

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TYLER DEVECCHIS : CIVIL ACTION NO.

Vs : 3:12-cv-1575

SEBASTIAN J. SCALORA,
JERRY FARRELL, JR.,
SEBASTIAN N. GIULIANO,
PATRICK T. MCMAHON,
GREGORY B. SNEED,
WILLIAM WARNER,
BRUCE E. DRISKA, and
CITY OF MIDDLETOWN. : NOVEMBER 7, 2012

COMPLAINT

I. INTRODUCTORY STATEMENT

This is an action to redress the deprivation of rights secured to the plaintiff by the Constitution and laws of the United States and the State of Connecticut. This civil rights action arises out of actions taken by the defendants which were violative of his common law and civil rights under the law, including his right to due process, to wit: Without lawful justification, the City of Middletown summarily suspended operation of Tyler DeVecchis's business, the Public Bar and Grill, on New Year's Eve, December 31, 2009, without Notice or Hearing, in violation of substantive and procedural due process. Said harassment, intimidation, and relentless pursuit of contrived violations, in contrast to the treatment of similarly situated business establishments, continued until the Public was forced, for economic reasons, to close the Public Bar and Grill on April 24, 2010 and continued to the bankruptcy filing under Chapter 7 on August 17, 2011.

The injuries include economic and personal and dignitary injuries, including but not limited to: economic loss, emotional distress, pain and suffering, loss of dignity, loss of reputation and, generally, violation of his Constitutional rights pursuant to the First, Fourth and Fourteenth Amendments to the U.S. Constitution, and to comparable sections of the Connecticut Constitution. The violations include violation of Tyler DeVecchis's Constitutional rights relating to substantive and procedural due process respectively, and violation of common law rights, including his rights to be free from infliction of emotional harm and defamation of character.

II. PARTIES

1. The plaintiff is an adult citizen of the United States who resides in the State of Connecticut and at all times relevant to this complaint. The plaintiff was the owner of Main Street Productions, a single member LLC which owned and operated the Public Bar and Grill.

2. The defendant Jerry Farrell, Jr. was the Commissioner of the Department of Consumer Protection, and Chairman, Liquor Control Commission. The defendant Sebastian N. Giuliano was the Mayor of the City of Middletown. The defendant Patrick T. McMahon was the acting Chief of Police of the Middletown Police Department. The defendant Gregory B. Sneed was the acting Deputy Chief of Police of the Middletown Police Department. The defendant William Warner was the Director of Planning, Conservation & Development for the City of Middletown. The defendant Bruce E. Driska was the CZEO, Zoning Enforcement Officer, of the City of Middletown. They are sued only in their individual capacities.

3. The defendant Sebastian J. Scalora is an adult citizen of the United States who resides in the State of Connecticut and at all times relevant to this complaint was an attorney licensed in Connecticut and was the business partner of the plaintiff in regard to Main Street Productions, LLC and the Public Bar and Grill.

III. JURISDICTION AND VENUE

4. The Federal District Court for the District of Connecticut may maintain jurisdiction over this matter. 28 U.S.C. § 1331. The court may also base jurisdiction on the case based on the existence of an action pursuant to 42 U.S.C. §§ 1983 and 1988. 28 U.S.C. § 1343(a)(3). Supplemental jurisdiction exists because state law claims have arisen out the same nucleus of operative facts as the federal claims and are so related to the federal claims that they form part of the same case. 28 U.S.C. § 1367(a).

5. The Federal District Court for the District of Connecticut is the proper venue for the claims in this action because all relevant events occurred within the State of Connecticut. 28 U.S.C. § 1391(b).

IV. STATEMENT OF FACTS

6. During all times mentioned in this Complaint, the defendants Farrell, Giuliano, McMahon, Sneed, Warner and Driska were acting under color of law, that is, under color of the constitution, statutes, laws, rules, regulations, customs and usages of the State of Connecticut.

7. On July 9, 2008, the Public Bar and Grill opened for business on Main Street in Middletown. The plaintiff was the owner of this establishment, which provided food and a mix of live entertainment, including bands, DJs, and karaoke.

8. The Public Bar and Grill was located at 337-351 Main Street, Middletown – the site of a former sports clothing and gear store but had been vacant for several years.

9. The plaintiff entered into a lease for the property and then completely renovated the premises at an investment of at least \$750,000.

10. This investment included such things as the build out, the renovation, the lease, loans and lines of credit, electrical, gas, POS system, security system, liquor and food vendors, linen company, a dishwasher company, all state hood and duct, among other vendors.

11. The Public Bar and Grill became so popular, routinely filled with packed crowds that the plaintiff made plans to expand the seating capacity by the addition of a lounge.

12. The plaintiff's business partner, defendant Scalora was to arrange for the necessary permits and ensure compliance with the local regulations, as necessary.

13. Prior to the defendant Giuliano being sworn in as mayor, he was law partners with the defendant Scalora, in the firm of Giuliano & Scalora, P.C.

14. The firm prior to Giuliano & Scalora was that of Giuliano & Rafala, with Nella Scalora Rafala, the defendant Scalora's sister, as defendant Giuliano's law partner.

15. Due to the defendant Scalora's business relation with the defendant Giuliano, the defendant Scalora presumptuously and arrogantly assumed he could "pull stings" with the mayor, defendant Giuliano.

16. This arrogance, however, was resented by defendants Warner and Driska, who took umbrage at the arrogance of defendant Scalora and felt their toes were being stepped on when the defendant Scalora "pulled rank" on them.

17. This caused a feud with regard to the opening of the lounge, with the defendants fighting for personal reasons, which had nothing to do with the merits of the opening of the lounge, as the defendants, aside from Scalora, barely even know who the plaintiff was.

18. The representations of the defendant Scalora caused the defendants Warner and Driska, of the City of Middletown's Planning and Zoning department to get angry and team up against the plaintiff.

19. In the end, the plaintiff lost the political war, lost his business and was ruined financially but he did not lose the battle because this lawsuit is being filed in pursuit of justice and fair and adequate compensation for the plaintiff.

20. In response, the mayor now was angry that he was being attacked for appearing to be siding with the plaintiff and thus now had to prove that he was not siding with the plaintiff, and the power struggle continued, writ large on a public stage regarding the Public Bar and Grill.

21. Thus a political war and power struggle began among the defendants with the plaintiff, a young, naive entrepreneur, innocently caught in the middle.

22. This power struggle played itself out on a public stage, of planning and zoning meeting, hearing, appeals the Zoning Board of Appeals, with all the defendants posturing and taking positions to the detriment of the plaintiff, and the Public Bar and Grill.

23. The defendant Scalora was quite vocal and open that he could “pull strings” with the Mayor, defendant Giuliano, in regard to smoothing things over to get the necessary permits for the construction of the lounge.

24. The defendant Scalora assured the plaintiff that he would smooth things over with the Mayor and would pull strings to obtain the necessary permits.

25. The plaintiff acted in reliance on the representations of the defendant Scalora that the necessary permits for the lounge had been taken care of and that the plaintiff could proceed with the construction of the lounge and the opening of the lounge for business.

26. At this point the Mayor began catching heat from the Planning and Zoning Committee and become irate at the plaintiff due to the fact that the Planning and Zoning Committee was becoming irate at the Mayor, defendant Giuliano.

27. At the same time, the Planning and Zoning Committee knew that the defendant Scalora was the plaintiff’s informal business partner.

28. There was a history of feuding between the Planning and Zoning Committee and the defendant Scalora because of previous occasions when the defendant Scalora pulled rank with the Mayor and got his way over the Planning and Zoning Committee.

29. The defendant Scalora drafted loan documents for the purpose of construction of the lounge at Public Bar and Grill and engaged the services of John Lombardo for construction of the lounge.

30. On November 5, 2009, the defendant Scalora as “Lender” and the plaintiff on behalf of Main Street Productions as “Borrower” executed a Loan Agreement for \$50,000 in order to further a portion of the plaintiff’s business referred to as the “Lounge.”

31. Simultaneously with the above-described Loan Agreement, on November 5, 2009, John Lombardo of Middletown also executed a Loan Agreement with the plaintiff, on behalf of Main Street Productions, in the amount of \$50,000 in order to further a portion of the plaintiff’s business referred to as the “Lounge.”

32. In connection with the two Loan Agreements described above, the plaintiff executed Promissory Notes to both Lombardo and the defendant Scalora in the amount of \$50,000 to both Lombardo and Scalora.

33. Upon reliance of the representations of defendant Scalora that the permits and necessary zoning approvals were in place, the plaintiff proceeded to construct the lounge and then open the lounge for business to patrons.

34. The Public Bar and Grill lounge opened for business on Thanksgiving Eve, 2009.

35. Present at the opening of the lounge was the Middletown Health Inspector, as well as employees of the Planning and Zoning Committee.

36. The plaintiff was subsequently issued a cease-and-desist order after the city determined that changes to the Public's private lounge area were made without the approval of the Planning and Zoning Commission, which approval the defendant Scalora has assured the plaintiff had been "taken care of."

37. The Public Bar and Grill came under increased scrutiny by the defendants jointly conspiring against the plaintiff.

38. On December 27, 2009, the defendants conspired to stage a raid on the Public Bar and Grill, and the Middletown Police stormed the establishment, complete with K-9s.

39. The sole purpose the raid was to fabricate evidence to use in order to shut down the operation of the Public Bar and Grill.

40. On December 31, 2009, New Year's Eve, at 3:45 p.m., with no notice or opportunity to be heard, the Public Bar & Grill was summarily shut down. The defendant McMahon signed a document to have the Public Bar and Grill shut down fifteen minutes before New Year's opening because the Public Bar and Grill allegedly was a threat to Middletown.

41. The Department of Consumer Protection Commissioner defendant Farrell suspended the plaintiff's liquor permit without a hearing on New Year's Eve.

42. The defendant Farrell suspended the permit after Acting Deputy Chief Gregory Sneed wrote to him about frequent police calls to the Public, including the fabricated December 27 disturbance where allegedly all on-duty officers were called to the scene.

43. The plaintiff was issued a summary suspension including a suspension of his liquor license, a procedure rarely done, by defendant Farrell.

44. The plaintiff lost revenue from the anticipated New Year's Eve entertainment, as New Year's Eve is one of the biggest sources of revenue of the year for a dining establishment.

45. When the plaintiff filed the appeal of the cease and desist order for the lounge at Public Bar and Grill, he entered the planning and zoning department and overheard Michiel Wacker and defendant Warner discussing how "when you are partners with the Mayor, you are above the rules and regulations."

46. The plaintiff attempted to re-open the Public and Grill under onerous restrictions required by the defendants Giuliano, Farrell and McMahon.

47. The plaintiff's liquor permit was reinstated January 15, 2010 under numerous conditions, including that he hire two off-duty police officers to provide security on Friday and Saturday nights and screen patrons with wand metal detectors.

48. No other local establishments were subject to such onerous restrictions, which were maliciously placed on the plaintiff.

49. The plaintiff won unanimous retroactive approval to expand the bar from the Planning and Zoning Commission on February 24, 2010.

50. The defendant City, at the urging of the defendant Giuliano, appealed the decision by its own commission in March, 2010. The defendant Giuliano spoke against approval during a public hearing before the Planning and Zoning Commission in the spring of 2010.

51. The plaintiff was maliciously targeted by the defendants in stark comparison to other local dining and entertainment establishments, such as Harbor Park, Mezzo Grill, Nikitas, Shadow Room, JavaPalooza, and others.

52. The combination of the City's appeal and issues with the Department of Consumer Protection's Liquor Control Division led the plaintiff to shut down his business.

53. The plaintiff was eventually forced to close the Public Bar and Grill for business in April 2010.

54. In April of 2010, the plaintiff was forced to transfer the lease for 337-351 Main Street and also sell the assets of his business, Main Street Productions, LLC.

55. The defendant Scalora negotiated a cash transaction on behalf of both the buyer and seller, which is a conflict of interest and a breach of fiduciary duty, as well as improper because the purpose of the cash sale was to avoid sales and use tax liability.

56. At the time of the sale of assets, the defendant Scalora was an attorney who had been admitted to the bar of Connecticut since 2002.

57. At the time of the sale of assets, the plaintiff was a naïve, trusting, young 26-year-old entrepreneur who had never before dealt with such business transactions and was relying on defendant Scalora, his business partner, to represent him properly in the transaction.

58. As a direct result of the defendant Scalora representing both the buyer and seller, the plaintiff had a poor business transaction with a resultant loss of potential revenue because all the cash proceeds of the sale were pocketed by the other parties, including the defendant Scalora and real estate agent Jacobson, which proceeds should have used to pay the tax liability.

59. The real estate agent for this transaction was Geraldine Jacobson, a licensed realtor with Coldwell Banker Calabro & Associates.

60. At the time of the transaction, the defendant Scalora was also communicating with Monica, the step-daughter of Michael Calabro, of Calabro & Associates, about a contract or

potential future purchase of the Main Street property that the plaintiff was being forced to sell, additional evidence of the improper self-dealing of defendant Scalora.

61. The defendant Scalora, instead of representing the plaintiff's interests in the sale, was blatantly and unethically negotiating for a possible purchase himself.

62. The buyers were Frank Johnson and Melysa Johnson, who subsequently opened up their establishment at 337-351 Main Street operating as Downtown Bar & Grill, which only stayed in business a short while, and closed by the end of 2010.

63. The plaintiff filed for bankruptcy under Chapter 7 on August 17, 2011 due to all the debts that had accrued from the closing of the Public Bar and Grill.

V. LEGAL ALLEGATIONS

Count One: (as to defendants Farrell, Giuliano, McMahon, Sneed, Warner, Driska & City of Middletown– 42 U.S.C. § 1983)

64 Paragraphs 1 – 63 are incorporated by reference.

65. In the manner described above, the defendants have deprived the plaintiff of property and liberty without procedural due process of law in violation of the Fourteenth Amendment to the United States Constitution as enforced by Sections 1983 and 1988 of Title 42 of the United States Code.

66. As a result, the plaintiff has suffered economic losses and will continue to suffer such economic losses in the future.

Pendant State Claims

Count Two: (as to all defendants: Intentional Infliction of Emotional Distress)

67 Paragraphs 1 – 63 are incorporated by reference.

68. The conduct of the defendants described above was extreme and outrageous and was carried out with the knowledge that was likely to cause the plaintiff to suffer emotional distress.

WHEREFORE the plaintiff claims judgment for intentional infliction of emotional distress against the defendants for compensatory damages, punitive damages and costs.

Count Three: (as to all defendants: Negligent Infliction of Emotional Distress)

69. Paragraphs 1 – 63 are incorporated by reference.

70. Throughout all of the events described above, the defendants negligently disregarded the fact that their actions were likely to cause the plaintiff to suffer, and were likely to cause any person of ordinary sensibilities similarly situated to the plaintiff to suffer, emotional distress.

WHEREFORE the plaintiff claims judgment against the defendants for negligent infliction of emotional distress for compensatory damages.

Count Four: (as to defendant Scalora: Breach of Fiduciary Duty)

72. Paragraphs 1 – 63 are incorporated by reference.

73. There existed a relationship of trust and confidence between the plaintiff, a young, naïve, 26-year-old entrepreneur and the defendant Scalora, an attorney licensed since 2002 who was acting as the business partner of the plaintiff.

74. Due to the superior knowledge, skill and experience of the defendant Scalora, he was under a duty to represents the business interests of the plaintiff.

75. The breach of fiduciary duty by defendant Scalora, as previously set forth herein, was willful, wanton and/or committed with complete and utter disregard for the rights of the plaintiff.

76. As a result of the wanton, willful and intentional acts of the defendant Scalora, the plaintiff has been damaged to his loss and detriment.

Count Five: (as to defendant Scalora: Negligent Misrepresentation)

77. Paragraphs 1 – 63 are incorporated by reference.

78. The defendant Scalora misrepresented to the plaintiff that the permits and approvals for the lounge would be “taken care of.”

79. The defendant Scalora knew or should have known that said representations were false.

80. The plaintiff reasonably relied on the defendant Scalora's misrepresentations.

81. The plaintiff suffered pecuniary harm as a result.

Count Five: (as to defendant Scalora: Innocent Misrepresentation)

82. Paragraphs 1 – 63 are incorporated by reference.

83. The defendant Scalora made material misrepresentations of fact to the plaintiff in regard to the permits and approvals for the lounge.

84. These representations were made for the purpose of inducing the plaintiff to act.

85. The defendant Scalora's representations that the permits and approvals for the lounge would be "taken care of" were untrue.

86. There was justifiable reliance by the plaintiff on the representations of the defendant Scalora.

87. The plaintiff was damaged because he proceeded to open the lounge, based on the representations of defendant Scalora.

Count Six: (as to defendant Scalora: Tortious Interference with Business Relationships)

88. Paragraphs 1 – 63 are incorporated by reference.

89. The plaintiff had numerous business relationships were a necessary part of the operation of the Public Bar and Grill.

90. Due to the interference of the defendant Scalora with the plaintiff's business relationships, the plaintiff was forced to shut down his bar and eventually declare bankruptcy.

WHEREFORE the plaintiff claims judgment against the defendant Scalora for tortious interference with a business relationship for compensatory damages, punitive damages and costs.

VI. REQUESTS FOR RELIEF

WHEREFORE, the plaintiff seeks the following relief:

- A. A jury trial;
- B. Compensatory damages in an amount to be determined at trial;
- C. Punitive damages in an amount to be determined at trial;
- D. Attorneys fees pursuant to 42 U.S.C. § 1988;
- E. Costs and disbursements; and
- F. Any other relief that this Court deems just and proper.

The Plaintiff

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