

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

EFRAIN GALICIA, FLORENCIA TEJEDA PEREZ,
GONZALO CRUZ FRANCO, JOHNNY GARCIA &
MIGUEL VILLALOBOS,

Plaintiffs,

vs.

DONALD J. TRUMP, DONALD J. TRUMP FOR
PRESIDENT, INC., THE TRUMP ORGANIZATION
LLC, KEITH SCHILLER and JOHN DOES 1-4,

Defendants.

SUMMONS

Index No. _____/2015


Purchased on September 9, 2015

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.


Plaintiffs designate Bronx County as the place of trial. The basis of venue is that plaintiffs Johnny Garcia and Miguel Villalobos reside in Bronx County.

Dated: New York, New York
September 9, 2015

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COMPLAINT

Index No. _____/2015

Plaintiffs Efrain Galicia, Florencia Tejada Perez, Gonzalo Cruz Franco, Johnny Garcia and Miguel Villalobos, by and through their attorneys, Roger J. Bernstein and Eisner & Associates, P.C., bring this complaint and in support state as follows:

INTRODUCTION

1. On September 3, 2015, plaintiffs, a group of human rights activists of Mexican origin, were violently attacked by defendant Donald J. Trump's security guards. Plaintiffs were attacked and their property destroyed for the express purpose of interfering with their political speech while they were lawfully and peacefully assembled on the public sidewalk in front of the headquarters of Donald J. Trump for America, Inc. and the Trump Organization LLC. Plaintiffs bring this action for relief from defendants' multiple physical assaults on plaintiffs and for relief from defendants' intentional destruction and conversion of plaintiffs' property.

PARTIES

2. Plaintiff Efrain Galicia ("Galicia") is a resident of Queens County, State of New York.

3. Plaintiff Florencia Tejada Perez (“Perez”) is a resident of Queens County, State of New York.

4. Plaintiff Gonzalo Franco (“Cruz”) is a resident of Queens County, State of New York.

5. Plaintiff Johnny Garcia (“Garcia”) is a resident of Bronx County, State of New York.

6. Plaintiff Miguel Villalobos (“Villalobos”) is a resident of Bronx County, State of New York.

7. Defendant Donald J. Trump (“Trump”) is a contender for the nomination of the Republican Party to run as its candidate for the office of the President of the United States in the 2016 Presidential Elections and was a reality television personality before he was discharged by the NBC television network as a result of the conduct alleged herein. Defendant Trump maintains offices at the “Trump Tower” at 725 Fifth Avenue, New York County, State of New York.

8. Defendant Donald J. Trump For President, Inc. (the “Trump Campaign”), a Virginia corporation authorized to do business in New York State, is the campaign committee formed to support the candidacy of defendant Trump in the 2016 Presidential Election and the primary contests for the Republican Party’s nomination. The Trump Campaign maintains its headquarters at the “Trump Tower” at 725 Fifth Avenue, New York County, State of New York. Defendant Trump controls the Trump Campaign.

9. Defendant Trump Organization LLC (“Trump Organization”), a New York limited liability company, is a multinational conglomerate engaged in, *inter alia*, real estate development, management and brand licensing. Defendant Trump Organization maintains its

principal place of business at the “Trump Tower” at 725 Fifth Avenue, New York County, State of New York. Defendant Trump is the Chairman and President of Trump Organization.

10. Defendant Keith Schiller (“Schiller”) is the Director of Security at defendant Trump Organization and is the personal bodyguard of defendant Trump. Defendant Schiller is a former member of the New York City Police Department. Schiller is over six feet tall.

11. Defendants John Doe 1, John Doe 2, John Doe 3 and John Doe 4 are individuals who appear to be security guards employed by Trump, the Trump Organization and the Trump Campaign whose identities are not yet known by plaintiffs.

12. At all times relevant herein defendants Trump, the Trump Campaign and the Trump Organization (collectively the “Trump Employer Defendants”) jointly and severally employed defendants Schiller, defendants John Doe 1-4, and other security personnel (collectively the “Trump Employee Defendants”). The Trump Employer Defendants all have authority to act with respect to supervising, directing, hiring and firing, and making decisions about workplace duties and use-of-force policies for their security personnel.

13. Upon information and belief, at all times relevant herein each of the Trump Employer Defendants exercised control over all aspects of the day-to-day functions of the personal security detail of defendant Trump, as well as the security personnel of the Trump Campaign and the Trump Organization including the Trump Employee Defendants. Specifically, the Trump Employer Defendants: (i) have authority and control over managing, supervising and directing security personnel; (ii) have the power to establish, and have established, the terms of employment of security personnel; (iii) have the power to hire and fire security personnel; (iv) have control over security personnel work schedules; and (v) have had and have the power to

establish and enforce use-of-force guidelines for security personnel to follow in the course of carrying out their duties as employees of the Employer Defendants.

JURISDICTION AND VENUE

14. This Court has jurisdiction over defendants pursuant to CPLR § 302, as defendants' principal place of business is in the State of New York. Venue is proper in Bronx County because plaintiffs Galicia, Garcia and Villalobos are residents of The Bronx.

FACTS

15. On June 16, 2015, defendant Trump held a press conference at Trump Tower in New York City to announce the commencement of his campaign for the nomination of the Republican Party to run as its candidate for the Presidency of the United States in 2016.

16. During the press conference Trump spoke on a variety of political issues and made unsubstantiated and inflammatory claims that Mexico and other countries in "South and Latin America" were "sending people [to the United States] that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists."

17. Trump's statement was reported in the press internationally and generated widespread condemnation. Mexico's Foreign Minister Jose Antonio Meade characterized Trump's statement as reflecting "prejudice, racism or plain ignorance."¹ Univision Communications Inc. announced that it had ended its business relationship with Trump "based on his recent, insulting remarks about Mexican immigrants."² Thereafter, several other

¹ <http://www.reuters.com/article/2015/08/19/us-usa-election-trump-mexico-idUSKCN0QOISZ20150819>

² <http://noticias.univision.com/article/2380190/2015-06-25/estados-unidos/noticias/univision-finaliza-relacion-donald-trump-miss-universo>

companies followed Univision in cutting ties with Trump. Trump's fellow Republican Party candidates criticized his statement as "offensive", "inaccurate" and "wholly inappropriate".³

18. Plaintiffs are among those insulted by and deeply concerned about Trump's June 16, 2015 statements along with his subsequent repetition and defense of the same remarks. Among plaintiffs' concerns is the potential for these remarks to incite violence against the Mexican immigrant community.

19. On or about August 23, 2015, plaintiff Cruz personally heard defendant Trump repeat the June 16, 2015 statements about Mexican immigrants while plaintiff Cruz was working at a catered private event in New Jersey at which Trump was a featured speaker.

20. As Trump's rhetoric has continued, plaintiffs' fears have been confirmed. On August 19, 2015, two brothers from South Boston, Massachusetts viciously beat a 58-year-old Hispanic man at a Dorchester bus stop. One of the brothers later told police that his crime had been inspired by presidential candidate Donald Trump.⁴

21. Plaintiffs have organized public demonstrations in response to defendant Trump's statements about the immigrant community. Plaintiffs have planned to hold future rallies on the public sidewalk running along Fifth Avenue adjacent to Trump Tower to draw attention through signs, costumes and street theater to what they deem to be Trump's racism and xenophobia.

22. On July 3, 2015, plaintiffs held their first public demonstration in front of Trump Tower. The demonstration was attended by approximately twenty-five individuals between the hours of 3:00 p.m. and 8:00 p.m. and remained peaceful and orderly. During that demonstration, plaintiff Galicia positioned himself on the public sidewalk opposite the entrance to Trump Tower

³ <http://latino.foxnews.com/latino/politics/2015/07/03/latino-leaders-warn-republican-party-to-condemn-trump-for-comments-about/>

⁴ <http://www.bostonglobe.com/metro/2015/08/19/homeless/iTagewS4bnvBKWxxPvFcAJ/story.html>

and on the street side of the wide sidewalk in front of the building. Within moments of arriving, an individual who appeared to be a security guard for the Trump Organization approached Galicia. The guard instructed Galicia to leave the area and told him he was not allowed on "private property." Galicia disputed the security guard's assertion that the sidewalk running along Fifth Avenue was private property and advised the guard that he was permitted to continue to demonstrate there. The guard asked Galicia if he had a permit to which Galicia responded that he did not need a permit to be on a public sidewalk. Several moments later, Galicia witnessed the security guard speaking with an officer of the New York City Police Department (NYPD). The guard and the NYPD officer together approached the location where Galicia was standing. The NYPD officer advised Galicia, in front of the Trump Organization guard, that Galicia could continue to demonstrate on the public sidewalk in front of Trump Tower. The NYPD thereby put defendants on notice that plaintiffs' sidewalk demonstration was lawful and permissible.

23. On August 9, 2015, plaintiffs held their second peaceful and orderly public demonstration in front of Trump Tower. At the outset of the demonstration, plaintiff Cruz positioned himself on the sidewalk in a similar location to where Galicia had stood during the first demonstration. Within moments, Cruz was approached by an individual who identified himself as a building security guard for Trump Tower. The security guard instructed Cruz to leave the area and told him he was not permitted to demonstrate on private property. Cruz responded by telling the security guard that he was demonstrating on a public sidewalk and that he was permitted to do so. The security guard contacted an NYPD officer who arrived and also advised Cruz that he was permitted to demonstrate on the public sidewalk. Defendants were again put on notice by the NYPD that plaintiffs' sidewalk demonstration in front of Trump Tower was lawful and permissible.

24. Within days following their August 9, 2015, demonstration, plaintiffs began planning their third public protest in front of Trump Tower for September 3, 2015.

25. Each plaintiff contributed money to purchase the materials to make signs and costumes for the planned September 3rd demonstration. These signs and costumes became the joint property of plaintiffs.

26. Plaintiffs met for several hours on September 1 and 2, 2015, to prepare additional signs for the upcoming demonstration.

27. Among the materials that plaintiffs prepared for the demonstration were three large blue signs that were designed to satirize Trump's campaign slogan: "Make America Great Again!" Plaintiffs' signs (the "Demonstration Signs") substituted: "TRUMP: MAKE AMERICA RACIST AGAIN!" for Trump's campaign slogan. Each of the three Demonstration Signs, measuring approximately eight feet long by three feet high, was prepared on corrugated cardboard and stenciled and painted to parody the appearance and lettering used by the Trump Campaign. Annexed as Exhibit A is a picture of one of the Demonstration Signs.

28. Shortly before the September 3rd demonstration, plaintiff Galicia became aware that David Duke, former leader of the Ku Klux Klan, had endorsed Trump's proposed policies on immigration and had praised his candidacy publicly.⁵ Accordingly, to further emphasize their concerns regarding Trump's anti-Mexican immigrant statements and policy positions, plaintiffs Cruz and Perez planned to dress in costumes consisting of white robes and hoods similar to those traditionally worn by members of the Ku Klux Klan (the "Parody Costumes").

29. On September 3, 2015, at approximately 3:00 p.m., plaintiffs Cruz and Perez arrived on the sidewalk adjacent to Trump Tower. Many news media organizations had already

⁵ <http://www.cnn.com/2015/08/25/politics/david-duke-donald-trump-immigration/>

assembled in the same location to cover a press conference that was being held by defendant Trump inside the building where he was expected to pledge not to run as a third-party candidate if he failed to win the Republican Party nomination to run for President.

30. Plaintiffs Cruz and Perez situated themselves in approximately the same location as plaintiffs had stood at the two prior demonstrations: opposite the entrance to Trump Tower on the public sidewalk running along Fifth Avenue.

31. Plaintiffs Cruz and Perez removed the Parody Costumes from their bags and put them on while they waited for plaintiffs Galicia and Garcia and other demonstrators to arrive.

32. Plaintiff Cruz was immediately seized by defendant John Doe 1 with considerable force and commanded by him to "Get out of here!" and to "Take that costume off!" Cruz responded to Schiller that he was in a "public place." Defendant John Doe 1 then used both hands to violently shove Cruz, propelling him several feet southward on the public sidewalk.

33. Plaintiff Perez, who was standing on the public sidewalk next to Cruz during this assault and battery by Schiller, took out her cell phone to record the incident and was accosted by defendants John Doe 2 and John Doe 3. Defendant John Doe 2 ordered Perez to stop recording on "private property" and threatened to confiscate her cell phone if she did not comply. Defendant John Doe 2 also ordered her to remove her costume.

34. Immediately thereafter defendant John Doe 2, with defendant John Doe 3 as reinforcement, forcefully grabbed plaintiff Perez by the wrist and thrust her down the sidewalk in the same direction as Cruz.

35. The assembled press saw these events and Joshua Robin, a reporter from Time Warner Cable New York 1, and photographer Matthew Chaves publicly tweeted the following:

“Josh Robin @joshrobin Sep 3:

Holy cow. Scuffles breaking out at trump hdq w trump aides trying to move anti trump protesters. More @NY1”

“Matthew Chayes @chayesmatthew Sep 3:

@joshrobin @NY1 are they on the public street?

“Josh Robin @joshrobin Sep 3:

@chayesmatthew @NY1 yes.”

36. The assembled press began to record the events via video cameras as, moments later, plaintiffs Galicia and Garcia arrived at Trump Tower with the three Demonstration Signs and other materials for the demonstration. Galicia gave one sign to plaintiff Garcia and set the other two Demonstration Signs on the sidewalk in front of cement sidewalk planters. Immediately thereafter security guard defendants John Doe 1 & John Doe 4 approached and pulled the two Demonstration Signs away from the cement planters and threw them to the ground. Galicia calmly retrieved the two Demonstration Signs from the ground and set them upright. Within an instant, and while the two Demonstration Signs were still in Galicia’s personal possession, defendant Schiller swiftly and menacingly approached Galicia and grabbed the Demonstration Signs with both hands. When Galicia attempted to hold on to one of the Demonstration Signs Schiller ripped it away from Galicia, tearing the Demonstration Sign into pieces in the process.

37. Galicia shouted at defendant Schiller to return the Demonstration Signs as Schiller hurried toward the entrance of Trump Tower with the intact Demonstration Sign. Galicia followed behind while Schiller ignored Galicia’s demand for the return of plaintiffs’ property.

38. With Schiller’s back facing him, Galicia reached around in an attempt to retrieve the intact Demonstration Sign before Schiller could abscond with it into Trump Tower. As

Galicia reached for the Demonstration Sign, Schiller swung around and struck Galicia with a closed fist on the head with such force that it caused Galicia to stumble backwards.

39. As Galicia stumbled and attempted to regain his footing, security guard defendant John Doe 4 placed his hands around Galicia's neck in an effort to choke him. Galicia struggled briefly with defendant John Doe 4 until he was able to break free.

40. Defendant Schiller's and defendant John Doe 4's assaults and batteries on plaintiff Galicia were recorded by the television news cameras of Time Warner Cable New York 1 and circulated widely following the event. During the foregoing events reporter Joshua Robin from Time Warner Cable New York 1 publicly tweeted the following:

“Josh Robin @joshrobin Sep 3:

trump aides tearing away anti trump signs and hitting anti trump protester coming up @NY1”

“Josh Robin @joshrobin Sep 3:

Trump aides scuffle w protesters who they try to eject from public sidewalk. Coming up @NY1”

41. Following the attacks by Trump's security personnel, plaintiffs maintained their protest on the sidewalk in front of Trump Tower where they had originally assembled. Throughout the afternoon, the number of protestors steadily increased to approximately forty people at its peak. The demonstration was concluded at approximately 8:00 p.m. when plaintiffs collected all of their materials, disposed of any garbage, and left the location.

42. While NYPD uniformed officers were present at the demonstration throughout the day, no orders to disperse were given, no arrests were made, and no citations were issued.

43. The September 3, 2015 demonstration attended by plaintiffs was a peaceful and lawful assembly on a public sidewalk to protest the policies and racially incendiary statements of

a man seeking the nomination of the Republican Party to be its candidate for the office of President of the United States.

44. Following the September 3rd assaults and batteries, it was reported that Trump aides claimed the demonstrators were blocking the sidewalk – an allegation that is inconsistent with widely circulated videos and photographs of the incident and is denied by plaintiffs

45. The wrongful acts and tortious conduct of defendants Trump, Trump Campaign, Trump Organization, Schiller and John Does 1-4 were committed and engaged in for the claimed purpose of “clearing the sidewalk”, which the defendants had no legal right to do. Defendants’ actual purpose was to prevent and suppress plaintiffs’ lawful political speech and suppress plaintiffs’ peaceful and lawful demonstration, and defendants’ acts were committed and engaged in with a conscious disregard of plaintiffs’ rights to demonstrate on the public sidewalk in front of Trump Tower.

46. The wrongful acts and tortious conduct of the Trump Employee Defendants, as set forth herein were committed and engaged in within the scope and course of their employment and at the express or implied direction of, and with the express or implied approval of, the Trump Employer Defendants. Defendants Trump, Trump Campaign, Trump Organization, Schiller and John Does 1-4 undertook these wrongful acts by common agreement and understanding among all defendants for the purpose of preventing plaintiffs’ demonstration.

47. The wrongful acts and conduct of the Trump Employee Defendants as set forth herein were committed and engaged in with malice, express or implied and with the intent to harm and injure plaintiffs and subject them to cruel and unjust hardship and did in fact harm and injure plaintiffs and cause them cruel and unjust hardship.

48. The wrongful acts and conduct of defendants Trump, Trump Campaign, Trump Organization, Schiller and John Does 1-4 were committed and engaged in with conscious disregard for the probable harmful consequences of their wrongful acts and conduct and with a willful and deliberate failure to act to avoid those consequences.

49. The Trump Employer Defendants expressly authorized or ratified the Trump Employee Defendants' wrongful acts and conduct as set forth and described herein and are personally culpable for oppression, fraud, and malice, express or implied.

50. Plaintiffs have planned additional demonstrations in front of Trump Tower to express their dissent from and objection to defendant Trump's statements concerning individuals of Mexican origin. Plaintiffs risk, and fear, additional assaults and batteries committed by and/or orchestrated by defendants Trump, Trump Campaign, Trump Organization, Schiller, and John Does 1-4 if they demonstrate again on the public sidewalk.

AS AND FOR A FIRST CAUSE OF ACTION
(Assault and Battery)

51. Plaintiffs Galicia, Cruz and Perez repeat and reallege each and every allegation contained in Paragraphs 1 through 50, inclusive, and incorporate the same by reference as though fully set forth herein.

52. The actions hereinabove alleged constitute assaults and batteries by the defendants on plaintiffs Galicia, Cruz and Perez. The assaults and batteries on these plaintiffs by defendants Schiller and John Does 1-4, acting individually and as agents of defendants Trump, the Trump Campaign and the Trump Organization, were intended to cause and did cause harmful and offensive contact to the persons of plaintiffs Galicia, Cruz and Perez, and such harmful and offensive contact upon the persons of Galicia, Cruz and Perez occurred without the actual or apparent consent of plaintiffs and without justification.

53. The assaults and batteries by defendants Schiller and John Does 1-3 on plaintiffs Galicia, Cruz and Perez were committed and engaged in with malice, express or implied, and with the intent to harm and injure plaintiffs and subject them to cruel and unjust hardship and said acts were authorized and approved by the Trump Employer Defendants with a willful and deliberate disregard for the probable harmful consequences of said assaults and their effect on plaintiffs' rights to engage in political speech.

54. The assaults and batteries by defendants Schiller and John Does 1-4, as set forth and described herein, were committed and engaged in within the scope and course of their employment by the Trump Employer Defendants and with the conscious approval and at the express or implied direction of the Trump Employer Defendants, who are responsible for and liable for such wrongful acts and conduct and are liable for those damages and injuries suffered by plaintiffs.

55. As a direct and proximate cause of defendants' multiple unlawful assaults and batteries upon plaintiffs Galicia, Cruz and Perez, plaintiffs were caused to suffer and experience physical and emotional pain, injuries, discomfort, embarrassment, and humiliation, both past and future.

56. As a direct and proximate cause of the unlawful assaults and batteries and injuries inflicted thereby, plaintiff Galicia may be required to incur medical expenses in the future, all to his special damages, in an amount to be proven at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(Conversion and Destruction of Property)

57. All plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 56, inclusive, and incorporate the same by reference as though fully set forth herein.

58. The taking and destruction of plaintiffs' Demonstration Signs by defendant Schiller, acting individually and as an agent of defendants Trump, the Trump Campaign and the Trump Organization, were intended to deprive and did deprive plaintiffs of their property and to take possession of said property without authorization or title and for the purpose of suppressing plaintiffs' political speech. Plaintiffs have incurred damages in an amount to be measured by the jury.

59. The taking and destruction of plaintiffs' property by defendant Schiller, as set forth and described herein, were committed and engaged in within the scope and course of his employment by the Trump Employer Defendants and with the conscious approval and at the express or implied direction of the Trump Employer Defendants, who are responsible for and liable for such wrongful acts and conduct and are liable for those damages and injuries suffered by plaintiffs.

60. Defendants' acts of conversion were undertaken maliciously and without justification or excuse and for the purposes of inflicting wanton damage and destruction and of interfering with plaintiffs' lawful demonstration against the campaign rhetoric of defendants Trump and Trump Campaign.

AS AND FOR A THIRD CAUSE OF ACTION
(Tortious Interference with Political Speech/Prima Facie Tort)

61. All plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 60, inclusive, and incorporate the same by reference as though fully set forth herein.

62. By and through the intentional assaults and batteries and conversion alleged herein, defendants Trump, the Trump Campaign, the Trump Organization, Schiller, and John Does 1-3 acted with the intent to tortiously interfere with plaintiffs' right to engage in lawful,

peaceful, public speech concerning matters of public interest and thereby to suppress such speech.

63. By and through the intentional assaults and batteries and conversions alleged herein, defendants Trump, the Trump Campaign, the Trump Organization, Schiller, and John Does 1-3 tortiously interfered with plaintiffs' right to engage in lawful, peaceful, public speech concerning matters of public interest and thereby suppressed their lawful political speech.

64. In the alternative, defendants' taking and destroying plaintiffs' Demonstration Signs and physical removal of plaintiffs from in front of Trump Tower on the public sidewalk for the purpose of suppressing plaintiffs' lawful political speech constituted a prima facie tort.

65. Plaintiffs have suffered damages in an amount to be measured by the jury.

WHEREFORE, Plaintiffs pray for judgment of this Court in their favor and against all defendants, as follows:

1) Preliminarily and permanently enjoining the Trump Employee Defendants from touching, assaulting and beating plaintiffs, from converting plaintiffs' property, and from all other forms of interference with plaintiffs' lawful demonstrations in front of Trump Tower on the public sidewalk or in any other public place;

2) Preliminarily and permanently enjoining the Trump Employer Defendants from causing, directing, or agreeing with the Trump Employee Defendants to touch, assault, or beat plaintiffs, convert or damage plaintiffs' property, or otherwise interfere with plaintiffs' lawful demonstrations in front of Trump Tower on the public sidewalk or in any other public place;


3) Awarding plaintiffs general damages including an award for pain and suffering, past and future and special damages for medical expenses, past and future, in an amount to be

proven at trial in excess of the jurisdictional limit of all lower courts that could otherwise have jurisdiction;


- 4) Awarding plaintiffs exemplary and punitive damages arising from defendants' wanton and malicious assaults and batteries and taking and destruction of plaintiffs' property as aforesaid;
- 5) Granting plaintiffs costs of suit and attorney's fees; and
- 6) Granting plaintiffs such other and further relief as this Court deems necessary and proper.

Dated: New York, New York
September 9, 2015

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