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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

J. EDWARD ESTEP, L.R.A. No. 0606,

Petitioner and Plaintiff,

v.

Civil Action No. 22-P-268
Honorable David J. Hardy

WEST VIRGINIA REAL ESTATE
APPRAISER LICENSING AND
CERTIFICATION BOARD, AND DEAN
E. DAWSON, Individually and as Chair of
the West Virginia Real Estate Appraiser
Licensing and Certification Board,

Respondents and Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pending before the Court is Defendants West Virginia Real Estate Appraiser Licensing and Certification Board and Dean E. Dawson's (collectively "Defendants") Motion for Summary Judgment. This Court held oral argument on this Motion on February 12, 2024. Based on the following Findings of Fact and Conclusions of Law, the Court **GRANTS IN PART AND DENIES IN PART** Defendants' Motion for Summary Judgment.

FINDINGS OF FACT

This action is based upon a petition for writ of mandamus, motion for preliminary and/or permanent injunction, and a Complaint filed by Petitioner J. Edward Estep (hereinafter referred to as "Estep" or "Petitioner"). Petitioner alleges that Petitioner is a licensed Real Estate Appraiser with license number LR0606. *See Amended Petition for Writ of Mandamus, Motion, and Complaint*, ¶ 2. Respondents/Defendants are the West Virginia Real Estate Appraiser Licensing and Certification Board (individually referred to as "the Board") and Dean E. Dawson (individually referred to as "Mr. Dawson"). *Id.*, ¶¶ 3, 4. As identified by Petitioner, the Board is a

state entity created by *West Virginia Code* § 30-38-1, *et seq.* and Mr. Dawson is a member and the Chair for the Board. *Id.*

Petitioner filed this action seeking to have this Court “command Respondent and Defendant, West Virginia Real Estate Appraiser Licensing and Certification Board to immediately dismiss the three (3) pending complaints against [Petitioner], and expunge all record of the allegations and wrongful suspension of his license thereon,” to have the Court enter an Order enjoining Respondent/Defendant “Dean E. Dawson from serving upon the West Virginia Real Estate Appraiser Licensing and Certification Board in any future matter related to Petitioner,” and for judgment in favor of Petitioner on the claims presented in the Complaint. *See Id.*, p. 1, 2. Specifically, as to the claims asserted against Respondents/Defendants, Petitioner brings forth claims for violation of Petitioner’s due process rights under the Article III, 10 of the *Constitution of West Virginia*, defamation, tortious interference with a contract, and the tort of outrageous conduct. *See generally Id.*

At all relevant times alleged in the Petition/Motion/Complaint, Mr. Dawson served as an independent appraiser and the Chair for the Board. *Id.* Petitioner has alleged that there are three (3) complaints against Petitioner that are currently pending before the Board and “should have been summarily dismissed by the Standards Committee of the Board at the allegation/inquiry stage,” *Id.*, ¶¶ 5, 6. The three complaints are (1) Complaint No. S21-005; (2) S21-007; and (3) S20-13. *Id.*, ¶¶ 7 – 17. Petitioner alleges that Complaint No. S21-005 and S21-007 pertain to expert testimony Petitioner offered that “were not in fact ‘appraisals’ and merely his written expert opinion.” *Id.*, ¶ 9. Petitioner contends that the Board applied the Uniform Standards of Professional Appraisal Practice (“USPAP”) standards when reviewing Petitioner’s expert reports and that the USPAP standard should have led the Board to dismiss Complaint No. S21-005 and S21-007 at the

allegation/inquiry stage. Id., ¶ 12 – 14. Additionally, Petitioner claims that Mr. Dawson had a textbook “conflict of interest” in regards to his involvement with Complaint No. S21-005 and S21-007. Id., ¶ 27. With respect to Complaint No. S20-13, Petitioner alleges that the complaint deals with a disagreement over the value of the property between the property owner and the appraiser, which, by the Board’s own website, is something the Board cannot assist with. Id., ¶¶ 15 – 17. Thus, the Board should have dismissed S20-013 at the allegation/inquiry stage as well but failed to do so. Id.

Ultimately, on November 12, 2021, the Board issued an Order suspending the license of Petitioner. Id., ¶ 24. Petitioner alleges that the Order suspending Petitioner’s license was without a “Notice Hearing” and was signed by Mr. Dawson, the Chair for the Board, Id., ¶ 25. Petitioner contends that there is no legal or equitable basis for suspending Petitioner’s license without hearing “since there exists no ‘extraordinary circumstances’ and ‘an immediate danger to the public.’” Id., ¶ 32. It is Petitioner’s contention that the Board had no “extraordinary circumstances” or “immediate danger to the public” for which it could use as grounds for issuing a suspension of Petitioner’s license “without Notice of Hearing.” Id., ¶¶ 33 – 39. Thus, Petitioner claims his due process rights under Article III, 10 of the *Constitution of West Virginia* were violated.

Petitioner goes on to additionally claim that the publication of the suspension of Petitioner’s appraisal license constitutes a defamatory statement under West Virginia law, constitutes tortious interference with Petitioner’s business relationships under West Virginia law, and that Respondents/Defendants’ actions were so atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency and that Respondents/Defendants’ actions were done with the intent to inflict emotional distress or acted so recklessly when it was certain that that emotional distress would result from the Respondents/Defendants’ actions. See generally Id.

Counts II – IV.

CONCLUSIONS OF LAW

Summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” W. Va. R. Civ. P. 56(c). Summary judgment is proper where the moving party demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Shaffer v. Acme Limestone Company, Inc.*, 524 S.E.2d 688 (W. Va. 1999); *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329, 336 (W. Va. 1996); *Painter v. Peavy*, 451 S.E.2d 755, 758 (W. Va. 1994). The West Virginia Supreme Court has explained that:

Roughly stated, a “genuine issue” for purposes of West Virginia Rule of Civil Procedure 56(c) is simply one half of a trialworthy issue, and a genuine issue does not arise unless there is sufficient evidence favoring the non-moving party for a reasonable jury to return a verdict for that party. The opposing half of a trialworthy issue is present where the non-moving party can point to one or more disputed “material” facts. A material fact is one that has the capacity to sway the outcome of the litigation under the applicable law.

Shaffer v. Acme Limestone Company, Inc., 524 S.E.2d 688 (W. Va. 1999) (citing Syl. pt. 5. *Jividen v. Law*, 461 S.E.2d 451 (W. Va. 1995)).

The West Virginia Supreme Court of Appeals has further instructed that “[t]he circuit court’s function at the summary judgment stage is not ‘to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.’ ” *Painter*, 451 S.E.2d at 758 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). Even though the non-moving party is entitled to have all underlying facts and inferences viewed in the light most favorable to him, the non-moving party must offer some “concrete evidence” from which a reasonable finder of fact could return a verdict in its favor or other “significant probative evidence

tending to support the complaint.” *Williams*, 459 S.E.2d at 337 (quoting *First Nat’l Bank of Arizona v. Cities Serv. Co.*, 391 U.S. 253, 290 (1968)). Once the party moving for summary judgment properly documents its motion, “the non-moving party must take the initiative and by affirmative evidence demonstrate that a genuine issue of fact exists.” *Morgantown v. West Virginia University Medical Corp.*, 457 S.E.2d 637, 643 (W. Va. 1995) (quoting *Painter*, 451 S.E.2d at 759).

A “genuine issue does not arise unless there is sufficient evidence favoring the non-moving party for a reasonable jury to return a verdict for that party.” Syl. pt. 5 (in part), *Kelley v. City of Williamson*, 655 S.E.2d 528, 530 (W. Va. 2007); see also *Calhoun v. Traylor*, 624 S.E.2d 501, 504 (W. Va. 2005); *Miller v. City Hosp., Inc.*, 475 S.E.2d 495, 499 (W. Va. 1996). Self-serving statements are not enough to defeat a motion for summary judgment. *Chafin v. State Farm Fire and Casualty*, 2003 U.S. Dist. LEXIS 28746, citing *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *National Enterprises, Inc. v. Barnes*, 201 F.3d 331, 335 (4th Cir. 2000).

A. The Court DENIES summary judgment and finds that Mr. Dawson is not entitled to absolute immunity from this action pursuant to *West Virginia Code* § 30-38-10 and finds that neither Defendant is entitled to qualified immunity.

Here, Defendants argue Mr. Dawson is entitled to absolute immunity pursuant to *West Virginia Code* § 30-38-10(a) and that both Defendants are entitled to qualified immunity for all of Petitioner’s claims. However, this Court finds that Defendants are not entitled to statutory or qualified immunity because there are questions of fact which are best left to the fact finder. Malice is a question of fact and the Court has found that there exists enough sufficient evidence that a reasonable jury could find that Defendants acted with malice. Further, there is a question of fact as to whether in suspending Plaintiff’s license the Defendants violated a clearly established

constitutional or statutory of right of the Plaintiff. The Court has again found that there exists enough sufficient evidence that a reasonable jury could find that Plaintiff suffered a violation of a clearly established constitutional or statutory right has occurred. Accordingly, this Court **DENIES** summary judgment to these Defendants on the issues of the asserted immunities.

B. This Court GRANTS summary judgment for Defendants on Plaintiff's Count IV claim for tort of outrageous conduct.

Next, based on the arguments asserted in Defendants' Motion for Summary judgment and at oral argument, this Court **GRANTS** summary judgment for Defendants on Plaintiff's Count IV claim for the tort of outrageous conduct and dismisses the same with prejudice.

C. Based on the agreement of the parties, this Court DISMISSES Plaintiff's Count III claim for tortious interference with contract.

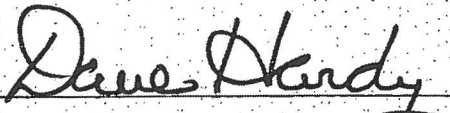
In addition, the parties have advised the Court that they have agreed to the dismissal of Plaintiff's Count III claim for tortious interference with contract. Accordingly, the Court **DISMISSES** Plaintiff's Count III claim with prejudice.

CONCLUSION

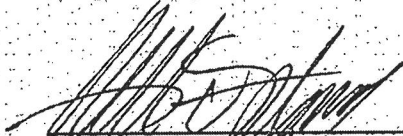
Based on the forgoing, this Court **GRANTS IN PART AND DENIES IN PART** prejudice Defendants' Motion for Summary Judgment. This Court **DENIES** summary judgment on the basis of statutory and qualified immunity, but **GRANTS** summary judgment for Defendants on Plaintiff's Count IV claim for the tort of outrageous conduct, and **DISMISSES** the same with prejudice. The Court also **DISMISSES** Plaintiff's Count III claim with prejudice based on the agreement of the parties. All other claims remain pending. Any objections or exceptions of the parties to the rulings made by the Court in this Order are noted and preserved.

The Clerk is directed to send certified copies of this Order to counsel of record.

ENTERED this 23rd day of Feb., 2024.


HONORABLE DAVID HARDY

Prepared by:



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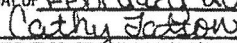
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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT,
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 26
DAY OF February 2024

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 

Agreed to by:



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