

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as Energy Transfer Equity, L.P.) and Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.),

Plaintiffs,

vs.

Greenpeace International (also known as “Stichting Greenpeace Council”); Greenpeace, Inc.; Greenpeace Fund, Inc.; Red Warrior Society (also known as “Red Warrior Camp”); Cody Hall; Krystal Two Bulls; and Charles Brown,

Defendants.

File No. 30-2019-CV-00180

MEMORANDUM OPINION
AND ORDER

[¶1] The above-entitled matter comes before the Court on Greenpeace International’s (“GPI”), Greenpeace, Inc.’s (“GI”), Greenpeace Fund (“GPF”), and Charles Brown’s (“Brown”) Motion to Dismiss Plaintiff’s Complaint against him.

[¶2] GPI, GI and Brown, for their motion, allege that Plaintiffs’ Complaint fails to state a claim under N.D. R. Civ. P. 12(b)(2)(ii). GPI and Brown additionally assert the Complaint against them should be dismissed for lack of personal jurisdiction. GPI and GI also assert that Plaintiffs have no standing to bring the action. GPF also asserts that Plaintiffs’ Complaint fails to state a claim against it.

STANDING

[¶3] Dakota Access LLC is now a Plaintiff in the case. Dakota Access is either a lessee or an owner of the property at issue in this case. It, therefore, has standing to bring this lawsuit.

PERSONAL JURISDICTION OVER GPI AND BROWN

[¶4] Personal jurisdiction, based on contacts, is governed by N.D.R.Civ.P. 4(b)(2), which states, in part, as follows:

A court of this state may exercise personal jurisdiction over a person who acts directly or by an agent as to any claim for relief arising from the person's

having such contact with this state that the exercise of personal jurisdiction over the person does not offend against traditional notions of justice or fair play or the due process of law, under one or more of the following circumstances:

...
(C) committing a tort within or outside this state causing injury to another person or property within this state;
...

[¶5] GPI appeared in the federal case, which was remanded. A party's right to object to personal jurisdiction can be waived. Larson v. Dunn, 474 N.W.2d 34, 36 (N.D. 1991). The Court, however, need not decide this because there is personal jurisdiction of GPI by contact. It committed tortuous acts outside the state causing injury to persons or property in the state. Here, Plaintiffs have made out a prima facie cause of action for defamation.

[¶6] There's also personal jurisdiction over Brown. There's a prima facie case of conspiracy against Brown, even though he joined GPI in 2018. One who joins a conspiracy after its inception, knowing its improper purpose is responsible. United States v. Heater, 689 F.2d 783, 788 (8th Cir. 1982). Brown is alleged to have committed a tort outside the state causing damage to a person or property within the state.

[¶7] Concerning GPF, it and GPI also hold themselves out as Greenpeace USA. They share a common director. In published reports, Greenpeace USA, GPF and GPI have admitted, in public filings, that they control all Greenpeace's operation in the United States. The Court concludes these entities are so interrelated that GPF knew or should have known about libelous statements made by GPI.

FAILURE TO STATE A CLAIM

[¶8] Plaintiffs' Complaint must be construed in the light most favorable to the Plaintiffs and the well-pleaded allegations in the Complaint are seen as true. Livingood v. Meece, 477 N.W.2d 183, 188 (N.D. 1991).

[¶9] GPI claims that either California or the District of Columbia law applies to Plaintiffs' defamation claim. The Court is not convinced. Some of the alleged defamatory statements were made in North Dakota. Furthermore, North Dakota has the most significant interest in this case, property damage in the state, so that its law should apply. It was also foreseeable to GPI that if it defamed parties and/or property in North

Dakota, North Dakota law would apply. See Kenna v. So-Fro Fabrics, Inc., 18 F.3d 623, 627 (8th Cir. 1994).

[¶10] Slander actions in North Dakota have a two-year statute of limitations. N.D.C.C. § 28-01-18. Plaintiffs' Complaint is timely under North Dakota law.

[¶11] Civil libel is defined in N.D.C.C. § 14-02-03, which reads as follows:

Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes the person to be shunned or avoided, or which has a tendency to injure the person in the person's occupation.

[¶12] GPI is correct in asserting it is afforded first amendment rights and that certain opinions are protected. The Amended Complaint sets forth several alleged defamatory statements. They allege that they asserted falsely that the pipeline traverse tribal land. They also allege that the Defendants falsely stated that the pipeline damaged burial grounds.

[¶13] The North Dakota Historical Association had already determined that this was not true. The fact that the tribe may have made this assertion is no defense. A repeater of a libelous statement is just as responsible. 96 A.L.R.2d 373 (1964).

[¶14] GPI and GPF argue the statements were not made with malice. Malice, however, is a question of fact for the jury. Riemers v. Mahar, 2008 ND 95, ¶ 12, 748 N.W.2d 714.

[¶15] Therefore, Plaintiffs' Complaint states a valid claim of defamation.

**TRESPASS TO LAND IN CHATTEL; AIDING AND ABETTING TRESPASS;
CONVERSION; AIDING AND ABETTING CONVERSION; NUISANCE; AIDING
AND ABETTING NUISANCE; TORTUOUS INTERFERENCE WITH BUSINESS
RELATIONS; CIVIL CONSPIRACY**

[¶16] Trespass is a common law theory accepted in North Dakota. N.D.C.C. § 28-01-16. Nuisance is a cause of action authorized by N.D.C.C. § 42-01-06.

[¶17] Tortuous interference with business relations is a tort recognized in North Dakota. Trade'N Post v. World Duty Free Americas, 2001 ND 116, ¶ 36, 628 N.W.2d 707.

[¶18] Civil conspiracy is recognized in North Dakota. See Burris Carpet Plus, Inc. v. Burris, 2010 ND 118, ¶ 43, 785 N.W.2d 164.

[¶19] Aiding and abetting is recognized as a basis for joint and several liability.

....

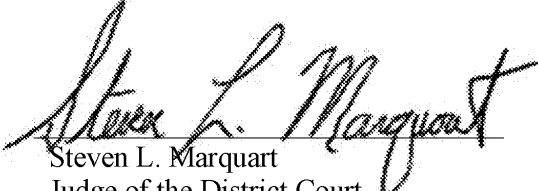
When two or more parties are found to have contributed to the injury, the liability of each party is several only, and is not joint, and each party is liable only for the amount of damages attributable to the percentage of fault of that person, except that any persons who act in concert in committing a tortuous act or aid or encourage the act, or ratifies or adopts the act for their benefit, are jointly liable for all damages attributable to their combined percentage of fault. . . .

N.D.C.C. § 32-03.2-02 (emphasis added).

[¶20] On the basis of the foregoing, IT IS HEREBY ORDERED that Greenpeace International's, Greenpeace, Inc.'s, Greenpeace Fund's, and Charles Brown's Motion to Dismiss Plaintiffs' Complaint against them is DENIED.

Dated this 13th day of February, 2020.

BY THE COURT:


Steven L. Marquart
Judge of the District Court