

MARK BUCK
YOLANDA TORRICELLA BUCK

Plaintiffs.

Vs.

LAZARO SANTOS
DIANELYS PEREZ LINARES

Defendants.

IN THE COUNTY COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CASE # 22-00603 CC 02

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiffs, Mark Buck – Yolanda T Buck, hereby submits their opposition to Defendants' Motion to Dismiss the Complaint with Prejudice, for the following reasons:

1. In defense's **article 1**. Defense claims that the complaint allegations do not fall within the parameters of Rule 1.140(f). He claims that all the allegations are:
impertinent, immaterial, irrelevant scandalous, malicious and all fabricated by the Plaintiffs.

His claim is False. Most of the defense claims are nothing more than copy & paste of excerpts from the Florida Rule of Civil Procedure. In addition, he cites an excessive amount of very old cases, where the majority, date back the 80s & 90s and are irrelevant or incomparable to the case at hand.

2. Furthermore, in defense's **article 2**. Defense states that Plaintiffs makes numerous facetious allegations concerning debts. **There is no claim for a debt**, in this action. The reference to a debt is strictly to demonstrate the defendants' motives to file the injunction with malice and therefore support the Malicious Prosecution claim. It is not part of the complaint itself. Apparently, defense has not read the complaint comprehensively and/or does not understand the context of the complaint.
3. Defense is also stating that Plaintiffs is not conforming to Rule 1.130, Fla.R.Civ.P., *"the rule expressly states that a party is required to attach a copy of the cause of action and the exhibits upon which it is travelling"*. Plaintiffs have no clue what defense is talking about. The complaint includes 9 multipage, exhibits, each Identified with its cover page. Since this filing, new evidence was obtained, and Plaintiffs is contemplating deposing defendants to include new discovery to the complaint, and to prove beyond a doubt, the malicious intent behind the defendants' filing of their Protection Against Sexual Violence injunction
4. In defense's **article 3**. defense states: ***"Actions for malicious prosecution are generally disfavored in Florida"***
That is nothing more than an opinion, as in his motion to dismiss he cites numerous Malicious Prosecution cases. Apparently, this style action is widely used. Of the two similar actions available: Malicious Prosecution or Abuse of Process, Malicious Prosecution was most befitting to the circumstances herein and does contain the 6 elements necessary for this particular action.

5. The six elements of the claim are present as described herein:

(1) An original criminal or civil judicial proceeding against the present plaintiff was commenced or continued;

The Injunction for Protection Against Sexual Violence on a Minor Child was Commenced on Jan 13th, 2020 and Continued until Jan 15th, 2021, at which time it was vacated.

(2) The present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding;

While Lazaro Santos filed the injunction OBO his daughter YPS, Plaintiffs believe that Mr. Santos is somewhat intellectually challenged, does not speak English and is incapable of fabricating and writing the allegations in the injunction, as it they were written, on his own. However, Mrs. Santos, who Plaintiffs strongly believe was the instigator of the action, signed the injunction in her husband's place, stating under oath, and under penalty of perjury, that the facts therein were true and correct.

(3) The termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff;

The termination was in favor of the respondent, as the injunction was dismissed and vacated, as a result of the Petitioner's decision to dismiss the temporary the injunction. Even though there was an agreement stipulated by the Petitioner, the stipulations therein did not provide the Petitioner any results that he did not already have. **ie:**

Stipulation 1, ***Parties will not contact the child;***

Respondents had not contacted the child prior to the injunction, had no intention of contacting the child, and they were blocked on the child's phone, therefore incapable of contacting the child.

Stipulation 2, ***Mr. Buck will not post photos of the child on Social Media Sites;***

Respondent, had removed all photos of the child from Facebook & Instagram and had ceased posting the child's photos on Specific Social Media Sites, since the inception of the injunction.

It is clear that the "Agreement" did absolutely nothing for the Petitioner to grant him a Bona Fide termination in his favor. The agreement did not ask for any kind of restitution for all the horrible things that Respondents had allegedly subjected the minor child to, mainly because his accusations were all fabricated lies. Furthermore, the "Agreement" in itself, does not constitute that the termination of the action was not a bona fide termination in the Respondent's favor.

Doss v. Bank of America N.A. 857So. 2d 991 (Fla. 5th DCA 2003)

We conclude that the joint stipulation and dismissal of the collection suit does not bar Doss from bringing this malicious prosecution suit against the Bank on the ground that there was no bona fide termination in her favor. The Bank has failed to show that the joint stipulation for dismissal was entered into for any reason not consistent with its recognition of Doss' lack of liability in the collection suit and its wrongful seizure of her savings account balance. There was no genuine compromise on Doss' part as she gave up nothing of value.

(4) *There was an absence of probable cause for the original proceeding;*

As previously stated, all of the accusations were fabricated lies. The petitioner did not provide any evidence whatsoever to support any of his 17 claims, against the Respondents. 9 out of 12 claims against Mr. Buck were totally irrelevant to the child. Such as:

- (a) Respondent came to the petitioner's house, banged on the door hard & left.
- (b) Respondent reached out to one of the child's friends asking about her WhatsApp.
- (c) Respondent was in & out of the house (He was invited by his ex-wife or the child)
- (d) Respondent sent nude pictures to the child's phone. The Hollywood detective closed the case citing that there was no probable cause.....

(5) *There was malice on the part of the present defendant;*

- (a) There was. The defendants were very angry at the Plaintiffs, as they no longer had a car to commute to work, albeit they had surrendered the car to the Plaintiffs.
- (b) They were extremely angry that the child, loved the Plaintiffs so much, as they provided for her and made her feel like part of their family.
- (c) They were very angry that the Plaintiff (Mr. Buck) was suing the defendant in small claim court for a \$2000 loan, that they were not willing to pay back.
- (d) They were extremely angry that Mr. Buck, wrote a documentary story on his consumer advocate website about all the events that took place while the Defendants were living in the Plaintiffs' house. The documentary is defamatory to the defendants, although all true.

The defendants filed the baseless injunction, strictly in revenge for the abovementioned reasons. They were hoping that the claims in the injunction would cause the Bucks to be arrested and jailed and/or at the very least subject them to exorbitant legal fees for defense of these severe accusations.

(6) *The plaintiff suffered damage as a result of the original proceeding;*

As a result of the Petitioners filing this injunction with very serious, fabricated accusations, Respondents were forced to retain expensive criminal attorney(s) for their defense. Respondents were subjected to over \$14,000 in legal fees, countless hours in court and with their attorney, as well as an extreme amount of stress, anxiety and emotional pain from the total isolation of the child that they had grown to love so much. All of this would have been avoided, had petitioners chosen a different form of revenge.

In defense's **article 4**. Defense continues with his very redundant claims about appended documents to the claim, or lack thereof and some fabricated conflict therein, not to mention, more baseless efforts, to dismiss on the basis of the "agreement" between the parties....

Furthermore:

In defense's **article 5**. *Sanctions must be imposed in this case against the plaintiffs pursuant to 57.105 Florida Statutes....*

Defenses attempts to discredit Plaintiffs by stating that Plaintiffs intentionally, knowingly, and maliciously have filed numerous unsuccessful claims against the defendants....

This claim is the only claim that pertains to this action. Again, defense is using the Plaintiffs' wordage from their claim, against them.

Sanctions to be imposed are the decision of the judge, not opposing counsel. And, such sanctions may be imposed only if & when the Judge in this case finds for the defendant.

The defense seems to have the case ruled in their favor before the parties have had their day in court.

As such, Plaintiffs pray this Honorable Court to DENY this Motion to dismiss as Plaintiffs do have a very valid complaint with ample material evidence —and more to come— to meet or exceed all of the 6 elements necessary for the filing of a Malicious Prosecution. Therefore, Plaintiffs ask for their day in court to finally prove, that all of the allegations in the defendants Injunction were fabricated lies, and that the filing was indeed Malicious in nature.

Respectfully:

Mark Buck

Yolanda T. Buck

Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was emailed through the Florida Courts E-filing portal this 4th day of March, 2022, and to Harvey D Rogers, counsel for defendants at: Rogerslaw1@aol.com.

Mark Buck