

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 01660

WAKE COUNTY

HARRY SMITH,

Plaintiff,

v.

J. FIELDING MILLER,

Defendant.

BTB



COMPLAINT

NOW comes Plaintiff and complains of the Defendant as follows:

INTRODUCTION TO ACTION

A. Plaintiff, who is a successful Eastern North Carolina businessman, philanthropist and volunteer leader in higher education, institutes this action to recover damages resulting from an effort to harm his reputation in the business, philanthropic and educational community in which he lives and works.

B. Certain leaders of ECU and the University of North Carolina, including Defendant, worked to cause ECU to hire and keep Cecil Staton as Chancellor of ECU based in part upon misinformation provided by Mr. Staton. Mr. Staton mismanaged ECU. Plaintiff, in his fiduciary role on the Board of Governors of The University of North Carolina system, began asking questions that revealed the misinformation from Mr. Staton and the mismanagement by Mr. Staton. In an effort to discredit Plaintiff and cover-up mistakes, Defendant, Mr. Staton and others began to defame Plaintiff who has volunteered thousands of hours to assist the University System.

C. The effort to discredit Plaintiff and harm the University includes the defamatory actions set out below. It also includes a law suit filed by Cecil Staton against Plaintiff and the University of North Carolina in which Mr. Staton falsely accuses Plaintiff, as former Chairman of the Board of Governors of the University of North Carolina System, of drafting a Dossier of information regarding Mr. Staton's misdeeds and sending this Dossier to Steven F. Austin State University. It is well known, based upon a sworn affidavit from Professor Tracy L. Tuten filed in Orange County Superior Court, that Professor Tuten drafted the Dossier without help from anyone. Upon information and belief, a doctored version of the Dossier-related material was sent to Steven F. Austin State University by Mr. Staton or other co-conspirators of Defendant Miller working to discredit Plaintiff.

PARTIES AND JURISDICTION

1. Plaintiff Harry Smith is a citizen and resident of Pitt County, North Carolina. He is the former Chairman of the Board of Governors of the University of North Carolina System – the system that oversees the 16 constituent institutions of the University of North Carolina including the University of North Carolina at Chapel Hill, North Carolina State University and ECU. Through his private equity businesses and his philanthropy, Mr. Smith works to improve the economic and educational vibrancy of Eastern North Carolina.

2. Defendant J. Fielding Miller is a citizen and resident of Wake County, North Carolina. He is a Principal of CapTrust Investment Advisors and a member of the ECU Board of Trustees during a time of great turmoil at ECU.

3. This Complaint is filed pursuant to the Order Extending Time to File Complaint of February 4, 2021. A true and accurate Summons and Motion and Order Extending Time to File this Complaint are attached as **Exhibit A.**

4. This Court has subject matter jurisdiction over the controversy and personal jurisdiction over the parties. Venue is proper because Defendant Miller resides in Wake County, North Carolina.

WRONGFUL ACTS BY MILLER AND CO-CONSPIRATORS

DEFAMATORY STATEMENTS

5. In a late night Facebook post published to the ECU community and John Bream on the “Right the Ship” Facebook page in February of 2020, and on other occasions since then, Mr. Miller stated falsely that Plaintiff BOG Chair Smith was pushing the ECU Board of Trustees to buy an inappropriate house owned by a friend through corrupt acts.

6. To quote Mr. Miller’s Facebook post about Chairman Harry Smith: “Do you recall the scandal over ECU buying a new chancellors house? Do you recall that the BOG chair was aggressively pushing the BOT to buy a different house? Do you recall that that house was owned by none other than Phil Lewis? That seems pretty corrupt to me since they are friends and his house was not even close to a good fit and was substantially worse as a financial transaction. I think that would be information your readers would appreciate.”

7. The defamatory Facebook post continued: “Bream: I do recall the Staton house saga, but I'm not aware of any public allegations Harry Smith was pushing a different house. I'm keenly aware, and covered on Fire Compher, the public was outraged. Again, I'll state my stance - the price tag was in-line with other Chancellors' houses, but ECU did the city of Greenville dirty by going back on the proposed agreement to renovate the current residence. I would appreciate you sending me evidence you have of this. There was an appraisal done to see what the costs would be to renovate the chancellor’s house and the price tag was well above what the new house cost – as I recall it was around 2X. There were asbestos issues and the house was well out of code in

several areas. It was never designed for the social events that it has hosted over the years, there is no parking, students partying all night in the houses that back up to the house, students ringing the doorbell all through the night on their way back from downtown, and more. The decision wasn't complicated, the political noise made it out to be much different than the reality."

8. Defendant Miller falsely stated that Plaintiff threatened to "Block ECU's funding if we [the ECU board of Trustees] didn't vote no confidence in Staton."

9. Defendant Miller falsely asserted that Cecil Staton's lawsuit against Plaintiff was true.

10. Second, in a June 9, 2020, email published to John Bream at 1 a.m. in the morning and through other written and oral publication, Mr. Miller made the following false and defamatory statements about Chairman Harry Smith:

The stuff with the Chair election was rotten. There was plenty of back door dealing there. It was rotten, all driven by Harry Smith, Tom Fetzer, Angela Moss, Robbie and Phil. They failed in the straw vote, they tried to coerce Colin Johnson (and accused others of the opposite). All in all, justice served. BTW, Vern never solicited a single vote and won fair and square.

Mr. Bream stated to Mr. Miller: "Your 2018 commencement speech mentioned was a glowing endorsement of Staton. Do you still feel this way?" Mr. Miller falsely responded: "This is the main point that I believe we disagree on. If you had witnessed what I did I feel you would have felt the same way as me. Yes I do. He was harassed right out of the gate by the BOG chair (who was forced to resign BTW). You can't imagine what he had to endure. And remember, ECU is not only about Athletics, it is 4% of the school budget. BTW, that story isn't done yet. I

have heard that there is an investigation going on about how he was treated and the false information that was perpetuated about his tenure. This was a good man treated poorly.”

Mr. Smith had support of the President Pro Tem, and the Board of Governors and was in no way forced to resign from his Board of Governor’s position. Mr. Staton was not harassed by Mr. Smith nor was false information “perpetuated” about Mr. Staton’s tenure by Mr. Smith. These statements were made as part of a smear campaign orchestrated by Mr. Miller and including what we believe was assistance from Kieran Shanahan and Henry Hinton of Inner Banks Media.

11. In Mr. Miller’s efforts to assist Cecil Staton in his lawsuit against the University of North Carolina and others, Mr. Miller has falsely told witnesses that Mr. Staton’s lawsuit is “true” or words to that effect. Mr. Miller’s statement that Mr. Staton’s lawsuit is “true” vouches for a false and defamatory lawsuit against Mr. Smith and the UNC System. The lawsuit and Mr. Miller’s statement provide that Mr. Smith breached the confidentiality provisions of Mr. Staton’s severance agreement with UNC and mailed a “dossier” to Steven F. Austin University when these allegations are patently false and harm the reputation of both UNC and Mr. Smith.

12. Defendant knew or should have known that Harry Smith has not even seen the alleged confidentiality and non-disparagement agreement with Mr. Staton, never signed it and therefore could not breach it. Defendant asserted the truthfulness of the Staton Suit when Mr. Smith did not send anything to Stephen F. Austin when Mr. Staton was interviewing there, let alone the “dossier” that appears to have been doctored by the unknown sender to be more favorable to Mr. Staton. As indicated by officials of Stephen F. Austin State University and Mr. William Funk who was leading the university’s search effort, Mr. Staton was never a top candidate for the Presidency of Stephen F. Austin.

13. Defendant Miller and his co-conspirators campaigned to “target” Plaintiff. Defendant Miller has also made false and defamatory statements of fact regarding Mr. Smith’s efforts regarding Project Unify, retaining or terminating President Margaret Spellings, hiring and termination of Cecil Staton’s tenure at ECU, North Campus Crossing, foundation audits, and the circumstances surrounding the end of Mr. Smith’s tenure on the UNC System’s Board of Governors. For instance:

- a. Defendant accused Plaintiff of “stopping” Project Unify when it was North Carolina Treasurer Dale Falwell who stopped the project despite Plaintiff’s efforts to improve the project’s terms for ECU and close the project transaction;
- b. Defendant accused Plaintiff of being forced to resign from the Board of Governors when Plaintiff had plenty of support to stay on, no significant pressure to leave and chose to leave for personal reasons having nothing to do with ECU or pressure;
- c. Contrary to the statements of Defendant, Plaintiff did not pressure the Board of Governors or the Board of Trustees of ECU to fire Cecil Staton;
- d. Contrary to the statements of Defendant, Plaintiff opposed the football stadium expansion at ECU and did not seek to feather his own bed through the expansion.
- e. Defendant stated that Plaintiff made the University audit the ECU Foundation and Kel Normann when Plaintiff did not do so;
- f. Defendant stated that Plaintiff pushed ECU to purchase Phil Lewis’ home as a chancellor’s residence for “corrupt” purposes when Plaintiff suggested ECU renovate the existing Chancellor’s home and believed this was the best option for ECU.

13A. Defendant Miller made these false statements alleged above despite Plaintiff's repeated offers to talk with Defendant to discuss the facts and keep published statements accurate. Despite Defendant Miller's effort to target Plaintiff with false and disparaging comments, in or around November of 2020, Mr. Miller sought Plaintiff Harry Smith's assistance helping ECU saying: Harry, we need you; we cannot fix ECU without you.

FIRST CLAIM FOR RELIEF

Defamation Per Se Against Defendant Miller

14. Plaintiff incorporates by reference the foregoing and succeeding paragraphs of the Complaint as if fully set forth here.

15. Defendant wrote, said or caused to be disseminated the defamatory statements set out above.

16. Defendant published the defamatory statements by sending them to John Bream and others on or after February 7, 2021. The false and defamatory statements described above were in fact false and defamatory and impeached Plaintiff in his trade and profession as a businessman, philanthropist and leader in higher education.

17. At the time of publication, Defendant knew the statements he was making were false or he made them with reckless disregard for the truth.

18. Alternatively, at the time of the publication of the false and defamatory statements set out above, Defendant failed to exercise ordinary care in order to determine whether the statements made were false or acted with reckless disregard as to whether the statements were false.

19. Defendant published the defamatory statements with actual malice.

20. The false and defamatory statements contained in the statements recited above concerned and directly targeted Plaintiff in his trade and profession as described herein. The statements defamed and libeled Plaintiff as intended by Defendant.

21. Upon information and belief, Defendant made oral and written statements to the same effect as the defamatory statements set out above to others in addition to John Bream and the readers of the Right the Ship Facebook site.

22. Defendant Miller and his co-conspirators contributed to the publication and/or dissemination of the false and defamatory statements set out above.

23. The above acts proximately caused damage to Plaintiff's reputation as a philanthropist, businessman and leader in higher education.

24. Plaintiff has suffered substantial damages, proximately caused by the above Defendant as a result of the defamation of Plaintiff through the statements set out above, including but not limited to, loss of income and benefits, loss of professional reputation, mental anguish, loss of quality and enjoyment of life and other damages to be proven trial.

25. The Defendant's acts, as described above, were deceptive, willful, wonton and malicious and events an intentional or reckless indifference to and disregard for the rights of Plaintiff. Aggravating factors that support an award of punitive damages are alleged above. Accordingly, Plaintiff is entitled to punitive damages in an amount to be determined by the jury in according with Chapter 1D of the North Carolina general statutes.

SECOND CLAIM FOR RELIEF

Defamation Per Quod against Defendant Miller for Publication of the Defamatory Statements

26. Plaintiff incorporates by reference the foregoing and succeeding paragraphs of this Complaint as if fully set forth herein.

27. Defendant wrote, printed or caused to be printed the defamatory written statements set out above.

28. Defendant published the John Bream email, the language in the Right the Ship ECU website and the other written defamation by sending it or causing it to be sent to John Bream and other third parties.

29. The statements set out above were false and defamatory and impeached Plaintiff in his trade, business and profession.

30. Additionally, the false and defamatory statements set out above are defamatory when considered in connection with innuendo, colloquium, and the circumstances in which they were made, thus constituting defamation per quod.

31. At the time of publication of the defamatory statements, Defendant knew the statements set out above were false.

32. Alternatively, at the time of publication of the defamatory statements, Defendants failed to exercise ordinary care in order to determine whether the defamatory statements were false; or acted with reckless disregard as to whether the statements were false.

33. Defendant published the false and defamatory statements with actual malice.

34. Upon information and belief, Defendant made oral and written statements to the same effect as the defamatory written statements set out above to members of the ECU Board of Trustees, the University of North Carolina Board of Governors and others.

35. The above acts proximately caused damages to Plaintiff's reputation in business philanthropy and higher education.

36. Plaintiff has suffered substantial damages proximately caused by the Defendant as a result of the defamation of Plaintiff through the defamatory statements, including, but not limited to, loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, mental anguish and other damages to be proven at trial.

37. The Defendant's acts as described above, were deceptive, willful, wonton and malicious, and evidenced an intentional or reckless indifference to and disregard for the rights of Plaintiff. Aggravating factors that support an award of punitive damages are alleged above. Accordingly, Plaintiff is entitled to punitive damages in an amount to be determined by the jury in accordance with Chapter 1D of the North Carolina General Statutes.

THIRD CLAIM FOR RELIEF

Unfair or Deceptive Acts or Practices against Defendant Miller

38. Plaintiff incorporates by reference the foregoing and succeeding paragraphs of this Complaint as if fully set forth herein.

39. The defamation and other actions alleged herein, were false and deceptive, and were committed in or effecting commerce. False and disparaging comments by one manager of millions of dollars of assets in Eastern North Carolina (Miller) about the honesty, competence and integrity of another business and philanthropic leader and manager of millions of dollars of assets in Eastern North Carolina (Smith) is conduct in or effecting commerce.

40. As a proximate result of the actions of Defendant Miller, Plaintiff suffered actual damages to be proven at trial.

41. The actions of Defendant as alleged, constitute unfair or deceptive acts or practices in violation of North Carolina General Statute Section 75-1.1.

42. Plaintiff is entitled to treble damages and attorneys' fees pursuant to North Carolina General Statute Sections 75-16 and 75-16.1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. That he recover compensatory damages against Defendant in an amount in excess of \$25,000 as proven at trial;

2. That he recover punitive damages against Defendant Miller in an amount determined in the reasonable discretion of the jury;

3. That he be awarded treble damages, attorneys' fees and costs pursuant to the provisions of GS 75-16 and GS 75-16.1 and any other statute providing for attorneys' fees and costs.

4. That he be awarded pretrial and post-judgment interest on all amounts awarded herein;

5. That Pursuant to Rule 38(b) of the North Carolina Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues of fact presented herein.

6. That the cost of this action be taxed to Plaintiff; and

7. That such other and additional relief as the Court deems just and proper be awarded to the wronged Plaintiff.

Respectfully submitted this the 23rd day of February, 2021.



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Attorney for Plaintiff

EXHIBIT A

F-12

STATE OF NORTH CAROLINA

File No. 2107 01660

WAKE County

In The General Court Of Justice
 District Superior Court Division

Name Of Plaintiff
HARRY SMITH

VERSUS

Name Of Defendant
J. FIELDING MILLER

APPLICATION AND ORDER EXTENDING TIME TO FILE COMPLAINT

G.S. 1A-1, Rule 3

APPLICATION

The undersigned requests permission to file a complaint in this action within twenty (20) days of any order granting this Application, as provided in Rule 3 of the Rules of Civil Procedure. The nature and purpose of the action are:

Name And Purpose Of The Action

SMITH V. MILLER

The nature and purpose of this action is to obtain compensation and relief from Mr. Miller for Defamation Per Se, Defamation Per Quod, Intentional Infliction of Emotional Distress, civil conspiracy and Unfair or Deceptive Acts or Practices arising out of a coordinated effort to defame Plaintiff's character including his character for honesty and competence through social media posts and other communications including but not limited to statements similar to Mr. Miller's written statements of June 9, 2020 to John Bream and on the "Right the Ship" FaceBook page of February 9, 2020.

Date
02-04-2021

Signature
Mark J. Ingleton

Applicant
 Attorney For Applicant

ORDER

The Court states that the nature and purpose of this action are as set forth above.

Therefore, it is ORDERED that permission is granted to the applicant to file a complaint in this action up to and including the date shown below.

File Complaint On Or Before
2.24.2021

(Date must be within 20 days of date of Order.)

Date Of Order
2.4.2021

Signature
[Signature]

Assistant Clerk Of Superior Court Clerk Of Superior Court

NOTE: Under Rule 3 of the Rules of Civil Procedure, upon entry of this Order, a summons shall be issued and the summons and a copy of this Order must be served in accordance with the provisions of Rule 4. A complaint must be filed in this action within the period provided above and that complaint must be served in accordance with the provisions of Rule 4 or by registered mail if the plaintiff so elects. If a complaint is not filed within the above period, the action shall abate.

STATE OF NORTH CAROLINA

WAKE County

File No.

21CV01660

Scan No.

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff

HARRY SMITH

VERSUS

Name Of Defendant(s)

J. FIELDING MILLER

CIVIL SUMMONS
TO BE SERVED WITH
ORDER EXTENDING
TIME TO FILE COMPLAINT

G.S. 1A-1, Rule 4

To:

Name And Address Of Defendant 1

J. FIELDING MILLER
1501 SPRUCE VIEW LANE

To:

Name And Address Of Defendant 2

RALEIGH NC 27614



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out!
You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles!
Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or the plaintiff's attorney within thirty (30) days after you have been served with the complaint as authorized in the attached order. You may serve your answer by delivering a copy to the plaintiff or the plaintiff's attorney or by mailing a copy to one of them at his/her last known address.
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

MARK FINKELSTEIN
FOX ROTHSCHILD LLP
434 FAYETTEVILLE STREET, SUITE 2800
RALEIGH NC 27601

Date

2/4/2021

Time

2 PM

Signature

[Handwritten Signature]

Deputy CSC

Assistant CSC

Clerk Of Superior Court

(Over)