

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2019-CA-013860-XXXX-MB

GABE HOFFMAN, an individual,

Plaintiff,

v.

THOMAS SCHOENBERGER,
an individual.

Defendant.

**ORDER DENYING PLAINTIFF'S VERIFIED EMERGENCY MOTION
FOR TEMPORARY INJUNCTIVE RELIEF**

THIS CAUSE came before the Court for hearing on Plaintiff's Verified Emergency Motion for Injunctive Relief (the "Verified Motion"). A hearing was conducted on August 20, 2020. The Court has considered the Verified Motion, reviewed the court file and heard argument of the parties. Upon consideration, the Court makes the findings that follow.

Plaintiff, Gabe Hoffman, has sued, Defendant, Thomas Schoenberger, for defamation and tortious interference with advantageous business relationships. Plaintiff alleges that the Defendant, individually, and through third parties, has published false and defamatory statements about the Plaintiff on the Internet using websites, blogs and other social media. Plaintiff's Verified Motion seeks a temporary injunction precluding the Defendant from continuing to post defamatory statements on social media and requiring the Defendant to remove defamatory and false statements from the Internet.

The Plaintiff did not present testimony to support the request for injunctive relief. Plaintiff relies on the Verified Motion and supplemental filings with the Court. The Plaintiff's filings clearly establish that the Defendant has published false, disparaging and defamatory

statements on the Internet. These statements include the false and defamatory allegations that the Plaintiff was involved in the alleged murder of Isaac Kappy and the that the Plaintiff is financially untrustworthy and dishonest. Perhaps more disturbingly, the various postings contain anti-Semitic comments and statements. Specific statements relied on by the Plaintiff include: 1) “The shrimp hedge fund guy from Palm Beach put out the hit on Isaac Kappy”; 2) “The Florida hedge fund manager financed the murder of Isaac Kappy”; and 3). “The Jewish supremacist hedge fund manager from Florida is under SEC investigation.”

A temporary or preliminary injunction is an extraordinary remedy which should be granted only if the party seeking the injunction establishes the following: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) consideration of the public interest. *Reserve At Wedgefield Homeowners’ v. Dixon*, 948 So. 2d 65 (5th DCA 2007).

The Plaintiff has established that the Defendant published false and defamatory statements on the Internet using a variety of social media outlets. To this extent, the Plaintiff has established a likelihood of success on the merits as it relates to his claim for defamation. However, this is not the end of the inquiry.

It is well established that injunctive relief is not available to prohibit the making of defamatory or libelous statements. *See, e.g., Vrasic v. Leibel*, 106 So.3d 485, 486 (Fla. 4th DCA 2013). A temporary injunction directed to speech is a classic example of prior restraint on speech triggering First Amendment concerns. *Id. See also, Moore v. City Dry Cleaners & Laundry*, 41 So.2d 865, 873 (Fla.1949) (recognizing First Amendment concerns triggered by temporary injunction); *Murphy*, 176 So.2d at 924 (same); *see also Post-Newsweek Stations Orlando, Inc. v. Guetzloe*, 968 So.2d 608, 610 (Fla. 5th DCA 2007) (recognizing temporary injunction forbidding

speech constitutes a prior restraint) (citing *Alexander v. United States*, 509 U.S. 544, 550, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993)). “[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976). There is, however, a limited exception to the general rule where the defamatory words are made in the furtherance of the commission of another intentional tort. *Murtagh v. Hurley*, 40 So.3d 62 (Fla. 2d DCA 2010); *Zimmerman v. D.C.A. at Welleby, Inc.*, 505 So.2d 1371 (Fla. 4th DCA 1987).

The Plaintiff seeks to invoke the limited exception discussed in *Murtach* and *Zimmerman* to obtain an injunction against the Defendant. There are, however, two fundamental problems with the Plaintiff attempt to apply the rationale of *Murtach* and *Zimmerman* to support a temporary injunction here. First, the Plaintiff has not established a sufficient evidentiary record to support the exception. Second, even if the record was sufficient, the scope of the relief requested is overly broad.

The Plaintiff relies on his claim for tortious interference with advantageous business relationships to support a temporary injunction. However, it is not enough to simply plead a count for tortious interference to obtain injunctive relief for defamatory statements. As the court addressed in *Murtach*, to obtain an injunction the moving party must establish proof to a reasonable certainty of the cause of action stated in the complaint. *Murtach*, *id* at 66.

Murtach dealt with a request for injunctive relief based an allegation of tortious interference with advantageous business relationships. Relying on *Zimmerman*, the appellant/plaintiff sought to enjoin defamatory statements which could affect his medical practice. Affirming the denial of injunctive relief, the court held there was insufficient evidence to establish: (1) the existence of a business relationship under which the plaintiff has legal rights,

(2) an intentional and unjustified interference with that relationship by the defendant, and (3) damage to the plaintiff as a result of the breach of the business relationship. *Murtach*, *id.* at 66-67.

Plaintiff has generally alleged that the Defendant's postings adversely impact his business by depicting him in a negative light to his clients. However, this is insufficient to establish likelihood of success on the merits with respect to each of the elements of tortious interference. To obtain injunctive relief based on tortious interference the movant must present evidence of interference with specific parties. *Chevaldina v. R.K./Fl Management, Inc.*, 133 So 3d 1086, 1090 (Fla. 3rd DCA 2014)(temporary injunction should have been denied for without a showing of reasonable unjustified interactions with specific parties known to be involved, or likely to be involved, in an advantageous business or contractual relationship with moving party). *See also, Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.2d 812, 815 (Fla.1995) (holding that the tort of interference is not met by communications to the public at large).

Finally, the relief sought by the Plaintiff is overly broad. Temporary injunctions must be narrowly tailored to specific conduct. *E.g., DeRitis v. AHZ Corp.*, 444 So.2d 93, 94 (Fla. 4th DCA 1984) (quoting *Fla. Peach Orchards, Inc. v. State*, 190 So.2d 796, 798 (Fla. 1st DCA 1966)). Entry of an overly broad injunction can constitute a violation of the First Amendment. *See, e.g., Animal Rights Found. of Fla., Inc. v. Siegel*, 867 So.2d 451, 456 (Fla. 5th DCA 2004); *Adoption Hot Line, Inc. v. State*, 402 So.2d 1307, 1308–09 (Fla. 3d DCA 1981).

The Court does not condone the statements and defamatory accusations being made against the Plaintiff. However, injunctive relief which prohibits or restricts free speech, even offensive free speech, is highly disfavored in the law. While there are limited exceptions, those

exceptions must be established with the same reasonable certainty and specificity as the defamatory statements themselves.

Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED that the Plaintiff's Verified Emergency Motion for Injunctive Relief is **DENIED**.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 4th day of September, 2020.



WEST PALM BEACH JUDICIAL CIRCUIT
ADMINISTRATIVE OFFICE OF THE COURT

JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

Copies furnished to:

Dennis S. Klein, Esq., dklein@kelleykronenberg.com
Thomas Schoenberger, (Defendant, pro se) tstger13@gmail.com