

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 018884-910

T. CRAIG TRAVIS,)
)
Plaintiff,)
)
v.)
)
P. KEVIN BERGER, DIANE P.)
PARNELL, DONALD T. POWELL,)
MARK F. RICHADSON, NORTH)
CAROLINA CONSERVATIVE FUND,)
ATLAS POLITICAL CONSULTING,)
LLC, and GOPAC, INC.)
)
Defendants.)

**INDIVIDUAL DEFENDANTS’
BRIEF SUPPORTING
MOTION TO DISMISS**

Defendants P. Kevin Berger, Diane P. Parnell, Donald T. Powell, and Mark F. Richardson (the “Individual Defendants”), submit this brief in support of their Motion to Dismiss all claims against them.

INTRODUCTION

Mr. Travis ran as a candidate in an election and lost. After he lost, Mr. Travis sued his political opponents and their alleged supporters for defamation. Looking at his Complaint, the alleged statements that Mr. Travis believes constitute defamation are **clearly not defamatory** under North Carolina law. Mr. Travis’s claims have no merit and must be dismissed.

FACTUAL ALLEGATIONS

Mr. Travis was a candidate in the 2024 Republican primary for the Board of Commissioners of Rockingham County. Compl. ¶ 1 Three of Mr. Travis’s opponents in the Republican primary were Mr. Berger, Mr. Powell, and Mr. Richardson. Compl. ¶¶ 3–5. Ms. Parnell is the chair of the Rockingham County Republican Party. Compl. ¶ 2.

Mr. Tavis has sued the Individual Defendants (as well as three corporate entities) for defamation. Specifically, he brings claims of (1) libel *per se*, Compl. ¶¶ 80–84, (2) libel *per quod*, Compl. ¶¶ 85–87, (3) slander, Compl. ¶¶ 88–90, (4) civil conspiracy, Compl. ¶¶ 91–95, and (5) punitive damages. Compl. ¶¶ 96–100.

The Complaint identifies five instances of allegedly defamatory statements made by the Individual Defendants.

First, Mr. Travis claims Mr. Berger, Mr. Powell, and Mr. Richardson defamed him by distributing a text message that accused Mr. Travis of planning to raise property taxes. Compl. ¶ 55–56; *see* Compl. ¶ 82(e) (Defendants “mislead voters by causing them to believe Mr. Travis planned to raise property taxes.”). An image of the text message is included in the Complaint:



As the image shows, the text message included a video interview of Mr. Travis. The Complaint includes a footnote with a link to the entire video interview: <https://www.facebook.com/share/v/3yviJmkKVVnTv88d/>. Compl. ¶ 56 n.11. Mr. Travis alleges that the body of the text message misrepresents the video’s content:

“The short excerpt omitted material context and falsely represented to recipients that Mr. Travis intended to raise property taxes for Rockingham County Residents.” Compl. ¶ 56. Mr. Travis admits that he does not know who sent the text message, but he believes it was Mr. Berger, Mr. Powell, and Mr. Richardson. Compl. ¶ 55.

Second, Mr. Travis accuses Mr. Powell of “falsely stat[ing] to many people that Mr. Travis had vandalized his vehicle.” Compl. ¶ 65. Specifically, Mr. Travis states that, on February 8, 2022, Mr. Powell accused him of “ripping the valve stems out of the tires of his vehicle.” Compl. ¶ 65.

Third, Mr. Travis claims Mr. Travis claims that Mr. Berger, Mr. Powell, and Mr. Richardson told “many people on multiple occasions” that Mr. Travis “had stolen campaign signs.” Compl. ¶ 66.

Fourth, Mr. Travis claims Ms. Parnell posted three types of defamatory statements on Facebook. Compl. ¶¶ 67, 68. First, Ms. Parnell allegedly posted that Mr. Travis had been “banned from the Rockingham Count Republican Party headquarters for ‘cussing and carrying on.’” Compl. ¶ 67(a). Second, Ms. Parnell “falsely implied” that Mr. Travis had ripped the valve stems out of Mr. Powell’s vehicle. Compl. ¶ 67(b). Third, Ms. Parnell allegedly posted that “Mr. Travis had committed a crime in that he had removed campaign signs.” Compl. ¶ 68.

Fifth, Mr. Travis accuses the Individual Defendants of defaming Mr. Travis by denying Mr. Travis’s accusations that the Rockingham County Commissioners had attempted to bring a casino to Rockingham County. *See* Compl. ¶ 64. Specifically, Mr. Travis alleges that the Individual Defendants “knowingly and falsely stated that Mr. Travis was lying when he said that their vote to approve Cordish's Rezoning Application was part of an effort to bring a casino to Rockingham County.” Compl. ¶ 64. Mr. Travis also alleges Mr. Berger, Mr. Powell, and Mr. Richardson falsely stated “that Mr. Travis was lying when he said that they had” “met with Cordish

in connection with the possibility of Cordish expanding its casino business into Rockingham County.” Compl. ¶ 64.

The only damages that Mr. Travis claims he suffered from the statements is that the statements allegedly “caused Mr. Travis to lose the election for a seat on the Board of Commissioners.” Compl. ¶ 79.

ARGUMENT

A motion to dismiss under Rule 12(b)(6) inquires “whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not.” *Crouse v. Mineo*, 189 N.C. App. 232, 237, 658 S.E.2d 33, 36 (2008). Although “the well-pleaded material allegations of the complaint are taken as admitted[,] . . . conclusions of law or unwarranted deductions of fact are not admitted.” *Sutton v. Duke*, 277 N.C. 94, 98, 176 S.E.2d 161, 163 (1970) (quotation omitted).

I. North Carolina law regarding claims of defamation.

To state a claim for defamation, a plaintiff must allege the defendant made false, defamatory statements about the plaintiff, which were published to a third person. *Boyce & Isley, PLLC v. Cooper*, 211 N.C. App. 469, 478, 710 S.E.2d 309, 317 (2011).

Heightened pleading. Defamation claims must be pled “in *haec verba*, or with sufficient particularity to enable the court to determine whether the statement was defamatory.” *Stutts v. Duke Power Co.*, 47 N.C. App. 76, 84, 266 S.E.2d 861, 866 (1980). “This heightened pleading standard generally requires the plaintiff to allege who said what to whom, as well as when and where the defamatory statements were made.” *Greentouch USA, Inc. v. Lowe's Companies Inc.*, 2024 NCBC 67, 48, 2024 WL 4381245 (N.C. Super. Oct. 2, 2024) (cleaned up); *see Addison Whitney, LLC v. Cashion*, 2017 NCBC 109, 32, 2017 WL 5973019 (N.C. Super. Dec. 1, 2018);

see also Wynn v. Tyrrell Cnty. Bd. of Educ., 253 N.C. App. 658, 799 S.E.2d 286 (2017) (unpublished) (“In addition, allegations of time and place are material for the purpose of testing the sufficiency of any pleading and such allegations should be pleaded with particularity in a defamation complaint.” (cleaned up)).

***Per se* defamation.** A publication is *per se* defamatory if it unambiguously (1) accuses a person of committing an infamous crime, (2) accuses a person of having an infectious disease, (3) tends to impeach a person in that person’s trade or profession, or (4) otherwise tends to subject one to ridicule, contempt, or disgrace. *Renwick v. News & Observer Pub. Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408–09 (1984). “[A]n infamous crime is one whose commission brings infamy upon a convicted person, rendering him unfit and incompetent to testify as a witness, such crimes being treason, felony, and *crimen falsi*.” *Aycock v. Padgett*, 134 N.C. App. 164, 516 S.E.2d 907 (1999). Moreover, words that “convey only the imputation of an imperfect sense . . . of moral virtue, duty, or obligation, are not sufficient to support” a claim for *per se* defamation. *Ringgold v. Land*, 212 N.C. 369, 193 S.E. 267, 268 (1937). Whether a statement is defamatory *per se* is a question of law to be decided by the Court. *Ellis v. N. Star Co.*, 326 N.C. 219, 224, 388 S.E.2d 127, 130 (1990).

***Per quod* defamation.** A publication can be *per quod* defamatory if a statement, “when considered in conjunction with innuendo, colloquium, and explanatory circumstances,” becomes libelous. *Skinner v. Reynolds*, 237 N.C. App. 150, 157, 764 S.E.2d 652, 657 (2014) (cleaned up). Importantly, “[t]o state a claim for libel *per quod*, a party must specifically allege and prove special damages as to each plaintiff.” *Id.* “In the law of defamation, special damage means pecuniary loss.” *Tallent v. Blake*, 57 N.C. App. 249, 254, 291 S.E.2d 336, 340 (1982); *see Stutts v. Duke Power Co.*, 47 N.C. App. 76, 82, 266 S.E.2d 861, 865 (1980) (same).

Opinions. “If a statement cannot reasonably be interpreted as stating actual facts about an individual, it cannot be the subject of a defamation suit.” *Craven v. Cope*, 188 N.C.App. 814, 817, 656 S.E.2d 729, 732 (2008). “[S]tatements of opinion relating to matters of public concern which do not contain provable false connotations are constitutionally protected.” *Lewis v. Rapp*, 220 N.C. App. 299, 305, 725 S.E.2d 597, 602 (2012). “Whether a statement constitutes fact or opinion is a question of law for the trial court to decide.” *Lewis v. Rapp*, 220 N.C. App. 299, 304, 725 S.E.2d 597, 602 (2012) (cleaned up).

Actual malice. Finally, a candidate for a public office is “subject to the actual malice standard,” *Boyce & Isley, PLLC v. Cooper*, 211 N.C. App. 469, 475, 710 S.E.2d 309, 315 (2011), which requires the candidate to show a statement was “made with ‘actual malice’—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” *Desmond v. News & Observer Publ'g Co.*, 375 N.C. 21, 42, 846 S.E.2d 647, 661 (2020) (cleaned up).

II. The text message is not defamatory.

The text message states that Mr. Travis “plan[ned] to RAISE your property taxes.” Compl. ¶ 55. This is not defamatory because the statement in the text message (1) is an opinion, (2) is not *per se* defamation, and (3) is not *per quod* defamation.

Opinion. A statement about a person’s future conduct—such as their intent to raise taxes if elected to office—is a prediction. Predictions are opinions about the future, which are not provable factual statements. *See Potts v. KEL, LLC*, 2018 NCBC 24, 20, 2018 WL 1597644 (N.C. Super. Mar. 27, 2018) (“[T]he law recognizes that opinions, predictions, and promises typically signal uncertainty or contingency in a way that statements of existing fact do not.”). Because the statement was an opinion about Mr. Travis’s future conduct, it cannot support a defamation claim.

No actual malice. Mr. Travis cannot establish actual malice by making only conclusory allegations of it. Mr. Travis has not alleged any facts that suggest Mr. Berger, Mr. Powell, and Mr. Richardson knew—or should have known—that Mr. Travis had no plan to raise property taxes.

Not *per se* defamation. An accusation of intending to raise taxes is not a statement that falls within the four categories of *per se* defamation. *See Renwick*, 310 N.C. at 317, 312 S.E.2d at 408–09 (infamous crime, infectious disease, impeach trade or profession, or subject to ridicule or contempt). The text message does not establish a claim for *per se* defamation.

Not *per quod* defamation. For the text message to constitute *per quod* defamation, Mr. Travis must have suffered pecuniary damages because of the text message. *Tallent*, 57 N.C. App. at 254, 291 S.E.2d at 340. Nowhere does Mr. Travis allege that he suffered pecuniary damages.

III. Mr. Powell’s alleged statements about valve stems are not defamatory.

Mr. Travis alleges that Mr. Powell accused Mr. Travis of removing the valve stems from Mr. Powell’s vehicle. Compl. ¶ 65. This is not a viable defamatory claim because (1) it is barred by the statute of limitations, (2) it fails the heightened pleading standard, (3) it is not *per se* defamation, and (4) it is not *per quod* defamation.

Statute of limitations. The statute of limitations for defamation is one year. N.C. Gen. Stat. § 1-54(3). Mr. Travis says that Mr. Powell’s lone statement about “ripping the valve stems out of the tires of his truck” occurred on February 8, 2022. Mr. Travis did not file his lawsuit until June 17, 2024. Any claim for defamation is time-barred.

Heightened pleading. To state a claim for defamation, a plaintiff must “allege who said what to whom, as well as when and where the defamatory statements were made.” *Greentouch USA*, 2024 NCBC 67, 48. Mr. Travis’s vague allegation that Mr. Powell (a) over the course of two years (“beginning on February 8, 2022 and continuing through March 5, 2024”) (b) told

“many people” (who are unidentified) that Mr. Travis had vandalized his vehicle does not satisfy the heightened pleading standard.

Not *per se* defamation. An accusation of removing valve stems is not a statement that falls within the four categories of *per se* defamation. *See Renwick*, 310 N.C. at 317, 312 S.E.2d at 408–09 (infamous crime, infectious disease, impeach trade or profession, or subject to ridicule or contempt). A statement about removing valve stems does create a claim for *per se* defamation.

Not *per quod* defamation. For Mr. Powell’s alleged statement to constitute *per quod* defamation, Mr. Travis must show that he suffered special damages. *Tallent*, 57 N.C. App. at 254, 291 S.E.2d at 340. Nowhere does Mr. Travis allege that he suffered any type of pecuniary damages because of Mr. Powell’s alleged statement.

IV. Accusations of removing campaign signs are not defamatory.

Mr. Travis accuses Mr. Berger, Mr. Powell, and Mr. Richardson of telling “many people on multiple occasions” that Mr. Travis “had stolen campaign signs.” Compl. ¶ 66. This is not a viable defamatory claim because (1) it fails the heightened pleading standard, (2) it is not *per se* defamation, and (3) it is not *per quod* defamation.

Heightened pleading. A defamation plaintiff must “allege who said what to whom, as well as when and where the defamatory statements were made.” *Greentouch USA*, 2024 NCBC 67, 48. Mr. Travis alleges only that the statement was made “too many people on multiple occasions.” These very vague allegations to state what exactly was said, when it was said, and to whom it was said.

Not *per se* defamation. An accusation of removing campaign signs is not a statement that falls within the four categories of *per se* defamation. *See Renwick*, 310 N.C. at 317, 312 S.E.2d at

408–09 (infamous crime, infectious disease, impeach trade or profession, or subject to ridicule or contempt). The alleged statements do not establish a claim for *per se* defamation.

Not *per quod* defamation. For accusations of removing campaign signs to constitute *per quod* defamation, Mr. Travis must show that he suffered special damages. *Tallent*, 57 N.C. App. at 254, 291 S.E.2d at 340. Mr. Travis never alleges that he suffered any type of pecuniary damages because of the alleged statements.

V. Ms. Parnell’s Facebook posts are not defamatory.

Mr. Travis claims Ms. Parnell made the following defamatory statements on Facebook: (a) posting that Mr. Travis had been “banned from the Rockingham County Republican Party headquarters for ‘cussing and carrying on’”; (b) “falsely impl[ying]” that Mr. Travis had ripped the valve stems out of Mr. Powell’s vehicle; and (c) posting that “Mr. Travis had committed a crime in that he had removed campaign signs.” Compl. ¶¶ 67, 68. None of these statements are viable defamatory claims because (1) they not *per se* defamation and (4) they are not *per quod* defamation.

Not *per se* defamation. An accusation of removing campaign signs is not a statement that falls within the four categories of *per se* defamation. *See Renwick*, 310 N.C. at 317, 312 S.E.2d at 408–09 (infamous crime, infectious disease, impeach trade or profession, or subject to ridicule or contempt). The alleged statements do not establish a claim for *per se* defamation.

Not *per quod* defamation. For accusations of removing campaign signs to constitute *per quod* defamation, Mr. Travis must show that he suffered special damages because of the accusations. *Tallent*, 57 N.C. App. at 254, 291 S.E.2d at 340. Nowhere does Mr. Travis allege that he suffered any type of pecuniary damages because of the alleged statements.

VI. The denials of Mr. Travis's accusations about Commissioner meetings are not defamatory.

Mr. Travis accuses the Individual Defendants of defaming Mr. Travis by denying Mr. Travis's accusations that the Rockingham County Commissioners had attempted to bring a casino to Rockingham County. *See* Compl. ¶ 64. This is not a viable defamatory claim because (1) it fails the heightened pleading standard, (2) it is not *per se* defamation, and (3) it is not *per quod* defamation.

Heightened pleading. Despite there being a heightened pleading standard, *see, e.g., Greentouch USA*, 2024 NCBC 67, 48, Mr. Travis never alleges only which of the three Defendants (Mr. Berger, Mr. Powell, or Mr. Richardson) said what particular statement, to whom it was said, or when and where the statement was said. Mr. Travis's vague allegations fall way short of the heightened pleading standard.

Not *per se* defamation. A denial of somebody else's statement does not fall within the four categories of *per se* defamation. *See Renwick*, 310 N.C. at 317, 312 S.E.2d at 408–09 (infamous crime, infectious disease, impeach trade or profession, or subject to ridicule or contempt). Therefore, the alleged denials of Mr. Travis's accusations cannot establish a claim for *per se* defamation.

Not *per quod* defamation. Nowhere does Mr. Travis allege that he suffered any type of pecuniary damages because of the alleged denials. *Tallent*, 57 N.C. App. at 254, 291 S.E.2d at 340.

VII. The claims for civil conspiracy and punitive damages necessarily fail too.

Mr. Travis's claims for civil conspiracy and punitive damages are contingent on his ability to establish an underlying defamation claim. Because Mr. Travis has not alleged a claim for defamation, his claims for civil conspiracy and punitive damages must be dismissed as well.

A claim of civil conspiracy is dependent on there being an underlying tort; therefore, a civil-conspiracy claim must be dismissed in the absence of an underlying substantive claim. *See Strickland v. Hedrick*, 194 N.C. App. 1, 19, 669 S.E.2d 61, 72–73 (2008); *Esposito v. Talbert & Bright, Inc.*, 181 N.C. App. 742, 747, 641 S.E.2d 695, 698 (2007). Likewise, a claim for punitive damages cannot withstand the dismissal of the underlying conduct on which the claim depends. *See Sullivan v. Mebane Packaging Grp., Inc.*, 158 N.C. App. 19, 35, 581 S.E.2d. 452, 463 (2003) (dismissal of underlying claims mandated dismissal of punitive damages claim).

Second, even assuming Mr. Travis’s defamation claim survives, he must allege facts showing an actual agreement among the alleged co-conspirators. “[A]llegations that defendants maliciously conspired together and acted in concert, explicitly, impliedly or tacitly, to engage in the [alleged] wrongful acts, without additional supporting facts, are insufficient to survive a Rule 12(b)(6) motion.” *Estate of Chambers v. Vision Two Hospitality Mgmt., LLC*, 2013 NCBC 52, ¶ 22 (N.C. Super. Ct. Nov. 21, 2013) (citing *S.N.R. Mgmt. Corp. v. Danube Partners 141, LLC*, 189 N.C. App. 601, 609, 659 S.E.2d 442, 449 (2008)) (internal quotations and brackets omitted). Mr. Travis offers no facts showing an agreement among any of the Defendants.

CONCLUSION

Because Mr. Travis cannot possibly state a claim for defamation based on the alleged in his Complaint, Individual Defendants request that Mr. Travis’s claims be dismissed with prejudice. *See Johnson v. Bollinger*, 86 N.C. App. 1, 8, 356 S.E.2d 378, 383 (1987) (holding that trial court has discretion to dismiss a complaint pursuant to Rule 12(b)(6) with prejudice).

Respectfully submitted, this the 16th day of April, 2025.

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CERTIFICATE OF SERVICE

This certifies that on this day a copy of the foregoing Motion was served on the following via e-mail to addresses of record with the Court, per Rule 5(b)(1)(a) of the N.C. Rules of Civil Procedure:

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This 16th day of April, 2025.

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