

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

WILBER ZARATE LLAVEN, *et al.*

Plaintiffs,

v.

Civil Docket No. CL15-11874

**PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, *et al.***

Defendants.

ORDER

This action came to be heard September 26, 2016, on various motions. The plaintiffs appeared by counsel, William H. Shewmake, Esq. and John M. Robb, Esq. PETA appeared by counsel, Philip J. Hirschkop, Esq., J. Bryan Plumlee, Esq., Alison R. Zizzo, Esq., and Reeves W. Mahoney, Esq. The individual defendants appeared by counsel, Benjamin J. DiMuro, Esq. David D. Hudgins, Esq. appeared for Debra Griggs and the Virginia Federation of Humane Societies. Edward H. Starr, Esq. appeared for Robin Starr and the Richmond SPCA. After receiving argument of counsel and giving further consideration to the papers filed, it is

ORDERED:

1. The individual defendants' amended demurrer to the plaintiff's claim for damages for emotional injury for trespass is overruled. Paragraph 66 of the complaint alleges Wilber Zarate Llaven ("Wilber") "experienced emotional pain and suffering." The Court finds that entering on to

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another's property for the purpose of carrying away his pet is an aggravating circumstance, and that the plaintiff need not allege facts that would support a right of action for intentional infliction of emotional distress.

2. Wood's amended demurrer to the count for trespass is overruled. Paragraph 77 does allege that the entry onto the porch was a trespass and paragraph 45 alleges that only Carey went onto the porch. However, paragraph 44 alleges "Carey and/or Wood" backed the van into Wilber's driveway. The inclusion of "/or" does cause the Court some concern as it could be construed to mean only Carey backed the van into the driveway. However, Wood did not demur on this ground and the Court may not consider it. *Code of Virginia* § 8.01-273(A).
3. The plaintiffs have conceded that only Wilber is seeking damages for trespass. Plaintiffs' Reply to the Individual Defendants' Amended Demurrer, *etc.* pg. 2, fn. 1. The Court holds that Wilber individually is the only plaintiff in Count III.
4. Wood's amended demurrer to the claim of conversion is overruled. Paragraph 45 alleges, in part, "Carey and Wood then drove off with Maya."
5. With respect to the subpoenae for financial records to Perdue Farms, Inc., Eastern Shore Tax Service, Inc., BB&T, and Julliana Armstrong, PETA's motions for a show cause order are denied and the plaintiffs' motion to quash is granted, except that Perdue Farms, Inc. shall produce

Wilber's personnel records for 2014 and 2015; provided, his social security number, wage, and income shall be redacted from such records.

6. The motions to quash the subpoenae to the Virginia Federation of Humane Societies, Debra Griggs, Richmond SPCA, and Robin Starr are sustained, except for communications between any of those persons and organizations and the plaintiff or any attorney, paralegal, or other employee of LeClair Ryan from October 18, 2004, to the present, regarding Maya or this action. The documents shall be produced to the court for review *in camera*. To assist the Court in ruling on the privileges claimed, counsel for the plaintiffs shall inform the Court of the date they first discussed the taking of Maya with either plaintiff.
7. The stay of discovery ordered on April 21, 2016, is hereby vacated. Until the entry of a protective order, any materials produced in discovery shall only be disclosed to the attorneys, paralegals, and other employees of the attorneys involved in the prosecution or defense of this action.
8. PETA's motion to compel deposition testimony of Wilber is denied, except for the questions described in paragraph 11(a), (b), and (e) of the motion. At the hearing of September 26, the Court ordered Wilber to answer 11 (a), (b), (c), and (e) pursuant to Rule 4:6(a), and it took under advisement 2 (j) and 11 (d). The Court now concludes that the information sought in paragraphs 2 (j) and 11 (c) and (d) of the motion are not relevant and are not reasonably calculated to lead to the discovery of admissible evidence.

9. Wilber has objected to PETA's definition of "you" in its interrogatories and requests for production. Among the persons included in the definition are Wilber's attorneys and executors and administrators. The inclusion of his attorneys would require Wilber to produce work-product without the requisite showing. Furthermore, Wilber is alive and has neither an executor nor administrator. The Court sustains the objection to the definition of "you."

10. The Court sustains the objections to interrogatories Nos. 2 and 3 and finds the remaining interrogatories have been answered adequately. With respect to interrogatory No. 6, there is no method for the calculation of emotional injury and punitive damages. With respect to interrogatory No. 7, Wilber has recognized a duty to supplement. The Court recognizes the inflammatory nature of the allegations of paragraphs 16-19, 31-33, and 68-69 of the complaint, that any punitive damages the defendants could be liable for will be greatly affected by the truth or falsity of these allegations, and that Wilber has little, if any, knowledge of their truth or falsity. It is therefore possible counsel for Wilber may have to reveal work-product in support of these allegations. The Court also recognizes that PETA has provided little discovery to Wilber to date.

11. Requests for Production Nos. 5-8 have been dealt with in paragraph 6, *supra*. Wilber shall seasonably produce all tangible evidence he intends to introduce into evidence or use as a demonstrative exhibit at trial. No.

10. The requirements of the scheduling order do not supersede Part 4 of the Rules of the Supreme Court. Wilber shall produce all communications with Edward Armstrong, No. 11, concerning the taking of Maya or this lawsuit. Wilber shall provide all communications with the Sheriff's Office of Accomack County, the Accomack County Commonwealth's Attorney, or any other law enforcement agency, No. 15, concerning the taking of Maya or this lawsuit. Nos. 16-18 are duplicative. The Court sustains the objections to Nos. 14 and 19-23. With respect to No. 24, the Court accepts the representations of plaintiffs' counsel that they have produced all the video footage they have. Plaintiffs' counsel even engaged a computer forensic expert to determine if additional footage exists. PETA may, if it chooses, engage its own expert to review the available video evidence.

12. The plaintiffs' motion for default judgment against PETA is denied. PETA, Carey, and Wood shall file their answers to the complaint by October 17, 2016.

13. The plaintiffs withdrew their motion to compel against PETA from the hearing and stated they wished to confer with PETA's counsel to further attempt to resolve the dispute. The Court appreciates this. The Court nonetheless pre-emptively determines that interrogatories Nos. 3, 4, 10, 12, 14, and requests for production Nos. 22, 23, 24, 25, 35, 42, 49, 50, and 57 are either overbroad and burdensome or irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Endorsements are waived pursuant to Rule 1:13.

ENTER: October 6, 2016



JUDGE

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