

**IN THE DISTRICT COURT OF MARYLAND
FOR ANNE ARUNDEL COUNTY**

BOOKHOLDERS, LLC

Plaintiff,

vs.

Case Nos. D07CV220127000,
D07CV22013292, and
D07CV22013293.

RILEY DEHORITY, ANNA PLETCH, AND
HANNAH STEINCAMP,

Defendants.

**MOTION TO DISMISS
(EARLY HEARING REQUESTED)**

These lawsuits,¹ brought against Riley DeHority (“DeHority”), Anna Pletch (“Pletch”), and Hannah Steincamp (“Steincamp”), (together, “Defendants”), by their former employer BookHolders, LLC (“BookHolders”), were filed in order to deter Defendants from engaging in constitutionally protected speech, namely, reporting BookHolders’ unlawful wage theft to the Virginia Department of Labor and Industry (“VA DOLI”), a state enforcement agency. The actions are thus unlawful strategic lawsuits against public participation (“SLAPP suits”) as defined by Md. Code Ann., Cts & Jud. Proc. § 5-807, entitling Defendants to civil immunity and a dismissal of BookHolders’ claims.

Through their undersigned counsel and pursuant to Md. Code Ann., Cts & Jud. Proc. § 5-807(d), Defendants hereby move this Court to hold an early hearing on this motion and subsequently dismiss with prejudice the instant suits. Defendants also move this Court to declare that they are entitled to attorneys’ fees and costs pursuant to Md. Rule 1-341.

¹ Defendants’ counsel have simultaneously filed with this Court a motion to consolidate the three actions.

FACTS

Defendant Riley DeHority is a full-time graduate student at Virginia Tech. Defendants Pletch and Steincamp are full-time undergraduate students at Virginia Tech. All three defendants reside in Blacksburg, Virginia and were previously employed part-time by BookHolders LLC, a retailer specializing in renting and selling books to college students, at its Blacksburg location.

Pletch's employment for BookHolders began in January 2022, App. 2 Pletch Aff. ¶ 2, while DeHority's and Steincamp's employment began in May 2022. App. 1 DeHority Aff. ¶ 2, App. 3 Steincamp Aff. ¶ 2. All three defendants were initially paid \$9.00 per hour. DeHority Aff. ¶ 3, Pletch Aff. ¶ 3, Steincamp Aff. ¶ 4.

Shortly after being hired, DeHority became concerned that BookHolders was unlawfully failing to pay DeHority and other employees the requisite minimum wage under Virginia law, which is \$11.00 per hour in 2022. DeHority Aff. ¶ 6, Va. Code § 40.1-28.10.C. Pletch similarly learned from a friend after working for BookHolders for nearly six months that she was being paid less than the Virginia minimum wage. Pletch Aff. ¶ 5. BookHolders attempted to justify its unlawful payment practices on the alleged existence of a certificate issued by the United States Department of Labor that permits paying full-time students less than the minimum wage.²

The workers reported minimum wage violations to VA DOLI, which is charged with investigating and remedying wage theft. On June 27, 2022, DeHority reported BookHolders' minimum wage violations to the VA DOLI. DeHority Aff. Ex. B. Pletch also filed a claim with DOLI on July 9, after voluntarily ending her employment with BookHolders. Pletch Aff. Ex. B-1. Steincamp filed a claim with VA DOLI in early July 2022, also after she chose to stop

² Although federal law allows paying students below the minimum wage in some circumstances, *see* 29 U.S.C. § 214(b), that exemption does not exist under Virginia law and does not permit violation of Virginia state minimum wage laws.

working for BookHolders. Steincamp Aff. ¶ 8.

Less than two weeks after DeHority filed their claim with VA DOLI, on July 9, BookHolders swiftly retaliated and terminated DeHority's employment. Shortly thereafter, on July 13, DeHority received a letter from BookHolders' Chief Executive Officer, John Verde, which erroneously asserted that by filing a claim with the VA DOLI, DeHority had breached the Employee Arbitration Agreement that DeHority had been required to sign as a condition of their employment with Plaintiff. DeHority Aff. Ex. C. The letter threatened prompt legal action if DeHority did not withdraw their claim of wage theft with the state agency. Pletch received an identical threatening letter from Verde on August 2, Pletch Aff. Ex. C-1, and Steincamp received an identical letter on August 2. Steincamp Aff. Ex. A-2. Mr. Verde followed these letters with a threatening phone call to DeHority in which he said words to the effect that "there will be a sheriff at your door," DeHority Aff. ¶ 10.

Mr. Verde quickly followed through on his unlawful threats. On August 9, BookHolders served DeHority with a copy of the writ of summons filed in this Court on July 25, alleging a breach of contract by DeHority. DeHority Aff. Ex. D. In early September 2022, BookHolders mailed to the home address of Steincamp's parents a copy of the writ of summons filed in this Court on August 9, also alleging a breach of contract by Steincamp. It is Defendants' counsel's understanding that Pletch, against whom BookHolders filed a writ of summons in this Court on August 9, has not yet been served.

Meanwhile, VA DOLI began investigating BookHolders for violating the Virginia minimum wage based on the information received from Defendants. Riley DeHority learned from a VA DOLI investigator that in July of 2022, as part of this investigation, a VA DOLI

investigator had visited the Blacksburg BookHolders location in person. DeHority Aff. ¶ 12. As of October 2022, DeHority also learned that VA DOLI had filed claims against BookHolders seeking unpaid wages on behalf of Defendants in Montgomery County Circuit Court in Virginia. DeHority Aff. ¶ 13.

BookHolders is a repeat-offender, having previously attempted to pay student workers sub-minimum wage and intimidate them from bringing claims to VA DOLI. Pursuant to FOIA requests, DeHority learned that BookHolders has previously attempted to use the existence of a “student certificate” to justify wage theft, and has been informed multiple times by the VA DOLI that an arbitration agreement does not prevent the state agency’s mandatory investigation of wage theft claims. DeHority Aff. Ex. E (claims of Anna Gillbody and Savanna Jones). Despite these repeated warnings, Mr. Verde has remained undeterred from his unlawful conduct and persists in using litigation as a cudgel to silence DeHority and other employees.

ARGUMENT

The instant lawsuit by BookHolders against student-workers who reported workplace misconduct is an archetypical SLAPP suit. Maryland’s General Assembly enacted anti-SLAPP legislation to protect “individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise” of their First Amendment rights. *See* Dep’t Legislative Servs., Fiscal and Policy Note, House Bill 930, at 2 (2004 Session). The law prohibits SLAPP suits because they chill the ability of individuals and the public to speak publicly and report misconduct to government – essential activities for a thriving democracy. *See id.*

The Maryland Court of Special Appeals has defined a SLAPP suit as a lawsuit that is:

- 1) brought in bad faith, 2) brought against a party who has made protected communications to a government body or the public on a matter within the authority of a government body or on an issue of public concern, 3) materially

related to the protected communications, and 4) intended to inhibit or to have inhibited the making of those protected communications.

MCB Woodberry Developer, LLC v. Council of Owners of Millrace Condominium, Inc., 265 A.3d 1140, 1151 (Md. Ct. Spec. App. 2021). Maryland’s anti-SLAPP law provides complete civil immunity from SLAPP suits. *See* Md. Code Ann., Cts & Jud. Proc. § 5-807(b).³ A defendant may seek immediate dismissal of a SLAPP suit if they can show that they “acted ‘without constitutional malice’ when making the protected communications.” *Id.* A court adjudicating a motion to dismiss a SLAPP suit shall “hold a hearing on the motion to dismiss as soon as practicable.” Md. Code Ann., Cts & Jud. Proc. § 5-807(b).

BookHolders’ lawsuits against Defendants constitute precisely the type of action that the Maryland General Assembly sought to prevent. Defendants are private citizens, earning *below* minimum wage, who sought the assistance of the Virginia government in recovering their lawfully earned wages. Defendants fall squarely within anti-SLAPP protections because this lawsuit is materially related to their protected communications with the government; Defendants’ communications with the government were protected by the First Amendment and on a matter within that government agency’s authority; those communications were truthful and free from constitutional malice; and Bookholders’ lawsuit was filed in bad faith, in order to inhibit Defendants from those communications.

³ “A lawsuit is a SLAPP suit if it is (1) brought in bad faith against a party who has communicated with a federal, State, or local government body or the public at large to report on, comment on, rule on, challenge, oppose, or in any other way exercise rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights regarding any matter within the authority of a government body or any issue of public concern; (2) materially related to the defendant’s communication; and (3) intended to inhibit or inhibits the exercise of rights under the First Amendment of the U.S. Constitution or Article 10, Article 13, or Article 40 of the Maryland Declaration of Rights.” Md. Code Ann., Cts & Jud. Proc. § 5-807(b).

I. BookHolders' Lawsuits Are Materially Related to Defendants' Constitutionally Protected Communications to VA DOLI.

BookHolders' writs of summons against the three Defendants in this action state the basis of the suits as "breach of contract." *See, e.g.,* DeHority Aff. Ex. D. The material relation between the alleged breach of contract and Defendants' protected communications to the government, as required by Md. Code Ann., Cts & Jud. Proc. § 5-807(b), is directly spelled out in pre-suit letters that BookHolders sent to each Defendant. These letters clarify that the contract whose breach BookHolders is alleging is the Employment Arbitration Agreement each Defendant was required to sign as a condition of their employment with BookHolders. Specifically, BookHolders' pre-suit letters cited the provision in the arbitration agreement stating that "arbitration shall be the exclusive means of resolving any dispute arising out of your employment by Employer or you and no other action can be brought by employees in any court *or any forum.*" *See, e.g.,* DeHority Aff. Ex. C (emphasis added). The pre-suit letters went on to contend that "[f]iling a claim with the Virginia Department of Labor is in breach of this agreement." *Id.* In short, BookHolders weaponized the company's arbitration agreement, which cannot bar citizens from seeking assistance from a government agency, to sue Defendants for reporting the company's wage theft to VA DOLI.

While this Court need not reach the legitimacy of BookHolders' assertions regarding the arbitration agreement in order to grant the instant motion, it bears mentioning that, as a legal matter, these statements in BookHolders' pre-suit letters are incorrect. VA DOLI, as a government agency with its own investigative and enforcement powers, can enforce Virginia's wage laws against BookHolders regardless of any arbitration agreements that individual BookHolders employees may have signed. A claim filed by an employee to trigger public

enforcement action by VA DOLI is not a private lawsuit; the Virginia agency has discretion to proceed on the charge as a matter of public enforcement, not a private remedy.⁴ *See Mar v. Malveaux*, 60 Va. App. 759, 770, 732 S.E.2d 733, 739 (Va. App. 2012); *Pallone v. Marshall Legacy Institute*, 97 F. Supp. 2d 742, 745 (E.D. Va. 2000). The private arbitration agreements between BookHolders and the Defendants are therefore inapplicable to the Virginia agency’s enforcement action. *See EEOC v. Waffle House, Inc.*, 534 U.S. 279, 291-93 (2002) (holding that an employer cannot preclude a public enforcement agency from bringing an enforcement action for employee-specific relief by relying on an employer-employee arbitration agreement); *NC Financial Solutions of Utah, LLC v. Commonwealth ex rel. Herring*, 299 Va. 452, 461-462, 854 S.E.2d 642, 647-648 cert. denied, 142 S. Ct. 582 (2021) (following *Waffle House*).

Nor can an arbitration provision prevent an employee from bringing information to a government agency for investigation because, as discussed below, such communications to a government agency are constitutionally protected. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 28 (1991) (“An individual . . . subject to an arbitration agreement will still be free to file a charge with the [U.S. Equal Employment Opportunity Commission], even though the claimant is not able to institute a private judicial action.”).

Moreover, the arbitration agreement that BookHolders forced its employees to sign would be void and unenforceable for violation of public policy if it were construed as extracting a promise that employees would not report violations to public agencies. *See, e.g., Overbey v. Mayor of Baltimore*, 930 F.3d 215, 224-226 (4th Cir. 2019) (public policy rendered unenforceable and void a settlement clause prohibiting plaintiff’s speech about police brutality).

⁴ The Commissioner of Labor and Industry retains the exclusive power and discretion to proceed in the name of the State on such a claim, and if the Commissioner declines to take action, the employee has no power to appeal. *See* Va. Code § 40.1–29(A)(1).

Such an agreement would be akin to compelling employees to vow that they will not report crimes to the police.

Legally specious as BookHolders' arguments are, BookHolders' pre-suit letters establish beyond question that BookHolders brought these lawsuits in response to Defendants' communications with VA DOLI, thereby satisfying the third factor that the Court of Special Appeals described in *MCB Woodberry Developer*. 265 A. 3d at 1151. Not only did BookHolders wrongfully claim breach of contract on the theory that filing a VA DOLI claim violates the arbitration agreement, but it also demanded that Defendants' VA DOLI claim "must be closed immediately." DeHority Aff. Ex. C, Pletch Aff. Ex. C-1, Steincamp Aff. Ex. B-2. BookHolders reiterated this threat at the end of each pre-suit letter, declaring that "[i]f the complaint is not closed by" a specified date "and a reply has not been received to that effect, then appropriate legal action will commence." *Id.* Conversely, the promise implied in these letters is that if DeHority, Pletch and Steincamp succumbed to the threats and closed their claims with VA DOLI, BookHolders would not sue them.

The quid-pro-quo nature of this correspondence suggests that BookHolders has brought these lawsuits in retaliation for the claims Defendants have filed with DOLI, and that if those claims are withdrawn, the lawsuits will also be dismissed. BookHolders has now acted on that threat by filing these actions. Accordingly, BookHolders has made clear that the lawsuits are "materially related" to Defendants' constitutionally protected communications with a governmental body within the meaning of Md. Code Ann., Cts & Jud. Proc. § 5-807(b).

II. Defendants' Communications with VA DOLI, On A Matter Within VA DOLI's Authority, Are Protected by the First Amendment

Defendants' reports of wage theft to the VA DOLI are protected communications under

Maryland's anti-SLAPP law because Defendants were petitioning the government of Virginia for redress of grievances as protected under the First Amendment of the United States Constitution. The communications are further protected because the VA DOLI has within its authority the ability to investigate and prosecute claims of wage theft in the Commonwealth of Virginia. Va. Code § 40.1 *et seq.*

The anti-SLAPP law broadly protects individuals from suit for engaging in communications with government bodies if that communication is in any way an “exercise [of] rights under the First Amendment of the U.S. Constitution . . . regarding any matter within the authority of a government body.” Md. Code Ann., Cts & Jud. Proc. § 5-807(b). Indeed, the Maryland Legislature specifically intended that “[c]overed activities may include . . . reporting unlawful activities” to the government. *See* Dep’t Legislative Servs., Fiscal and Policy Note, House Bill 930, at 2 (2004 Session).

The Petition Clause of the First Amendment of the United States Constitution guarantees the right to “petition the government for redress of grievances.” U.S. Const. Amend. I. Complaints filed with state agencies fall within the ambit of the Petition Clause, *Cal. Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1974) (“Certainly the right to petition extends to all departments of the Government”), and, more specifically, claims that an individual’s rights have been violated are protected by the First Amendment. *Gable v. Lewis*, 201 F.3d 769 (6th Cir. 2000); *see also Hytel Group Inc. v. Butler*, 936 N.E.2d 542, 551 (Ill. App Ct. 2010) (wage theft complaint to Illinois Department of Labor protected under the First Amendment’s Petition Clause and Illinois’s anti-SLAPP protections). In *Gable*, the Sixth Circuit held that a written complaint to the Ohio Highway Patrol alleging sex discrimination in the

allocation of state business by the operator of a towing company that contracted with the Ohio Highway Patrol was protected under the First Amendment's Petition Clause. *Id.* at 770-71. Similar to *Gable*, Defendants' reports to VA DOLI sought the government's assistance in redressing the fact that their employer was not paying them the minimum wage as mandated under Virginia law. Accordingly, Defendants' claims submitted to the Virginia Department of Labor and Industry are protected petitions under the First Amendment, and fall within the Maryland anti-SLAPP's ambit as related to a matter within the government's authority.

III. Defendants' True, Verifiable Claims of Wage Theft Were Made Without Malice

Defendants acted out of their reasonable desire to stop an unlawful practice, not malice, when making their claims to VA DOLI. *See MCB Woodberry Developer*, 265 A. 3d at 1151 (For anti-SLAPP civil immunity, a speaker of a protected communication must have acted without "constitutional malice."). A speaker acts with "constitutional malice" when "a statement was made 'with knowledge that it was false or with reckless disregard of whether it was false or not.'" *Id.* at 1159 (quoting *Batson v. Shiflett*, 325 Md. 684, 728 (1992)). Any malice must be proven through "clear and convincing evidence." *Id.*

Here, BookHolders does not allege harm on the basis that Defendants' reports to DOLI were knowingly false. To the contrary, BookHolders seeks relief in this Court because Defendants' reports to VA DOLI were *true*, and forced BookHolders to answer to a government agency for its statutory violations. The claims that Defendants filed with VA DOLI contained true factual information about, *inter alia*, the rate at which they were paid, the location of BookHolders' business, and the reasons why BookHolders told Defendants it was not paying them Virginia minimum wage. DeHority Aff. Ex. B; Pletch Aff. Ex. B-1. Defendants had

personal knowledge of all the facts contained in the claims, namely, details of their wage and job duties. Further, all of the factual assertions contained in the claims are independently verifiable by the exhibits attached to this motion. Bookholders has no evidence that Defendants acted with malice, constitutional or otherwise.

IV. The Lawsuits Were Brought in Bad Faith to Intimidate Defendants From Exercising their First Amendment Rights of Speech and Petition.

BookHolders sued Defendants DeHority, Pletch, and Steincamp in bad faith to stop them from exercising their constitutional rights. Such conduct meets the first and fourth *Woodberry* factors. *MCB Woodberry Developer*, 265 A. 3d at 1156 ((1) “brought in bad faith” and (4) “intended to inhibit” protected communications). Bad faith under the Anti-SLAPP statute may be determined as a question of law on a preliminary motion to dismiss like this one, without the need for an evidentiary hearing. *Id.* at 1157.

The way in which BookHolders described the prospect of litigation before filing suit leaves no doubt that BookHolders used the threat of litigation as a cudgel to inhibit further engagement with the government. Not only did BookHolders explicitly link its breach of contract allegations to Defendants’ constitutionally protected activity of seeking redress from government, as explained in Section I above, but in the pre-suit letters sent to all three Defendants, BookHolders emphasized the financial liability these college students faced: “You would be responsible for . . . costs and damages, including legal costs.” DeHority Aff. Ex. C, Pletch Aff. Ex. C-1, Steincamp Aff. Ex. A-2. Viewed in that context, these lawsuits are part of a concerted pattern of intimidation. *See MCB Woodberry Dev.*, 265 A.3d at 1158 (seeking large damages without justification indicates that SLAPP suit plaintiff’s “true intent was intimidation”).

In addition to the clear intent to silence Defendants, other indicia of bad faith are present in BookHolders' course of conduct. "Bad faith" under Maryland's Anti-SLAPP statute has the same definition as "bad faith" under Md. Rule 1.341: litigation that is brought "vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons." *MCB Woodberry Dev.*, 265 A.3d at 1156.

BookHolders had ample notice of the fact that Defendants had not actually breached their arbitration agreements by filing claims with a governmental agency. The VA DOLI had informed BookHolders of this fact on multiple previous occasions, in connection with other wage claims filed with VA DOLI about BookHolders. DeHority Aff. Ex. E (claims of Anna Gillbody and Savanna Jones). *After* BookHolders initiated this litigation, Defendants' counsel again informed BookHolders of the fact that no breach of contract had occurred, providing BookHolders with numerous legal authorities on the point and requesting that BookHolders voluntarily dismiss the lawsuits. App. 4 (demand letter). BookHolders' insistence on pursuing this litigation despite being repeatedly informed of its frivolousness indicates that the lawsuits are being pursued vexatiously, in an attempt to deter Defendants from continuing to exercise their First Amendment rights to petition government agencies.

The timing of these lawsuits further supports a finding of bad faith. *See MCB Woodberry Dev.*, 265 A.3d at 1157-58. Throughout July of 2022, VA DOLI was continuing to pursue its investigation of the wage claims against BookHolders and an investigator even visited the Blacksburg BookHolders location in person. After Defendants declined to withdraw their administrative claims in response to BookHolders' threats of legal action, and with the investigation by the labor agency heating up, BookHolders' decision to file these knowingly

groundless lawsuits, can only be understood as an escalation tactic in its pressure campaign to try to convince Defendants to withdraw their claims with VA DOLI and, in turn, reduce the level of scrutiny on BookHolders' pay practices. These are improper purposes that fall squarely within the definition of bad faith. *See Christian v. Maternal-Fetal Medicine Assocs. Of Md., LLC*, 459 Md. 1, 18, 183 A.3d 762, 772 (2018) (discussing Rule 1.341, which has been interpreted in parallel to Maryland's Anti-SLAPP statute, as intended to deter abusive litigation).

Finally, Defendants are entitled to attorneys' fees and costs in defending against these baseless SLAPP suits. Because the standard of bad faith under Maryland's anti-SLAPP law is the same standard as the Maryland rules regarding an unjustified proceeding, a finding by this Court that BookHolders' lawsuits against Defendants constitute SLAPP suits is a finding that Defendants are entitled to attorneys' fees and costs. *See MCB Woodberry Developer, LLC v. Council of Owners of Millrace Condominium, Inc.*, 265 A. 3d 1140, 1156 n. 19 (Md. Ct. Spec. App. 2021).

CONCLUSION

Because BookHolders' lawsuits against Defendants are SLAPP suits, this Court should dismiss them with prejudice and order that Defendants are entitled to attorneys' fees and costs.⁵

Dated: October 21, 2022

Respectfully submitted,

s/ Adam Breihan
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⁵ Upon a favorable order of this Court, Defendants will file the required motion for attorneys' fees and costs pursuant to Md. Rule 1-341.

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Counsel for the Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2022, I will serve a copy of the foregoing motion and all supporting documents via regular first-class mail to the following:

BookHolders, LLC
2137 Hallmark Dr.
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Dated: October 21, 2022

s/ Adam Breihan
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