STATE COURT OF EFFINGHAM COUNTY
STATE OF GEORGIA

SHANE RAMSEY	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No.: STCV2023000435
	)	
YANCY FORD AND JAMIE WELLS,	)	
	)	
Defendants.	)	

DEFENDANT YANCY FORD'S
MOTION TO DISMISS AND BRIEF IN SUPPORT

Defendant Yancy Ford, pursuant to O.C.G.A. § 9-11-12(b)(6), respectfully moves this Court to dismiss the captioned action.

INTRODUCTION

This matter has a long, tortured and meandering history. Plaintiff has filed a separate pending case in the Superior Court of Effingham County against Defendant Ford (and other defendants) arising out of the same cause of action – i.e., Ramsey v. Effingham County School District, et. al., No. SUCV202300096 ("Original Case"). And now, Plaintiff has endeavored to tax a second court to preside over and adjudicate his prosecution of the same cause of action against two of the same defendants – Defendants Ford and Wells.

This, however, Plaintiff cannot do. Maintaining two cases arising out of the same set of facts is violative of the claim splitting doctrine set out in O.C.G.A. § 9–2–5(a) and O.C.G.A. § 9–2–44(a). His second complaint, i.e., this action, must be dismissed as a matter of law.

STATEMENT OF FACTS

A. Procedural History and Factual Allegations in Plaintiff's Original Case

Plaintiff filed the Original Case in the Superior Court of Effingham County on June 28, 2023. See, Exhibit A to Defendant Wells Brief in Support of Mtn. to Dismiss ("Wells Brief"), Original Complaint in Original Case.[1] In that first complaint, Plaintiff named as defendants the Effingham County School District ("School District") and a number of individual defendants, including Defendant Ford.[2] He and all other individual defendants were sued in their official capacities only. On September 21, 2023, the individual defendants, including Ford, filed a motion for judgment on the pleadings on all official capacity claims. See, Ex. 1, Motion for Judgment on the Pleadings as for official capacity claims against all individual defendants.

The very next day, however, Plaintiff filed a motion under O.C.G.A. § 9-11-19(a) to add Ford as a defendant in his individual capacity. See, Ex. 2, Motion and Brief to Add Defendant Ford as a Party Needed For Just Adjudication.[3] Plaintiff contended that Ford was a necessary defendant for just adjudication because he "**conspir[ed] with Wells to unlawfully contact Plaintiff's employer with the intent to slander and defame him in efforts to negatively interfere with his employment on or about July 11, 2023.**" Id. at 4-5 (emphasis added). Plaintiff asserted Ford "engaged in a conspiracy to get Ramsey terminated or in the least, negatively impact his employment status…**in the form a disparaging and slanderous phone**

[1] In an effort not to duplicate exhibit submission to the Court, Defendant Ford herein cites and references to the extent possible exhibits submitted by Defendant Wells in connection with his Motion to Dismiss. See, O.C.G.A. §9-11-12(g))("A party who makes a motion under this Code section may join with it motions provided for in this Code section and then available to him."). Defendant Wells has moved to dismiss on the same legal grounds as asserted herein. Pursuant to O.C.G.A. § 9-11-12(g), Defendant Ford joins in Defendant Wells' motion to the extent it is not inconsistent with the arguments, assertions and dispositive contentions set forth herein.

[2] The other individual defendants originally sued were the members of the School District's Board of Education and Amie Dickerson. Defendant Wells was not originally named as a defendant.

[3] Plaintiff also moved to add Amie Dickerson in her individual capacity as a defendant do the Original Case.

call to Plaintiff's employer." Id. at 6 (emphasis added).[4] Just after Plaintiff filed his motion to add Ford as a defendant, on September 28, 2023, Plaintiff filed is amended complaint, which remains the operative complaint in the Original Case. See, Exhibit C to Wells Brief, First Amended Complaint ("FAC") in Original Case.

Defendant Ford vigorously opposed the motion to add him in the Original Case as a defendant in his individual capacity. See, Ex. 3, Oct. 20, 2023 Brief in Opposition to Motion to Add Party. Despite this objection, the court granted the motion, holding that there was "good cause appearing" to add Ford individually as a "Part[y] Needed for Just Adjudication…" See, Ex. 4, Oct. 25, 2023 Order.

As alleged in the Original Case, Plaintiff is a former teacher and former head baseball coach at Effingham County High School. See, FAC, Ex. C to Wells Brief, at ¶¶ 4-5. He contends he "noticed a racial epithet affixed to a locker by way of a label" in the locker room and "contacted his administrators [including Ford]…and advised them what happened." Id. at ¶ 8. He was also "outspoken about the lack of consequences to the offending students…" Id. at ¶ 10. Because of this, Plaintiff claims that he was retaliated against and subjected to a hostile work environment, which ultimately caused him to resign involuntarily. Id at ¶¶ 12-13.

Additionally, Plaintiff makes a set of allegations related to threats, calls and interferences with his new employment at a new school district:

1. After Ford learned of "Ramsey's departure," Ford stated that he could "call the Board up there," which allegedly was an implied threat to "call the Board of the new district where he was hired to interfere with his hire." Id. at ¶ 13 (emphasis added).

[4] This was Plaintiff's second motion to add additional defendants. As noted by Defendant Wells in his pending motion to dismiss, Plaintiff's Motion to Add Mr. Wells as a party-defendant was granted. See, Defendant Wells' Brief in Support of Motion to Dismiss at 2.

2. Plaintiff further alleges that after he filed the Original Case, that threat came to fruition as Defendant Wells contacted Plaintiff's new employer and "**made disparaging comments with the intent to sabotage, hinder and negatively affect Plaintiff's employment**." Id. (emphasis added).

3. Plaintiff claims that Wells made this contact with his new employer **"at the behest"** of Yancy Ford. Id. (emphasis added).

Based on this set of transactions and occurrences, Plaintiff in the Original Case pled one legal claim for relief against all defendants – a retaliation claim under the Georgia Whistleblower Act ("Whistleblower Act"), O.C.G.A. § 45-1-4. See, FAC, Ex. C to Wells Brief.

In response to this operative pleading in the Original Case, Defendant Ford (and Dickerson), in his individual capacity, filed a motion to dismiss under O.C.G.A. §9-11-12(b)(6). See, Ex. 5, Ford Mtn. to Dismiss. Therein, Defendant Ford argues that dismissal as a matter of law is warranted as the Whistleblower Act does not provide for a cause of action against individual persons, including individual employees; rather the Whistleblower Act only provides for a claim against public employers. Id. at 4-7. Defendant Ford is not a public employer. Id.

B. Plaintiff's Factual Allegations in this Case.

During the pendency of the three dispositive motions in the Original Case, Plaintiff filed this second lawsuit against Defendants Ford and Wells. See, Exhibit E to Wells Brief, Complaint in Second Case. His legal claims are tortious interference with contract (Count I), defamation – slander and libel (Counts II and III) and civil conspiracy / aiding and abetting (Count IV). Each of these claims arise out of the same discrete set of facts alleged in the Original Case:

1. When Plaintiff was employed as baseball coach at Effingham County High School, he was subject to retaliation and a hostile work environment, which ultimately compelled him to resign. Id. at ¶ 7.

2. After accepting a new coaching position in another school district, Defendant Ford "threatened to contact [Plaintiff's] new employer in efforts to sabotage his position Id. at ¶ 8.

3. On or around July 11, 2023, Defendant Wells, at the direction of Defendant Ford, called Plaintiff's new employer, specifically, "Ramsey's athletic director," and made "derogatory and defamatory comments about Ramsey, intimating that he was incompetent and unqualified to coach." Id. at ¶¶ 11-12.

4. The alleged defamatory statements by Wells "were made with the intent to sabotage and jeopardize" Plaintiff's new employment. Id. at ¶ 13.

The same set of facts giving rise to the retaliation claim under the Whistleblower Act in the Original Case also give rise to the tortious interference, defamation and conspiracy claims in this case – Plaintiff's employment as high school baseball coach, an incident subjecting him to a hostile work environment and retaliation, his forced resignation, and further claimed retaliation, specifically, a claimed threat by Ford and the fruition of that alleged threat with Wells calling Plaintiff's new employer at behest of Ford making "defamatory comments" "to sabotage and jeopardize" his new employment.

As set forth below, Plaintiff's second case, pending now before this Court, is an exemplar of claim splitting, impermissible as a matter of law and in violation of O.C.G.A. § 9–2–5(a) and O.C.G.A. § 9–2–44(a). Plaintiff cannot maintain two separate lawsuits arising out of the same set of facts. His Complaint must be dismissed as a matter of law.

STANDARD OF REVIEW

The standard of review for a motion to dismiss under O.C.G.A. § 9-11-12(b)(6) is well-settled:

> [a] motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the

> claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. If, within the framework of the complaint, evidence may be introduced which will sustain a grant of the relief sought by the claimant, the complaint is sufficient and a motion to dismiss should be denied. In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor.

Global Payments, In.c v. IncCom Fin. Serv., Inc., 308 Ga. 842, 843 (2020), quoting Anderson v. Flake, 267 Ga. 498, 501 (1997)(citations omitted). As held by the Georgia Supreme Court, "[t]he main consideration for the trial court ruling on a motion to dismiss is whether a right to some form of relief exists under the assumed set of facts." Ass'n of Guineans in Atlanta, Inc. v. DeKalb Cnty., 292 Ga. 362, 364 (2013), citing Northway v. Allen, 291 Ga. 227, 229 (2012).

Here, the assumed set of facts is identical to those facts asserted in the original case. For that reason, this case is barred and should be dismissed as a matter of law for impermissible claim splitting.

ARGUMENT AND CITATION OF AUTHORITY

There is a time-immemorial and well-trodden legal maxim that one cannot maintain separate suits arising out of the same set of facts against the same defendant. It has long been the law in this state that a plaintiff is required to bring all claims arising under the same set of facts in one lawsuit. See, Lawson v. Watkins, 261 Ga. 147, 149-150 (1991)(emphasis added). ("[O]ur law requires that such **a plaintiff must bring every claim for relief he has concerning the same subject matter in one lawsuit**."). Plaintiff's Original Case was filed on June 28, 2023. His second complaint, filed November 30, 2023, arises out of the same set of facts pled in the Original Case. This violates this clear and unequivocal proscription of maintaining two identical suits and, accordingly, this case must be dismissed.

O.C.G.A. § 9–2–5(a) provides in relevant part: "No plaintiff may prosecute two actions in the courts at the same time for the same cause of action and against the same party.... **If two such actions are commenced at different times, the pendency of the former shall be a good defense to the latter.**" (emphasis added). Similarly, O.C.G.A. § 9–2–44(a) provides in pertinent part: "…the pendency of a former action for the same cause of action between the same parties in the same or any other court having jurisdiction shall be a good cause of abatement." Accordingly, "[w]henever a pending suit for the same cause of action has been pled, abatement is required as a matter of law." Intl. Telecom. Exch. Corp. v. MCI Telecom. Corp., 214 Ga.App. 416, 417 (1994).

Importantly, "the effect of [this] defense cannot be avoided even by a dismissal of the first suit." Astin v. Callahan, 222 Ga. App. 226, 227-228 (1996)(citations omitted) (alteration in original). In Austin, the Court of Appeal held that the trial court "correctly dismissed the second suit…on the basis of a prior suit pending, **even though the prior suit had been voluntarily dismissed after the commencement of the second action.**" Id. at 228 (emphasis added)

Defendant anticipates that Plaintiff may argue that the claims in this case are different from the claims in the Original Case. Yet, that prospective argument in unavailing as it conflates "claim" with "cause of action." "[T]o determine whether there is identity of the **cause of action**, the court must examine 'the **subject matter** and **the issues raised** by the pleadings in the two cases[.]'" Harris v., Deutsche Bank Trust Co., 338 Ga. App. 838, 840 (2016), quoting Crowe v. Elder, 290 Ga. 686, 688 (2012) (citations omitted) (emphasis added). Under Georgia law, "[a] cause of action [is] deemed to be **the entire set of facts** which give rise to an enforceable claim." Id. (Citation and punctuation omitted) (emphasis added). The question in determining identity of cause of action "is whether both claims **arose from the same set of facts**." Sweet City Landfill,

LLC v. Lyon, 352 Ga. App. 824, 836 (2019)(emphasis added). It is the entire set of facts themselves, once they occur, however, that give rise to the cause of action, regardless of whether the party fails to include certain facts in the first action. Dashtpemya v. Walker, 359 Ga. App. 644, 646 (201), citing, Kaylor v. Rome City School Dist., 267 Ga. App. 647, 649 (2004) (finding identity of the causes of action where the first suit was for breach of contract and second suit was for fraudulent inducement to enter that contract).

Here, it is clear that Plaintiff has pled the same "cause of action" in this case, as he pled in the Original Case, which remains pending in the Effingham County Superior Court. It bears repeating that same or identical "cause of action" does not mean same or identical claim. Rather, as the above-cited authorities clearly and unequivocally demonstrate the "same cause of action" means "entire set of facts which give rise to an enforceable claim." In the Original Case, Plaintiff alleged that after he was forced to resign, he obtained new employment as a coach in another school district. He alleged that Defendant Ford threatened to contact his new employer and made good on that threat by directing Defendant Wells to call and make derogatory and defamatory statements to Plaintiff's new employer. He claims that Defendant Wells did so at the behest of Ford. Plaintiff claims that those facts give rise to an enforceable retaliation claim under the Whistleblower Act.

In this second case, Plaintiff alleges those identical facts. Yet, this time, he contends that those facts support enforceable claims of tortious interference, defamation and conspiracy. But the fact of asserting different claims is irrelevant where the "cause of action," i.e., the "entire set of facts" giving rise to the legal claims are identical. Here, those facts are identical in both cases. Georgia law is clear. Plaintiff cannot prosecute the same cause of action against Defendant Ford in two separate lawsuits. That is precisely what Plaintiff is attempting to do with in this case.

Plaintiff has pled the identical "cause of action" in his Original Case and now in his second complaint before this Court. Pursuant to O.C.G.A. § 9–2–5(a) and O.C.G.A. § 9–2–44, a Plaintiff is required to bring all claims arising out of the same set of facts in one lawsuit. This action, Plaintiff's second later-filed case, must be dismissed as a matter of law.

CONCLUSION

For the foregoing reasons, Defendant Ford respectfully requests that his Motion to Dismiss be granted.

This 3rd day of January, 2024.

PEREIRA, KIRBY, KINSINGER & NGUYEN, LLP
s/ Aparesh Paul
Aparesh Paul
Georgia Bar No. 362648

210 Washington Street NW Ste. 203
Gainesville, Georgia 30501
Telephone: (770) 534-7341
Facsimile: (770) 532-0399
Email: apaul@pkknlaw.com

ATTORNEY FOR DEFENDANT
YANCY FORD

CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that he has this date electronically filed the foregoing **DEFENDANT YANCY FORD'S MOTION TO DISMISS AND BRIEF IN SUPPORT** with the Clerk of the Court using the e-filing system and has been served by electronic mail as provided in O.C.G.A. § 9-11-5(b) and O.C.G.A. § 9-11-5(f) to counsel of record for all parties.

This 3rd day of January, 2024.

PEREIRA, KIRBY, KINSINGER & NGUYEN, LLP
s/ Aparesh Paul
Aparesh Paul
Georgia Bar No. 362648

210 Washington Street NW Ste. 203
Gainesville, Georgia 30501
Telephone: (770) 534-7341
Facsimile: (770) 532-0399
Email: apaul@pkknlaw.com

ATTORNEY FOR DEFENDANT