-292 (1986). Courts have considerable discretion in deciding whether
13 a statement is defamatory, guided only by "the words themselves and their
14 purpose, the circumstances surrounding their use, and the manner, tone and
15 style with which they are used . . ." Steinhilber, 68 NY2d at 291-292).

16
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18
19 Defendants posted the following about Bunn and Attorney Christopher Brown
20 on December 28, 2019.

21 In this case, after being sued by Plaintiff on December 26, 2019 (Docket
22 Entry 1) for sexual battery and the conversion of her belongings, Defendants
23 posted a "movie" online on December 27, 2019, made in April 2019, in which
24 he accused Plaintiff of trying to steal from him. The full video can be viewed

25
26
27 at:
28

1 <https://www.worldstarhiphop.com/videos/video.php?v=wshh521J2N5gO2veK>

2 [XNi](#). The video was seen over one million (1,000,000) times.

3
4
5 **Key Evidence:**

6 The Court has granted summary judgment on behalf of Ms. Bunn on her conversion
7 claim. Poppington LLC, Dash and Horn have been found to be liable for the
8 conversion of over 100,000 photographs and her belongings, many of which have not
9 been returned. The documents provided in discovery establish the damages which are
10 in excess of One Million Dollars (\$1,000,000) and establish that the computers no
11 longer work which contained all Bunn’s photographs. The photos are forever lost.

12
13 Bun will testify to her claim of sexual assault. Bunn will explain the actions
14 unlawfully committed by Dash and the trauma of the events that has caused her
15 stress, sleepless nights and anxiety. She has sought medical attention from Dr. Jeffrey
16 Pinsk. Dr. Pinsk, an internist and the author of a book relating to PTSD and anxiety,
17 has noted that Bunn suffers from PTSD, anxiety and other conditions as a result of the
18 sexual assault. Bunn will also testify to her damages and the unauthorized sexual
19 battery Dash committed. Bunn will also testify to previous sexual advances and
20 produce a picture of Mr. Dash brandishing his penis while he sat in a car with Bunn
21 in New York.

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26 Ms. Harper will testify that Mr. Dash raped her and Ms. Levine will also testify
27 that Mr. Dash committed sexual assaults while she worked with Mr. Dash. There is
28

1 also the Washington Post article relating to Mr. Dash’s rape case from the 1980’s that
2 will be introduced at trial and Mr. Dash settlement of his rape case, KT v. Dash, New
3 York County, Supreme Court in 2006-2007.
4

5 In addition, Dr. Pinsk (internist) has also provided a report relating to the sexual
6 assault and the PTSD, anxiety and emotional distress Bunn has suffered. The forensic
7 economist, Stan Smith, has placed damages on the harm suffered by Ms. Bunn at over
8 Two Million Dollars (\$2,000,000.00).
9

10 Sameer Somal, CEO of Blue Ocean Global Technology has prepared a
11 report relating to defamation damages and the damages exceed Five Million
12 Dollars (\$5,000,000.).
13

14
15 **Damages:** Brown will testify as to the damages Plaintiff has suffered. Brown will
16 produce an expert witness, Sameer Somal, CEO of Blue Ocean Global Technology
17 who has prepared a report relating to damages. Mr. Somal concluded that the
18 following damages are appropriate:
19

20
21 Economic Damages: \$2,550,000

22 Reputational Damages: \$2,500,000

23 Emotional Distress: \$1,000,000

24 Punitive Damages: \$5,000,000

25 Compensatory Damages: \$150,000
26

27 Based on the wealth of evidence of the intent of Dash and the scope of the false
28 statements, the damages award should be no less than Five Million Dollars

1 (\$5,000,000.00) based on the expert report of Blue Ocean Global Technology, which
2 includes Two Million Five Hundred Dollars (\$2,500,000.00) to repair the on-line
3 reputation and Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in
4 reputation damages, and monetary damages. See Expert Report of Blue Ocean
5 Global Technology; Roland Van Liew v. Philip Eliopoulos, 92 Mass. App. Ct. 114
6 (2017) (The jury found Van Liew liable for making defamatory statements and
7 awarded \$2.9 million in, damages to Eliopoulos: reputational damages of \$2.5 million,
8 emotional distress damages of \$250,000, and compensatory damages of \$150,000;
9 Ayash v. Dana-Farber Cancer Institute, 443 Mass. 367, 371, 406-408 (2005)
10 (affirming \$2.1 million defamation award, including emotional distress awards of
11 \$1,440,000 against newspaper and \$360,000 against reporter); Borne v. Haverhill Golf
12 & Country Club, Inc., 58 Mass. App. Ct. 306 , 319-321 (2003) (concluding \$424,000
13 emotional distress award not excessive). Brown has been humiliated and suffered
14 emotional distress due the false statements of the defendants and Brown's career has
15 been harmed due to the allegations of the defendants. See also, Bargerstock v. WGCC,
16 580 A.2d 361 (Superior Court, PA 1990), [Bargerstock v. WGCAC :: 1990 :: Supreme](#)
17 [Court of Pennsylvania Decisions :: Pennsylvania Case Law :: Pennsylvania Law :: US](#)
18 [Law :: Justia](#); Menkowitz v. Peerless Publications, No. 40 MAP 2018 (Supreme Court
19 of PA); [Menkowitz. v. Peerless Publications :: 2019 :: Supreme Court of Pennsylvania](#)
20 [Decisions :: Pennsylvania Case Law :: Pennsylvania Law :: US Law :: Justia](#); Sprague
21 v. Philadelphia Newspapers, Inc., 441 Pa Super. 1 656 A.2d. 890 (1995).
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1 For the sexual assault and emotional distress, Bunn is entitled to an
2 additional Seven Million Dollars (\$7,000,000.00) in addition to her conversion
3 claim.

4 **Affirmative Defenses:**

5 None

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7 **III. ANTICIPATED EVIDENTIARY ISSUES**

8 Plaintiff does not anticipate any evidentiary issues.

9
10 **IV. BIFURCATION OF ISSUES**

11 There is no need to bifurcate any issues.

12
13 **V. JURY TRIAL**

14 All issues are to be tried by jury.

15
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28 July 13, 2022

Counsel for Plaintiff

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PROOF OF SERVICE

BOSTON, MASSACHUSETTS

I am employed in the Suffolk County, Boston, Massachusetts. I am over the age of eighteen years and not a party to the within action. My business address is Brown & Rosen LLC, 100 State Street, Suite 900, Boston, MA 02109. My address for electronic service is cbrown@brownrosen.com.

On the date below, I electronically served the foregoing document(s), described as

PLAINTIFF’S RULEE 16.4 MEMORANDUM OF CONTESTED FACTS

on each of the interested parties in this action by attaching the original a PDF copy thereof addressed as follows:

Attorneys for Defendants

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I declare under penalty of perjury under the laws of the Massachusetts that the foregoing is true and correct. Executed on July 13, 2022, in Boston, MA.

Christopher Brown

Christopher Brown

Signature