

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

22-1835B

EAST COAST PRINTING, INC.,

Plaintiff,

v.

JIM LYONS AND MASSACHUSETTS REPUBLICAN
PARTY,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
22 AUG 10 P 2:54
JIM JOSEPH DONOVAN
CLERK / MAGISTRATE

I. INTRODUCTION

Plaintiff, East Coast Printing, Inc. ("Plaintiff" or "East Coast"), pursuant to Rule 65 of the Massachusetts Rules of Civil Procedure, requests this Court enter an ex parte Temporary Restraining Order and/or Preliminary Injunction against Defendants, Jim Lyons ("Defendant Lyons") and the Massachusetts Republican Party ("MassGOP") (referred to herein collectively as "Defendants"), in order to avoid immediate and irreparable injury in light of the impending election cycle, loss and/or damage to East Coast before Defendants can be heard in opposition, and issue a Short Order of Notice. East Coast filed a Verified Complaint in this matter on August 10, 2022, seeking injunctive relief to enjoin Defendants from restricting East Coast's use of the MassGOP non-profit postage permit, prohibiting East Coast's participation in the MassGOP's Coordinated Mail Program and instructing MassGOP candidates that they are not allowed to use East Coast's printing services.

East Coast relies on the allegations of the Verified Complaint and the attached Affidavit of Louis Silva, President of Plaintiff, East Coast Printing, Inc., and submits this Memorandum of Law in support thereof.

East Coast respectfully requests this Court:

- A. Issue a Temporary Restraining and/or Preliminary Injunction enjoining Defendants from restricting East Coast's use of the MassGOP non-profit postage permit, prohibiting East Coast's participation in the MassGOP's Coordinated Mail Program and instructing MassGOP candidates that they are not allowed to use East Coast's printing services, during the pendency of this action;
- B. Issue a Short Order of Notice to Defendants;
- C. Declare, adjudge or decree the rights of the parties;
- D. Award all such other and further relief as the Court deems just and appropriate.

II. BACKGROUND

East Coast has worked closely with MassGOP and its candidates for many years. (Verified Complaint ¶ 5) East Coast derives significant economic benefits from its relationships with, and work for, MassGOP candidates. (Verified Complaint ¶ 6) On or about June 2, 2022, East Coast learned that Defendants prohibited East Coast from participation in the MassGOP's Coordinated Mail Program, revoked East Coast's use of the MassGOP non-profit postage permit, and Defendant Lyons, Chairman of MassGOP, instructed candidates that they are not allowed to work with East Coast and East Coast is no longer permitted to participate in the program. (*See* Verified Complaint ¶¶ 8-9) Defendant Lyons is using his position of authority to retaliate against East Coast for a perceived slight because one of East Coast's junior employees, Mike, was copied on an email thread to which Sean Powers and Matt Sisk – two (2) individuals with whom Defendant Lyons has

a personal dispute – replied all. (Verified Complaint ¶ 10) East Coast’s junior employee, Mike, was not an active participant on the subject email thread and is not affiliated – politically or otherwise – with Sean Powers or Matt Sisk. (Verified Complaint ¶ 11) Neither East Coast, nor its junior employee, Mike, have any connection with Defendant Lyon’s personal dispute with Sean Powers and Matt Sisk. (Verified Complaint ¶ 12)

Defendant Lyons’ deliberate interference with East Coast’s business relationships with MassGOP candidates has had, and continues to have, detrimental consequences including economic loss and damage to East Coast’s reputation. .” (Verified Complaint ¶ 13) For example, as recent as July 8, 2022, Elizabeth Groot, Executive Assistant, MassGOP, responded to an email from Representative David DeCoste’s Campaign stating “Sorry, MassGOP will not work with East Coast Printing,” even though Representative David DeCoste’s Campaign has “historically worked with East Coast Printing.” *Id.* Additionally, Defendant, MassGOP’s employee, agent and/or representative, John Milligan, informed Republican candidates that East Coast is not allowed to participate in the Coordinated Mail Program through MassGOP. (Verified Complaint ¶ 14)

As a result, Defendants have directly interfered with East Coast’s business and their actions have harmed the valuable and credible reputation that East Coast has worked tirelessly to achieve over twenty-three (23) years of business.

East Coast’s Application to enjoin Defendants from restricting East Coast’s use of the MassGOP non-profit postage permit, prohibiting East Coast’s participation the MassGOP’s Coordinated Mail Program and instructing MassGOP candidates that they are not allowed to use East Coast’s printing services, should be granted as East Coast will suffer irreparable harm if a Temporary Restraining Order and/or Preliminary Injunction does not issue in light of the upcoming election cycle, including the State Primary on September 6, 2022 and State Election on November

8, 2022. Unless Defendants are restrained from proceeding with the above-mentioned actions, East Coast will suffer irreparable injury as a result of Defendants' publication of false and defamatory statements regarding East Coast, causing damages, including economic loss and injury to reputation. For the reasons set forth herein, East Coast has no adequate remedy at law or otherwise.

III. LEGAL STANDARD

Massachusetts Rule of Civil Procedure 65(c) authorizes this Court to grant a temporary restraining order where "it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant." Mass. R. Civ. P. 65(a). Under Massachusetts law, a plaintiff is entitled to preliminary relief upon demonstrating a substantial likelihood of success on the merits, that the preliminary relief requested is necessary to prevent immediate and irreparable harm, that the relative equities favor the moving party and that granting the injunction is in the public interest. *GTE Products Corp v., Stewart*, 414 Mass. 721, 722-23 (1993). As set forth below, East Coast has met this standard and therefore is entitled to an *ex parte* restraining order and preliminary injunction.

IV. ARGUMENT

A. East Coast Has Shown A Likelihood Of Success On The Merits

East Coast seeks a preliminary injunction enjoining Defendants from restricting East Coast's use of the MassGOP non-profit postage permit, prohibiting East Coast's participation the MassGOP's Coordinated Mail Program and instructing MassGOP candidates that they are not allowed to use East Coast's printing services. An injunction is warranted because Defendants published false, defamatory and disparaging statements about East Coast and East Coast's services, causing it to suffer damages, including economic loss and injury to reputation. Further, Defendants intentionally disrupted the business relationships between East Coast and MassGOP

candidates, and made false and misleading statements constituting unfair and deceptive business practices.

i. Defamation

East Coast has a likelihood of success on the merits of its defamation claim because it can demonstrate that Defendants have made a defamatory statement of fact, of or concerning East Coast, that was published and was false. *White v. Blue Cross & Blue Shield of Mass.*, 442 Mass. 64, 66 (2004); *Cignetti v. Healy*, 89 F. Supp. 2d 106, 126 (D. Mass. 2000). The defamatory statements caused East Coast economic loss where East Coast derives significant economic benefits from its relationships with, and work for, MassGOP candidates (Verified Complaint ¶ 6); and Defendants' statements, including instructions to MassGOP candidates that they are not allowed to use East Coast's printing services, have effectively blocked that source of business upon which East Coast relies. Additionally, Defendants' defamation is without proof of economic loss, and East Coast is not required to prove economic loss where Defendants' statements prejudiced East Coast's profession and business. *Ravnikar v. Bogojavlensky*, 438 Mass. 627, 630 (2003).

Showing a defamatory statement to just one person is sufficient to prove publication. *Phelan v. May Dep't Stores Co.*, 443 Mass. 52, 56 (2004); *Shafir v. Steele*, 431 Mass. 365, 372 (2000). East Coast has a likelihood of proving publication where as recent as July 8, 2022, Elizabeth Groot, Executive Assistant, MassGOP, responded to an email from Representative David DeCoste's Campaign stating "Sorry, MassGOP will not work with East Coast Printing," even though Representative David DeCoste's Campaign has "historically worked with East Coast Printing." (Verified Complaint ¶ 13) Additionally, by sharing the statements with MassGOP

candidates, Defendants published defamatory statements causing it to suffer damages, including economic loss and injury to reputation.

ii. Commercial Disparagement

In a commercial disparagement case, a plaintiff may recover for economic loss, usually lost sales, caused by the commercial disparagement. *Bose Corp. v. Consumers Union*, 529 F. Supp. 357, 361 (D. Mass. 1981) Loss of sales to specific customers is usually required unless the plaintiff can avail itself of the “widespread dissemination” exception. *Hipsaver, Inc. v. Kiel*, 464 Mass. 517, 539 (2013). Here, East Coast has a likelihood of success on the merits as MassGOP candidates represent an example of loss of sales to specific customers, especially where Defendants have prohibited candidates from using East Coast’s printing services.

East Coast demonstrates a likelihood of success on the merits where Defendants published the false and disparaging statements concerning East Coast’s services, causing East Coast to suffer special and general damages, including the monetary loss of important and valuable clients, including but not limited to MassGOP candidates, and injury to the reputation of East Coast.

iii. Intentional Interference with Advantageous Business Relations

The elements of the tort of interference with advantageous business relations include proof that a plaintiff “had an advantageous relationship with a third party,” that “the defendant knowingly induced a breaking of the relationship,” and that the defendant’s interference, “in addition to being intentional, was improper in motive or means,” causing plaintiff’s loss of advantage directly resulting from the defendant’s conduct. *See Blackstone v. Cashman*, 448 Mass. 255, 260, 860 N.E.2d 7, 12–13, 25 I.E.R. Cas. (BNA) 953, 153 Lab. Cas. (CCH) P 60343 (2007); *Comey v. Hill*, 387 Mass. 11, 438 N.E.2d 811 (1982) quoting from *Nolan*, 37 Massachusetts Practice Series: Tort Law § 72 (1979).

East Coast has a likelihood of success on the merits where it was involved in ongoing, valid, and existing business relationships with MassGOP candidates. East Coast had the valid and reasonable expectation that it would derive future economic benefits from its relationships with MassGOP candidates. Defendants knew of the relationships between East Coast and MassGOP candidates. Defendants intentionally disrupted the relationships between East Coast and MassGOP candidates with the express purpose to harm East Coast, engaging in wrongful conduct, including prohibiting East Coast from participating in the Coordinated Mail Program and publishing defamatory and disparaging statements concerning East Coast. Defendants' conduct was undertaken wholly without privilege or justification. As a result of Defendants' intentional acts, the business relationships between East Coast and MassGOP candidates were disrupted in that MassGOP candidates were not permitted to do business with East Coast and East Coast was excluded from the Coordinated Mail Program. Defendants' interference with the business relationships between East Coast and MassGOP candidates has resulted in damages to East Coast including economic loss. Defendants acted maliciously and wantonly in interfering with the business relationships between East Coast and MassGOP candidates. As a result of Defendants' intentional interference, which was improper in motive and means, East Coast has been caused to suffer damages, including economic loss.

iv. Violation of M.G.L. c. 93A, § 11

Defendants are engaged in trade or commerce within the Commonwealth of Massachusetts. Defendant Lyons has made false and misleading statements concerning East Coast's business. MassGOP, through its agents, employees and/or representatives, Jim Lyons, Elizabeth Groot and John Milligan, informed MassGOP candidates that MassGOP will not work with East Coast and East Coast is not allowed to participate in the Coordinated Mail Program. Defendants, without

justification, have excluded East Coast from participation in its Coordinated Mail Program. East Coast has requested Defendants allow candidates to work with East Coast and authorize East Coast to participate in the Coordinated Mail Program. On July 21, 2022, East Coast, through counsel sent a formal demand that Defendants cease and desist from all defamatory and commercially disparaging statements, that Defendants refrain from interference with East Coast's business relationships and that Defendants reinstate and re-authorize East Coast for participation in the MassGOP's Coordinated Mail Program. A Copy of East Coast's Demand Letter dated July 21, 2022, is attached hereto as Exhibit A. Defendants' failure to respond is evidence of their bad faith as they continue to prohibit MassGOP candidates from working with East Coast and refuse to authorize East Coast to participate in the Coordinated Mail Program. By the foregoing, Defendants have engaged in unfair methods of competition and unfair and deceptive trade practices in violation of Sections 2 and 11 of Chapter 93A of the Massachusetts General Laws. Such actions were, and are, intentional and undertaken willfully and knowingly, and have caused proximate damage to East Coast in violation of M.G.L. c. 93A, §11. As a result of the foregoing, East Coast has been caused to suffered damages by injury, plus multiple damages and attorney's fees.

B. East Coast Will Be Irreparably Harmed If Defendants Are Not Enjoined

If a Temporary Restraining Order and/or Preliminary Injunction does not issue, and Defendants are permitted to wrongfully exclude East Coast from participating in the upcoming election cycle, then East Coast will suffer immediate and irreparable harm to its reputation, upon which its business depends, as East Coast has no adequate remedy at law or otherwise.

With the State Primary on September 6, 2022, and the State Election on November 8, 2022, the upcoming election cycle includes the following deadlines:

- State Primary:
 - Voter Registration Deadline: August 27, 2022;
 - Vote by Mail Application Deadline: August 29, 2022;
 - Early Voting: August 27 – September 2, 2022;
 - State Primary: September 6, 2022.
- State Election:
 - Voter Registration Deadline: October 29, 2022;
 - Vote by Mail Application Deadline: November 1, 2022;
 - Early Voting: October 22 – November 4, 2022;
 - State Election on November 8, 2022.

A copy of “Upcoming Elections” as posted on Secretary of State, William Francis Galvin’s, website, is attached hereto as “Exhibit B;” and East Coast requests the Court take judicial notice. (<https://www.sec.state.ma.us/ele/eleupcomingelections/upcoming-elections.htm>)

If Defendants are not enjoined, then East Coast will suffer irreparable harm because its significant losses can never be recouped due to the immediacy of the election cycle. As such, the forthcoming election cycle combined with East Coast’s irreparable injuries, entitles it to an interim order enjoying Defendants. East Coast’s reputation, which is uniquely valuable, is also at risk of immediate and irreparable harm.

C. There Will Be No Harm to Defendants In Granting This Temporary Restraining Order and/or Preliminary Injunction.

In contrast to the irreparable harm that East Coast will incur if a Temporary Restraining Order and/or Preliminary Injunction do not enter, Defendants will not be harmed if East Coast’s Application is granted. With an injunction in effect, there is no irreparable harm to Defendants, who stands to lose nothing. Defendants’ opportunity to resolve its personal grievances with third

parties will suffer no disadvantage. East Coast has made a good faith effort to request Defendants allow candidates to work with East Coast and authorize East Coast to participate in the Coordinated Mail Program, however, Defendants continue to ban MassGOP candidates from working with East Coast. Granting a Temporary Restraining Order and/or Preliminary Injunction to enjoin Defendants will not deprive Defendants of any rights they may have.


D. The Public Interest Will Not Be Adversely Affected If A Temporary Restraining Order and/or Preliminary Injunction Are Issued.

The public interest will not be affected by the issuance of injunctive relief. Defendants should be enjoined from interfering with East Coast's rights, especially in light of the impending election cycle, because the public has an interest in preserving the reputation of credible and dependable businesses such as East Coast.

V. CONCLUSION

For the foregoing reasons, East Coast respectfully requests that a Temporary Restraining Order and/or Preliminary Injunction be issued. For the Court's convenience, a Proposed Order is attached hereto.

Respectfully submitted,
Plaintiff,
East Coast Printing, Inc.,
By its attorneys,



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