

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

[REDACTED])
)
 Plaintiff,)
) **CIVIL ACTION NO. [REDACTED]**
 v.)
)
 [REDACTED])
 [REDACTED])
)
 Defendants)

**PLAINTIFF/ COUNTER DEFENDANT'S MOTION TO DISMISS THE
COUNTERCLAIMS PURSUANT TO FED. R. CIV. P. 12(B)(6)**

Plaintiff/ Counter Defendant [REDACTED] respectfully moves this Honorable Court, pursuant to Fed. R. Civ. P. 12(B)(6), to dismiss the counterclaims of Defendant/ Counter Plaintiff, [REDACTED], because they are facially insufficient and fail to state a claim upon which relief can be granted. Further grounds for this motion are stated in the attached brief.

Respectfully Submitted,

[REDACTED]
Attorney for Plaintiff
Law Offices [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

_____))
))
Plaintiff,))
)) **CIVIL ACTION NO. _____**
v.))
))
_____))
))
))
Defendants))

**BRIEF IN SUPPORT OF PLAINTIFF/ COUNTER DEFENDANT’S MOTION TO
DISMISS THE COUNTERCLAIMS PURSUANT TO FED. R. CIV. P. 12(B)(6)**

PRELIMINARY STATEMENT

This case involves a defendant _____ (“_____”), who abused his position of authority over an employee, _____ (“_____”), in order to sexually harass, humiliate, and assault her. Now _____ is attempting to abuse the legal system by filing patently insufficient counterclaims, which have no basis in law, and that are designed to do nothing more than harass _____ and make it more difficult for her to vindicate her rights in this case. _____ has filed a claim for tortious interference with contract, but has been unable to allege the existence of any contract. _____ has filed a claim for defamation, but has failed to allege the content, time, place, listener, or any specifics of any defamatory statement. Because these claims do not meet the minimum pleading requirements, _____ should not be allowed to proceed to discovery, fishing for a cause of action where none exists.

STATEMENT OF FACTS

The Plaintiff/ Counter Defendant, [REDACTED], (“[REDACTED]”) obtained employment as a pharmacy technician in the Department of Pharmacy and Research Services of [REDACTED] (“[REDACTED]”). Amended Complaint at [REDACTED]. Defendant/ Counter Plaintiff, [REDACTED], (“[REDACTED]”) was the Director of the department. Amended Complaint at [REDACTED]. [REDACTED] called [REDACTED] into his office throughout each workday in order to make sexual comments and inappropriate requests. Amended Complaint at [REDACTED]. [REDACTED] asked [REDACTED] what she would do if he spanked her, forced her to come into his office rather than take her breaks, stated that “everyone thinks we are fucking, and if we are going to be accused, we might just as well be doing it,” stated that he wanted to grab and have her, adjusted her work hours in order to harass her, repeatedly speculated on her undergarments, grabbed and pulled her pants at the waist, and made harassing phone calls to her home. Amended Complaint at [REDACTED]. [REDACTED] was forced to escape this degrading, traumatizing, and hostile work environment by resigning, and she filed the instant lawsuit. [REDACTED] has filed counterclaims against [REDACTED] for defamation and tortious interference with contract. Answer to Amended Complaint and Counterclaims at [REDACTED].

STANDARD OF REVIEW

Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. *Republican Party v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). It does not test the factual merits of the claim, but rather tests whether the allegations constitute a short and plain statement of the claim showing that the pleader is entitled to relief. *Id.* Under Fed. R. Civ. P. 8(a), plaintiff is required to give fair notice and state the elements of the claim plainly and

succinctly. *Stanson v. Calligan*, 1993 U.S. App. LEXIS 1776 (9th Cir. 1993). A District Court may dismiss a claim with prejudice if such notice is not given. *Id.* “A claim for relief must still satisfy the requirements of the substantive laws which give rise to the pleadings, and no amount of liberalization should seduce the pleader into failing to state enough to give the substantive elements of his claim.” *Morrow v. Kings Dep't Stores, Inc.*, 57 N.C. App. 13, 17 (N.C. Ct. App. 1982).

LAW AND ARGUMENT

I. [REDACTED]’ TORTIOUS INTERFERENCE WITH CONTRACT CLAIM MUST BE DISMISSED BECAUSE HE HAS FAILED TO ALLEGE THE EXISTENCE OF ANY CONTRACT OR A BREACH OF CONTRACT.

[REDACTED]’ tortious interference with contract claim is facially inadequate because it does not allege the necessary elements of such a claim. Under North Carolina law, a claim for tortious interference with contract requires that the plaintiff had some contract with a third party and that defendant induced the third party not to perform on the contract. *Stark v. Weavetec, Inc.*, 1998 U.S. Dist. LEXIS 8110 (D.N.C. 1998). The elements of the claim are as follows:

- (1) that a valid contract existed between the plaintiff and a third party, conferring upon the plaintiff some contractual right against the third party;
- (2) that the defendant had knowledge of the plaintiff’s contract with the third party;
- (3) that the defendant intentionally induced the third party not to perform his contract with the plaintiff;
- (4) that in so doing, the defendant acted without justification; and
- (5) that the defendant’s act caused the plaintiff actual damages.

Stark v. Weavetec, Inc., 1998 U.S. Dist. LEXIS 8110 (D.N.C. 1998); *See also King v. N.C. Dept. of Trans.*, 121 N.C. App. 706, 468 S.E.2d 486 (1996).

In the instant case, [REDACTED] has failed to plead the most basic element of tortious interference with contract: the existence of a contract. The counterclaim states only that [REDACTED] was employed by [REDACTED] and that there was an “employment relationship.”

Answer to Amended Complaint and Counterclaims at [REDACTED]. However, in North Carolina, employment is presumed to be at-will, meaning that in the absence of an employment contract, the employment relationship may be terminated by either party without regard to quality of performance. *Farris v. Tubular Textile LLC*, 2002 U.S. Dist. LEXIS 10444, 4 (M.D.N.C. 2002). In *Farris*, as in the instant case, Plaintiff filed a tortious interference with contract claim but alleged only that he was employed, not that he had any employment contract. The Court dismissed the claim for lack of a contract, holding:

“[A tortious interference with contract claim] is designed to remedy a defendant’s deliberate interference with performance of a contract existing between a plaintiff and a third party... This cause of action appears utterly inapposite to the facts at bar. First, as previously discussed, no contract exists between Plaintiff and Defendant, and Plaintiff’s complaint did not allege the existence of any contract between Plaintiff and a third party. Plaintiff was an at-will employee of Defendant and could be terminated at any time for any reason or for no reason at all.” *Farris*, 2002 U.S. Dist. LEXIS 10444 at 12-13.

In the instant case, [REDACTED] has failed to allege any contract with [REDACTED] or any other third party. He has alleged only that he had an employment relationship, which is presumed to be at-will. Nor has [REDACTED] alleged that [REDACTED] had any knowledge of a contract with a third party—the claim states merely that [REDACTED] knew the [REDACTED] was employed by [REDACTED]. **Answer to Amended Complaint and Counterclaims at [REDACTED].** In the absence of a valid contract, the tortious interference with contract claim is not sufficiently pled.

Moreover, even if this Court could overlook the failure to allege a valid contract, [REDACTED] has not alleged the third prong of a tortious interference claim: that the defendant intentionally induced the third party not to perform his contract with the plaintiff. Tortious interference with contract is only possible when that interference has caused an underlying contractual breach. *Collins Entertainment Corp. v. Drews Distrib., Inc.*, 1999 U.S. App. LEXIS 3712 (4th Cir. 1999). The counterclaim states merely that [REDACTED] induced [REDACTED] “not to continue” [REDACTED]’ employment. **Answer to Amended Complaint and Counterclaims at [REDACTED]**. However, [REDACTED] never alleged that [REDACTED] was not within its rights to do so, or that this failure to continue the employment constituted a breach of some contractual right. The element of an underlying breach of contract is entirely missing from the defective counterclaim.

As in *Farris*, “[T]he reference to the lack of justification appears to be the only recognizable trace of a properly-pleaded tortious interference claim.” [REDACTED]’ counterclaim must be dismissed.

II. [REDACTED] HAS FAILED TO STATE A CLAIM FOR DEFAMATION BECAUSE THE CLAIM DOES NOT PROVIDE ANY DETAILS THAT WOULD PUT [REDACTED] ON NOTICE OF THE SUBSTANCE OF THE CLAIM.

The counterclaim for defamation is also deficient. In pleading a cause of action for defamation, a plaintiff must recount the allegedly defamatory statement either verbatim or at least with enough specificity to allow the Court to decide if the statement is defamatory. *Jolly v. Acad. Collection Serv.*, 400 F. Supp. 2d 851,861 (D.N.C. 2005); *Morrow v. Kings Dep’t Stores, Inc.*, 57 N.C. App. 13, 21 (N.C. Ct. App. 1982). The words attributed to defendant must be alleged substantially *in haec verba*, or with sufficient particularity. *Stutts v. Duke Power Co.*, 47 N.C. App. 76, 84 (N.C. Ct. App.

1980). In the instant case, [REDACTED]' counterclaim contains no particularity. Instead he merely lists the allegations of sexual harassment in [REDACTED]'s complaint and asserts that [REDACTED] made these statements "to third parties" and "within the applicable statute of limitations." **Answer to Amended Complaint and Counterclaims at [REDACTED]**. The claim fails to state when the alleged defamatory statement was made, where the alleged defamatory statement was made, to whom the alleged defamatory statement was made, or what was the content or context of the alleged defamatory statement. This is insufficient, even under the liberal standards of notice pleading.

When a defamation claim does not contain sufficient specificity, it cannot survive a motion to dismiss. In *Jolly*, the Court dismissed a defamation claim, reasoning that "the complaint also lacks necessary details regarding the exact statements made by the defendants and their context. It gives nothing more than a general description of the idea plaintiffs believe was conveyed by defendants' statements." *Jolly*, 400 F. Supp. 2d 851 at 862. Similarly, [REDACTED]'s complaint merely provides a laundry list of the allegations against [REDACTED] contained in [REDACTED]'s complaint, with no specifics or context. **Answer to Amended Complaint and Counterclaims at [REDACTED]**. In fact, the claim could very well be referring to the filing of the complaint, or to some statement incident to bringing this judicial proceeding, in which case the statement would be entitled to immunity. *See Scott v. Statesville Plywood & Veneer Co.*, 240 N.C. 73; 81 S.E.2d 146 (1954). [REDACTED] has no idea whether an immunity defense would be appropriate or what other defenses may be appropriate, because it is impossible to tell just what [REDACTED] is alleging, without any information about the alleged statement, it's context, when it was made, and to whom it was made.

■■■■' ambiguous defamation claim fails to even give ■■■■ a clue as to the nature of the allegation. In *Stutts*, the Court examined whether plaintiff had sufficiently alleged time and place of an alleged defamation. The Court found that plaintiff's use of a specific date (the defamation occurred "on numerous occasions since on or about September 10th, 1976") was sufficient. *Stutts*, 47 N.C. App. At 83. In the instant case, however, ■■■■ does not give any date or even a broad approximation of the timing of the alleged statement. The counterclaim merely states that the defamation was "within the applicable statute of limitations." **Answer to Amended Complaint and Counterclaims at ■■**. This is no help whatsoever, as presumably if the statements were made *outside* of the applicable limitations period, the counterclaim would never have been filed.

■■■■ has taken a shot-in-the-dark approach of parroting the allegations made against him in the complaint and framing it as a defamation claim, with no specifics as to the time, place, audience, content, or context of any defamatory statement. The reason ■■■■ cannot provide any specific allegation of defamation is because the claim is nothing more than a request to launch a fishing expedition, which the Court should not allow to go forward. Because the defamation claim fails to put ■■■■ on notice of the substance of the allegation, the claim must be dismissed.

CONCLUSION

Because ■■■■' counterclaims are facially inadequate, Plaintiff respectfully requests that this honorable Court dismiss the counterclaims and provide such other relief to Plaintiff as the Court deems just and proper.

Respectfully Submitted,

[Redacted]
Attorney for Plaintiff
[Redacted]
[Redacted]
[Redacted]

LEGALEASE SOLUTIONS