

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

LIBERTY UNIVERSITY, INC.,)
)
Plaintiff/Counterclaim Defendant,)
)
v.)
)
JERRY L. FALWELL, JR.,)
)
Defendant/Counterclaim Plaintiff.)

Case No. CL21000354-00 - 01

DEFENDANT’S COUNTERCLAIM AGAINST PLAINTIFF

Defendant and Counterclaim Plaintiff, Jerry L. Falwell, Jr. (“**Mr. Falwell**” or “**Defendant**”), by counsel, states the following as his Counterclaim (the “**Counterclaim**”) against Plaintiff and Counterclaim Defendant, Liberty University, Inc. (“**Liberty**” or “**Plaintiff**”).

Introduction

1. Mr. Falwell brings this breach of contract and defamation action against Liberty following his resignation with good cause and the actions taken by Liberty employees in the wake of Mr. Falwell’s resignation. Additionally, Mr. Falwell brings claims to recover Mr. Falwell’s personal property Liberty still has control over following Mr. Falwell’s resignation.

2. Liberty’s actions directly breach their duty not to defame or disparage Mr. Falwell and on August 26, 2020, Liberty’s actions were in breach of the agreement between Mr. Falwell and Liberty.

3. Over the course of his adult life, Mr. Falwell has dedicated significant time, energy, and resources to Liberty. Following his father’s, and Liberty’s founder, death in 2007, Mr. Falwell was appointed President and Chancellor of Liberty, beginning the exponential growth Liberty sees today. From 2007 to 2020 alone, Liberty’s enrollment increased from 9,600 residential students

and 27,000 online students to 15,000 residential students and 108,000 online students. Through Mr. Falwell's leadership, he has helped steer Liberty away from financial ruin, while developing Liberty into the world's leading evangelical university and one of the largest private non-profit universities in the nation.

4. In August of 2020, although at least certain members of Liberty's Board of Trustees were aware, it became public that Mr. Falwell's wife, Rebecca Falwell ("**Becki**"), engaged in an extramarital affair with Giancarlo Granda, who was also attempting to extort Mr. Falwell and Becki.

Parties

5. Mr. Falwell is a citizen and resident of Virginia. He currently resides in Bedford County, Virginia.

6. Liberty is a Virginia non-stock corporation headquartered in Lynchburg, Virginia with its principal office located at 1971 University Boulevard, Lynchburg, Virginia 24515.

Jurisdiction

7. This Court has jurisdiction over this matter pursuant to Va. Code §§ 17.1-513 and 8.01-328.1. Liberty is organized as a non-stock corporation under the laws of the Commonwealth of Virginia and has its principal office in the Commonwealth of Virginia.

8. Venue is proper in this Court pursuant to Va. Code § 8.01-262(1).

Factual Background

9. On August 24, 2020, Mr. Falwell provided Liberty with written notice of his resignation for "Good Reason," as defined in Mr. Falwell's 2019 Employment Agreement with Liberty (the "**Employment Agreement**").

10. The Employment Agreement provides in Section 3.7 that “[t]he parties to this Agreement shall not make defamatory or slanderous remarks about the other in public fora or settings Neither party, however, waives the protections afforded by otherwise applicable common law privileges.”

11. “The provisions of this Section 3.6 [*sic*] shall survive termination of this Agreement.

12. Additionally, Section 3.7 of the Employment Agreement provides that in only one situation may the Board discuss the reasoning and circumstances forming the Board’s determination. Section 3.7 states, “[i]f Falwell’s employment is terminated *for cause*, the parties may truthfully explain the circumstances forming the bases for the determination of cause.” (Emphasis added). Mr. Falwell’s termination was not for cause.

13. Falwell resigned and the Board accepted his resignation for “Good Reason.” As part of Mr. Falwell’s resignation for Good Reason and payment of severance, Mr. Falwell agreed to and executed a release of all claims he may have against Liberty up to and including August 25, 2020.

14. Prior to Mr. Falwell’s resignation, Mr. Falwell provided a statement to the *Washington Examiner* that detailed Mr. Falwell’s and Becki’s interactions with Granda and made clear that Granda had attempted to extort the Falwells through salacious allegations that were false.

15. At the time of Mr. Falwell’s resignation, Liberty possessed information that Granda’s statements were false because Mr. Falwell had previously disclosed information regarding the affair to a top official who was then, and until recently, a member of Liberty’s Board of Trustees.

16. On August 24, 2020, Granda followed through with his extortive threat to accuse Mr. Falwell of participating in Granda's affair with Becki. In a *Reuters* article titled *The Falwell Affair*, Granda made the outrageously false claim that Mr. Falwell participated in Granda's affair with Becki and "enjoyed watching" them. The *Reuters* article also noted that Mr. Falwell "categorically denies" the allegations.

17. Yet, despite Liberty's knowledge, when the *Reuters* article was published, not one member of the Board or the Executive Committee asked Mr. Falwell about the veracity of Granda's lies before requesting Mr. Falwell's resignation and then defaming him by repeating and endorsing the lies. Liberty performed no investigation whatsoever into the veracity of Granda's claims before requesting Mr. Falwell's resignation or before making the Defamatory Statements, as defined below.

18. On August 26, 2020, David Nasser ("Nasser"), Liberty's Senior Vice President for Spiritual Development, presented a speech at Liberty's Campus Community, an event at the start of a new school year where thousands of Liberty's residential students and Liberty's faculty are in attendance. Liberty also broadcasts the program online.

19. In the lead-up to Liberty's Campus Community, Nasser helped secure a widespread attendance and media presence by promoting the event, including at Liberty's Convocation, which was held earlier in the day, broadcasted online, and considered mandatory for all faculty, staff, and students. During Convocation, Nasser told the attendees that he would be discussing the events leading to Mr. Falwell's resignation at Liberty's Campus Community event.

20. On information and belief, Nasser's speech later that day at Liberty's Campus Community was largely scripted; other Liberty employees participated in drafting the speech, and Nasser was reading from a script during his speech.

21. Nasser began the defamatory and disparaging remarks about Mr. Falwell by stating in his speech, “[t]here are those who have told me to lay low and to not mention any of the things that led to Jerry Falwell’s resignation yesterday.” Moments later, Nasser tells the audience, “you’re also right if you wanna see stern and swift accountable action for sinful behavior.” A moment later, he tells the audience, “the embarrassment that’s been brought upon you as a Liberty student and more importantly brought upon the name of Christ is wrong.” A moment later, he tells the audience, “[y]our concerns, if you’re concerned, are valid. If you’re not concerned, you should be concerned.” Later in the speech, Nasser returns to discussing Mr. Falwell and Granda’s lies by directly referring to the same lies: “[t]hen the summer came to a close, and we opened the semester with a series of revelations about Jerry Falwell that can only be described as shameful. That’s okay, by the way, to say it. It’s okay to call sin, sin. Paul says in Ephesians. Have nothing to do with the fruitless deeds of darkness but rather, expose them. It is shameful to even mention what the disobedient do in secret. But everything exposes by the light becomes visible.” A moment later, he proceeds to state again, “[i]t’s okay to call sin, sin.” These comments taken together are referred to herein as the “**Defamatory Speech**.”

22. The Defamatory Speech is false and defamatory. Taken together, Liberty’s statements repeat, as a statement of fact, Granda’s lies, specifically that Mr. Falwell watched Granda have sexual intercourse with Becki and participated in their affair. Granda’s lies were first reported in the *Reuters* article two days before Nasser’s speech garnering national attention. Upon information and belief, every or virtually every Liberty student and faculty member present for Nasser’s speech was aware of Granda’s lies and understood that the lies were “the things that led to Jerry Falwell’s resignation yesterday,” as Nasser put it. Upon information and belief, that is exactly what Liberty intended to convey and intended for listeners to understand and what the

audience in fact understood. By saying, “[y]our concerns, if you’re concerned, are valid,” referring to the subject matter of Granda’s lies as “sinful behavior” and a “sin,” and as something “shameful” the “disobedient do in secret,” Liberty unequivocally told its audience and the world that Mr. Falwell had done what Granda had falsely said he did — in other words, that Granda’s lies were “valid.”

23. The Defamatory Speech was subject of much media attention and was attended by members of the national press, as Liberty was no doubt aware it would be.

24. Liberty published a video of Campus Community and the Defamatory Speech online to its website, where the video remains online. *See https://watch.liberty.edu/playlist/dedicated/82178711/1_4qg5ezeh/1_p48anqx0* (last accessed October 19, 2021).

25. On information and belief, Nasser was authorized or directed to speak on behalf of Liberty at the Campus Community event. In fact, Nasser did so in the course and scope of his employment and in furtherance of Liberty’s interests, and was acting as Liberty’s agent in his role as Senior Vice President. Furthermore, the Campus Community event was an official Liberty event where thousands of Liberty students were in attendance, alongside Liberty’s faculty, staff, and leadership, including its acting President and Chairman Jerry Prevo.

26. On August 31, 2020, Liberty University issued a press release affirming its prior condemnation of Mr. Falwell. In the statement, Liberty accused Mr. Falwell of a “lack of spiritual stewardship” and suggested that he had not “demonstrate[d] a full commitment to the spiritual mission of Liberty University by words, actions, and example.” Liberty clearly connected its accusation of a lack of spiritual leadership with Granda’s false allegations by noting that “all the signs were not there until the start of last week,” *i.e.*, when Granda’s false allegations were

publicized, and that while Liberty “still didn’t know the full scope of the matter, [it] had learned enough” These statements together are referred to as the “**Defamatory Press Release.**”

27. Liberty posted the statement online, where it remains currently. See <https://www.liberty.edu/news/2020/08/31/liberty-university-board-pledges-full-commitment-to-spiritual-mission-and-launches-independent-investigation/> (last accessed October 19, 2021).

28. The Defamatory Press Release is false and defamatory because, as with the Defamatory Speech, it suggests that Mr. Falwell’s presidency came to an end because of Granda’s lies and that by claiming Mr. Falwell “lack[ed] spiritual stewardship” and conducted himself inconsistently with the “spiritual mission” of Liberty, said lies were truthful.

29. Liberty has also defamed Mr. Falwell in the pages of its own publication, providing statements that it knew would be disseminated by the media. For example, a number of articles in the September 24, 2020 issue of the *Liberty Journal*, an official magazine published by the University and distributed nationally to media outlets and alumni, further accused Mr. Falwell of inappropriate behavior. Specifically, one article republished the August 31, 2020 accusation in the Defamatory Press Release of a “lack of spiritual stewardship” from Mr. Falwell. Another article said that “[r]ecent events involving Liberty’s fourth president, Jerry Falwell, Jr., have broken trust for most in Liberty University, and some question Liberty’s commitment to its nearly 50-year mission of *Training Champions for Christ.*” These statements together are referred to as the “**Defamatory Journal Articles,**” and together with the Defamatory Speech and Defamatory Press Release, the “**Defamatory Statements.**”

30. Liberty published the September 24, 2020 issue of the *Liberty Journal* online, where it remains online. See https://issuu.com/libertyuniversity/docs/fall2020_libertyjournal/1?ff (last accessed October 19, 2021).

31. The Defamatory Journal Articles are false and defamatory because, as with the Defamatory Speech and Defamatory Press Release, they suggest that Mr. Falwell's presidency came to an end because of Granda's lies, including by asserting the lies are true by claiming Mr. Falwell "lack[ed] spiritual stewardship" and that he had "broken trust for most in Liberty University."

32. Despite Liberty's current President, Jerry Prevo, stating on October 23, 2020 that "in the time I have been here I have not seen any wrong-doing on [Mr. Falwell's part]," Liberty stands by its Defamatory Statements against Mr. Falwell as each remains publicly available on Liberty's website, and Liberty has never apologized or retracted the Defamatory Statements.

33. As a direct and proximate result of the Defamatory Statements, Mr. Falwell's reputation, profession, and future employment prospects and business opportunities have been harmed.

34. Upon information and belief, there is widespread knowledge of the Defamatory Statements within the Liberty community, the evangelical community, the legal community, the real estate industry, the academic field, the political world, and various media outlets.

35. As a direct and proximate result of the Defamatory Statements, Mr. Falwell has a drastically reduced ability to attach his name to, or be otherwise publicly involved in, business and charity organizations and events without a real and justifiable fear that his damaged reputation will erode the reputation of such organizations.

36. For instance, prior to the Defamatory Statements, Mr. Falwell received a number of invitations to appear on television or at public events to discuss, among other things, Liberty, evangelicalism, and politics. Indeed, Mr. Falwell has considered becoming a recurring contributor

on news outlets. Since, Liberty's Defamatory Statements, Mr. Falwell has lost invitations and has lost any prospect of becoming a media contributor.

37. As a direct and proximate result of Liberty's Defamatory Statements, Mr. Falwell has a drastically reduced ability to attend industry-related academic, political, legal, or real-estate conferences, and to seek business and professional opportunities in those fields, without a real and justifiable fear that any new business contacts he develops will have knowledge of the Defamatory Statements and associate his damaged reputation with any companies he establishes, manages, and/or owns. In the past, Mr. Falwell has attended a number of such conferences per year.

38. Both the Defamatory Statements and the attendant fear that others will associate Mr. Falwell's businesses, charities, family, and friends with his damaged reputation have caused Mr. Falwell significant anguish and humiliation.

39. As a direct and proximate result of Liberty's Defamatory Statements, Mr. Falwell has also become the subject of much ire and hatred over the "sin" Liberty claimed he committed in its Defamatory Statements. Upon information and belief, members of the public have written numerous hateful messages on social media in reliance on Liberty's Defamatory Statements.

COUNT I: BREACH OF EMPLOYMENT AGREEMENT

40. Mr. Falwell repeats and realleges the allegations contained in the foregoing paragraphs as if fully stated herein.

41. On July 1, 2019, Mr. Falwell and Liberty executed the 2019 Employment Agreement.

42. Pursuant to Section 3.7 of the 2019 Employment Agreement, Liberty was barred from "mak[ing] defamatory or slanderous remarks about [Mr. Falwell] in public fora and settings."

43. Pursuant to Section 3.7 of the 2019 Employment Agreement, the parties agreed that “[t]he provisions of Section 3.6 [sic] shall survive termination of this Agreement.”

44. Liberty breached the foregoing provision by making and publishing the Defamatory Statements after Mr. Falwell’s resignation.

45. Furthermore, pursuant to Section 3.7 of the 2019 Employment Agreement, Liberty was permitted to “truthfully explain the circumstances forming the basis” of termination if “Falwell’s employment is terminated *for cause*.” (Emphasis added).

46. Liberty breached the foregoing provision because Mr. Falwell was not terminated for cause. Mr. Falwell resigned for Good Reason. Therefore, Liberty agreed not to discuss the circumstances surrounding the conclusion of Mr. Falwell’s employment as it did by making and publishing the Defamatory Statements.

47. As a direct and proximate result of the Defamatory Statements, Mr. Falwell has suffered damage to his reputation, damage to his profession, humiliation, and anguish, lost business opportunities, and suffered other pecuniary damage.

COUNT II: DEFAMATION

48. Mr. Falwell repeats and realleges the allegations contained in the foregoing paragraphs as if fully stated herein.

49. Liberty made and published the Defamatory Statements, which are statements of fact of and concerning Mr. Falwell. These Defamatory Statements are false and exposed Mr. Falwell to contempt, ridicule, and hatred.

50. The Defamatory Statements are also defamatory *per se* because they impute to Mr. Falwell unfitness to perform the duties of an office or employment and prejudice him in his profession or trade.

51. Liberty made and published the Defamatory Statements knowing that such statements would be disseminated throughout the country and world.

52. Liberty made and published the Defamatory Statements without any applicable privilege.

53. Liberty made and published the Defamatory Statements with knowledge that the statements were false and/or with reckless disregard for the truth or falsity of the statements, or with at least negligent disregard for the truth or falsity of the statements.

54. As a direct and proximate result of the Defamatory Statements, Mr. Falwell has suffered damage to his reputation, damage to his profession, humiliation, and anguish, lost business opportunities, and suffered other pecuniary damage.

COUNT III: CONVERSION

55. Mr. Falwell repeats and realleges the allegations contained in the foregoing paragraphs as if fully stated herein.

56. Upon Mr. Falwell's resignation, Liberty maintained certain property belonging to Mr. Falwell.¹

57. Following Mr. Falwell's resignation, Liberty took certain steps to ensure Mr. Falwell did not return to Liberty's campus. Liberty has banned Mr. Falwell and Becki from visiting campus and upon information and belief, has provided Liberty police instructions to issue citations to Mr. Falwell and Becki for trespass, despite the fact that both of Mr. Falwell's parents are interred on Liberty's campus.

¹ Liberty has been working with Mr. Falwell to return the certain property belonging to Mr. Falwell and Mr. Falwell intends to continue working with Liberty regarding return of his property. There remains additional property Mr. Falwell owns that Liberty maintains.

58. Facing potential trespass citations, Mr. Falwell has been intentionally deprived of many of his personal possessions.

59. Mr. Falwell owns and has the right to immediate possession of all personal property belonging to him, including, but not limited to:

a. a large collection of books, including numerous volumes of the Virginia Code and other legal texts;

b. various legal files from Mr. Falwell's time as an active member of the Virginia bar from 1988 to 2007;

c. a .38 revolver

d. the website JerryFalwell.com

e. various personal items and pictures from Mr. Falwell's Liberty offices;

f. many historical items owned by Mr. Falwell residing in the Jerry Falwell Museum;

g. the personal property located at 6024 Piedmont Place, Lynchburg, Virginia;

h. various personal items stored in multiple Liberty Warehouses; and

i. three horses provided to Liberty's equestrian center.

60. Since Mr. Falwell's resignation, Liberty has wrongfully possessed and controlled Mr. Falwell's property.

61. As a result of Liberty's conversion, Mr. Falwell has been damaged in an amount that will be determined at trial.

COUNT IV: DETINUE (in the alternative)

62. Mr. Falwell repeats and realleges the allegations contained in the foregoing paragraphs as if fully stated herein.

63. Mr. Falwell is the lawful owner of the property previously described in paragraph 59 and has an immediate right to possession of the property.

64. Mr. Falwell's property that remains in Liberty's possession is easily identifiable and of value.

65. Liberty has maintained Mr. Falwell's property in its possession prior to the institution of this claim, and Mr. Falwell has been damaged by its detention in an amount that will be determined at trial.

COUNT V: TRESPASS TO CHATTELS (in the alternative)

66. Mr. Falwell repeats and realleges the allegations contained in the foregoing paragraphs as if fully stated herein.

67. Upon Mr. Falwell's resignation, Liberty maintained certain property belonging to Mr. Falwell.

68. Following Mr. Falwell's resignation, Liberty took certain steps to ensure Mr. Falwell did not return to Liberty's campus. Liberty has banned Mr. Falwell and Becki from visiting campus and, upon information and belief, has provided Liberty police instructions to issue citations to Mr. Falwell and Becki for trespass, despite the fact that both of Mr. Falwell's parents are interred on Liberty's campus.

69. Facing potential trespass citations, Mr. Falwell has been intentionally deprived of many of his personal possessions.

70. Mr. Falwell owns and has the right to immediate possession of all personal property belonging to him, including, but not limited to:

a. a large collection of books, including numerous volumes of the Virginia Code and other legal texts;

p. various legal files from Mr. Falwell's time as an active member of the Virginia bar from 1988 to 2007;

c. a .38 revolver;

d. the website JerryFalwell.com;

e. various personal items and pictures from Mr. Falwell's Liberty offices;

f. many historical items owned by Mr. Falwell residing in the Jerry Falwell Museum;

g. various personal items stored in multiple Liberty Warehouses; and

h. three horses provided to Liberty's equestrian center.

71. Since Mr. Falwell's resignation Liberty has wrongfully possessed and controlled Mr. Falwell's property.

72. As a result of Liberty's trespass to Mr. Falwell's chattel, Mr. Falwell has been damaged in an amount that will be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth herein, Counterclaim Plaintiff, Jerry Falwell, Jr., respectfully requests this Honorable Court:

a. enter judgment in Mr. Falwell's favor;

b. award Mr. Falwell damages to be determined at trial for Liberty's acts in breaching the 2019 Employment Agreement;

c. award Mr. Falwell damages to be determined at trial for Liberty's conversion of Mr. Falwell's property, or in the alternative award Mr. Falwell damages for his action in detinue and Liberty's trespass to chattel;

d. award Mr. Falwell punitive damages;

- e. enjoin Liberty from retaining possession of the property belonging to Mr. Falwell;
- f. award Mr. Falwell pre-judgment interest; and
- g. provide Mr. Falwell any other relief this Court deems appropriate.

Dated: October 21, 2021

Respectfully submitted,

JERRY L. FALWELL, JR.



Counsel

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CERTIFICATE OF SERVICE

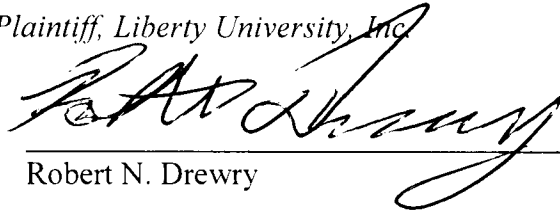
I hereby certify that on the 21st day of October, 2021, a true and correct copy of the foregoing *Defendant's Counterclaim Against Plaintiff* was served via e-mail transmission and first-class, postage-prepaid, U.S. Mail upon the following:

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Robert N. Drewry

OCT 21 2021