

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

FIRECLEAN LLC,

Plaintiff,

v.

ANDREW TUOHY

and

EVERETT BAKER,

Defendants.

Case No. 1:16-cv-294 JCC/MSN

**MOTION TO DISMISS ALL CLAIMS AGAINST DEFENDANT EVERETT BAKER
PURSUANT TO FRCP 12(B)(2) AND 21(B)(6)**

NOW COMES Defendant Everett Baker, by and through counsel, , pursuant to Federal Rules of Civil Procedure 8, 12(b)(2), and 12(b)(6), and hereby moves to dismiss all claims asserted against him on the basis of this Court’s lack of personal jurisdiction and Plaintiff’s failure to state a claim upon which relief may be granted. In support thereof, Mr. Baker states as follows:

1. Plaintiff, FireClean LLC, a Virginia company, asserts various claims against Defendants Andrew Tuohy and Everett Baker. Plaintiff’s claims against Mr. Baker include counts of defamation, *see* Plaintiff’s Complaint, ¶¶ 199-209, as well as statutory and common law conspiracy, *see id.* at ¶¶ 210-39.

2. Even accepting as true the facts alleged by Plaintiff, the “contacts” outlined in the complaint are insufficient for this Court to exercise jurisdiction over Mr. Baker. A resident of New Hampshire, he did not carry out a tortious act in the Commonwealth, nor did he intend to target any published statements to Virginia. Therefore, Virginia’s Long Arm Statute, Va. Code

Ann. § 8.01-328, does not reach Mr. Baker and the Court's exercise of jurisdiction in this case would not comport with traditional notions of fair play and substantial justice. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

3. Plaintiff's defamation claims against Baker, set forth in Count V of the Complaint, in the alternative, must be dismissed as a matter of law. The Plaintiff has failed to point to an actionable statement that could serve as the basis of a defamation claim. Clearly, the single comment to which Plaintiff points as being allegedly defamatory simply conveys Mr. Baker's interpretation of scientific experiments he conducted. Further, Plaintiff has not and cannot demonstrate that Mr. Baker's comments were made with the requisite intent to harm.

4. Relatedly, Plaintiff's conspiracy claims, set forth in Count VI and VII,¹ fail as they cannot survive without an underlying tortious act, *see Dunlop v. Cottman Transmission Sys., LLC*, 287 Va. 207, 215 (2014), which, as set forth above and more fully in the attached memorandum of law, has been insufficiently plead. Notwithstanding the insufficiently plead underlying tortious act, the conspiracy claims fail as the Complaint is without facts demonstrating that Mr. Baker and co-Defendant Andrew Tuohy had a preconceived plan to cause injury to Plaintiff or its business.

5. Accordingly, and as is more fully set forth in the memorandum of law in support of this motion, the Plaintiff's claims are ripe for dismissal as the plaintiff has not pled sufficient facts in its complaint to establish this Court's jurisdiction, nor has it set forth claims upon which relief may be granted.

¹ Plaintiff mistakenly repeats Roman VI for both the common law and statutory conspiracy claims; however, Mr. Baker refers to the latter VI as Count VII.

WHEREFORE Defendant Everett Baker respectfully requests that this Honorable Court issue an Order:

A. Dismissing all claims against Mr. Baker, pursuant to FRCP 12(b)(2) for want of personal jurisdiction; or

B. In the alternative, dismissing all claims against Mr. Baker, pursuant to FRCP 12(b)(6) for failure to state claims upon which relief may be granted; and

C. Granting such other and further relief as it deems just and necessary.

Dated: May 20, 2016

Respectfully submitted,

EVERETT BAKER
By Counsel

/s/ Timothy J. McEvoy

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to registered ECF users and to the following:

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