



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

US DOMINION, INC., DOMINION)
VOTING SYSTEMS, INC., and)
DOMINION VOTING SYSTEMS)
CORPORATION,) C.A. No. N21C-03-257 EMD
)
Plaintiffs,) CONSOLIDATED
)
v.) PUBLIC VERSION
)
FOX NEWS NETWORK, LLC,)
)
Defendant.)
)
US DOMINION, INC., DOMINION)
VOTING SYSTEMS, INC., and)
DOMINION VOTING SYSTEMS)
CORPORATION,) C.A. No. N21C-11-082 EMD
)
Plaintiffs,)
v.)
)
FOX CORPORATION and FOX)
BROADCASTING COMPANY, LLC,)
)
Defendants.)

DEFENDANT FOX NEWS NETWORK, LLC'S
FIRST AMENDED COUNTERCLAIM

Defendant/Counterclaim Plaintiff Fox News Network, LLC (“FNN”), by and through its attorneys, brings a counterclaim against Plaintiffs/Counterclaim Defendants US Dominion, Inc. (“USDI”), Dominion Voting Systems, Inc. (“DVSI”), and Dominion Voting Systems Corporation (“DVSC”):

1. This lawsuit assails the First Amendment and the news media's duty and right to report on matters of significant public interest without fear of liability. The First Amendment and New York law give the press the right to report on newsworthy allegations. Dominion says the press has no such right, advancing novel defamation theories that contradict settled law and seeking more than one billion dollars in damages—a staggering figure that has no factual support and serves no apparent purpose other than to generate headlines, chill First Amendment-protected speech, and unjustly enrich Dominion's private equity owner, Staple Street Capital Partners, and its investors.

2. Dominion brought this lawsuit to punish FNN for reporting on one of the biggest stories of the day—allegations by the sitting President of the United States and his surrogates that the 2020 election was affected by fraud. The very fact of those allegations was newsworthy. So—like other media outlets around the world—FNN covered the story, providing extensive reporting and commentary on the President's allegations, the lawsuits they spawned, and related government investigations.

3. FNN covered these newsworthy allegations from multiple perspectives. Some FNN hosts reported on the President's allegations by going directly to the newsmakers, interviewing his attorneys and surrogates (and in one case, the

President himself). When the voting-technology companies denied the allegations being made by the President and his surrogates, FNN aired those denials as well.

4. Other FNN hosts offered protected opinion commentary about the President's allegations. Individual reactions to those allegations varied among FNN hosts, just as individual opinion itself does.

5. According to Dominion, FNN had a duty not to truthfully report the President's allegations but to suppress them or denounce them as false. Dominion is fundamentally mistaken. Freedom of speech and freedom of the press would be illusory if the prevailing side in a public controversy could sue the press for giving a forum to the losing side. Fortunately, that is not the law. The First Amendment and New York law protect the press from liability for truthfully reporting allegations, particularly allegations on matters of utmost importance to the public, whether or not those allegations are ultimately proven.

6. Dominion's ten-figure damage claim demonstrates the danger that unfounded litigation poses to a free press. Threatening FNN with a \$1.6 billion judgment will no doubt cause other media outlets to think twice before reporting allegations that are inconvenient to Dominion—and other companies.

7. But that figure has no connection to Dominion's financial value as a company or any supposed injury it suffered as a result of FNN's reporting. Staple

Street Capital Partners paid a small fraction of that amount to acquire a controlling interest in Dominion only four years ago. And even under the most optimistic projections, Staple Street has never estimated Dominion's value as a business to be anywhere near \$1.6 billion.

8. Dominion could not possibly suffer damages in that amount, let alone suffer such damages because of a single press outlet's coverage of a story that was reported by media throughout the world. Nor did it. Documents produced in discovery show that Dominion is in a solid financial position, maintaining substantial cash, carrying no debt, and producing a steady return on investment to Staple Street.

9. The defamation action instituted by the Dominion Entities and the inflated damages claims against FNN seek to chill the exercise of vital freedoms of speech and the press protected by the First Amendment. The New York anti-SLAPP statute is designed to guard against exactly this type of lawsuit.

PARTIES

10. Counterclaim Plaintiff FNN is a Delaware limited liability company and has its principal place of business in New York. FNN operates the Fox News Channel, among others, and Fox News Digital, which includes the foxnews.com website.

11. Counterclaim Defendant USDI alleges that it is a Delaware corporation

with its principal place of business in Denver, Colorado.

12. Counterclaim Defendant DVSI alleges that it is a Delaware corporation with offices in Denver, Colorado, and New York, New York.

13. Counterclaim Defendant DVSC alleges that it is an Ontario corporation with its principal place of business in Toronto, Ontario.

14. The foregoing entities in Paragraphs 11-13 are referred to collectively as the Dominion Entities.

FACTUAL ALLEGATIONS

15. The Dominion entities are owned and controlled by Dominion Intermediate Holdings, Inc. (“DIH”), which in turn is owned by SSC Dominion Holdings, LLC (“SSC”). SSC is the vehicle by which Dominion’s cash is funneled to its investors. The most significant of those investors is Staple Street Capital Partners (“Staple Street”).

16. Staple Street was founded in 2010 by Hootan Yaghoobzadeh and Stephen Owens. Mr. Yaghoobzadeh and Mr. Owens founded Staple Street to focus on the “middle market,” defined loosely as companies with less than \$1 billion in assets or less than \$100 to \$200 million in earnings before interest, taxes, depreciation, and amortization (EBITDA).

17. In July 2018, Staple Street invested \$38.3 million in Dominion, acquiring 76.2% of the company. Mr. Yaghoobzadeh and Mr. Owens ultimately

approved Staple Street's acquisition of Dominion.

18. Within the Dominion Entities, representatives Staple Street control 3 of 5 board seats.

19. On November 10, 2020, Dominion entered into a consulting services agreement with Hamilton Place Strategies, LLC, a public-relations firm. Hamilton Place was retained to provide public relations and media services in response to the President's allegations about Dominion and the 2020 election. Mr. Yaghoobzadeh, co-founder of Staple Street, was one of the individuals to whom Hamilton Place Strategies reported during its work for Dominion.

20. Mr. Yaghoobzadeh also authorized Dominion's lawsuit against FNN and approved it as a member of Dominion's board. The Dominion Entities sued FNN, asserting that FNN published multiple defamatory statements that caused Dominion to suffer a loss of not less than \$1.6 billion in lost business opportunities and lost enterprise value, among other damages.

DISCOVERY CONFIRMS DOMINION HAS SUFFERED NO DAMAGES

21. Contrary to the allegations in Dominion's lawsuit against FNN, Dominion has suffered no cognizable harm from FNN's reporting.

22. Based on evidence to date, there are no instances where—as a result of the alleged defamation—Dominion has laid off a single employee, closed a single office, or defaulted on a single credit obligation.

23. Moreover, based on evidence to date, none of Dominion’s customers have cancelled their contracts as a result of FNN’s coverage of the President’s allegations. This is not surprising, because as recently as December 2020 Dominion’s CEO and president, John Poulos, stated to Staple Street partner and Dominion board member Hootan Yaghoobzadeh in the midst of the media coverage of the President’s allegations concerning the 2020 Presidential election that “no customer cares about the media. It’s just more words from their perspective.”

24. Since the alleged defamation, Dominion has remained a company with plenty of cash and no debt. Staple Street has not made any contribution to Dominion beyond the \$38.2 million that it originally invested, and Dominion has not had to make any capital calls on its investors or owners as a result of FNN’s coverage of the President’s allegations.

25. Indeed, Staple Street caused Dominion to distribute \$8 million to shareholders in 2021 and \$5 million to shareholders in 2022. To date, majority owner Staple Street has already recovered \$30.8 million—over 80%—of its investment in Dominion.

26. In 2021, Dominion paid full bonuses to all its employees and executives. In 2022, Dominion projects revenues of \$98 million.

27. There is no indication that Dominion ever has been or ever would have

been worth anything close to \$1.6 billion—the amount Dominion claims in damages for loss of enterprise value. Dominion’s damage figure is pulled out of thin air.

28. When Staple Street invested in Dominion, it paid \$38.3 million to acquire 76% of the company. Dominion’s claim of \$1.6 billion in enterprise value is 42 times that amount.

29. Staple Street’s internal valuations for investors and auditors set the value of their investment in Dominion at a maximum of approximately \$80 million.

30. Based on discovery, Staple Street had no expectation that Dominion would be worth any more than that amount. It told investors that its “investment thesis” for Dominion has always been that in a best-case scenario, they could sell Dominion for double the \$38.3 million purchase price—that is, approximately \$80 million.

31. There is no explanation for the massive gap between Staple Street’s valuation of Dominion and Dominion’s claim for \$1.6 billion in damages. According to Staple Street’s co-founder Stephen Owens, there is no relationship between Dominion’s claim for \$1.6 billion in lost enterprise value and the value that Staple Street assigns to its interest in Dominion on its own books and in reports to auditors.

32. Based on evidence to date, at no time did Staple Street so much as hint to its investors, auditors, or anyone else that Dominion could be worth \$1.6 billion.

Yet, when Dominion decided to file a lawsuit to punish FNN for reporting the President's allegations about Dominion, Dominion chose to claim that Dominion's value was 20 times their highest estimate.

COUNT ONE – N.Y. CIVIL RIGHTS LAW

33. FNN repeats and re-alleges paragraphs 1-32 as if set forth fully herein.

34. FNN brings this counterclaim pursuant to the New York anti-SLAPP law.

35. The New York anti-SLAPP law imposes strict burdens on persons who sue members of the media for defamation. This suit against FNN is an “action involving public petition and participation” under the New York anti-SLAPP law, N.Y. Civil Rights Law § 76-a, because the suit is based upon “communication[s] in a place open to the public or a public forum in connection with an issue of public interest” and upon FNN’s “lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest,” *id.* at § 76-a(1)(a).

36. The New York anti-SLAPP law provides that “costs and attorney’s fees shall be recovered upon a demonstration . . . that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law.” N.Y. Civil Rights Law § 70-a.1(a)

(emphasis added).

37. The Dominion Entities commenced and continued this lawsuit without a substantial basis in fact and law, and they cannot support their action by a substantial argument for the extension, modification, or reversal of existing law. This is so because (among other reasons) Dominion’s action is foreclosed by multiple First Amendment and state law doctrines that protect freedom of speech and freedom of the press.

38. The statements complained of involve a matter of profound public concern: allegations made by the sitting President of the United States of America and his legal team and surrogates following the 2020 presidential election.

39. The Dominion Entities cannot dispute that the President’s allegations involved a matter of profound public concern about which any media outlet would be expected to report. Dominion’s own public relations consultant, Michael Steele of Hamilton Place Strategies, described the President’s allegations about the 2020 election as “one of the biggest issues of the day” and “the biggest topic in the country at that time.”

40. Yet the Dominion Entities sued FNN— and made an attention-grabbing claim for \$1.6 billion in damages—because FNN did what any responsible media outlet would do, and what the First Amendment gave it the right to do: report on “the

biggest story of the day” and present news-making interviews with the newsmakers themselves.

41. Dominion’s claim for \$1.6 billion in damages is grossly disproportionate to Dominion’s true finances. Staple Street directly assisted in preparing the \$1.6 billion damages calculation set forth in the complaint here. But discovery has yet to reveal any contemporaneous evidence that Dominion would ever have been worth such a sum. In fact, Staple Street’s share of the alleged damages award would be \$1.2 billion—which is 32 times Staple Street’s initial four-year old investment.

42. Dominion’s decision to make such a fanciful claim for damages can be explained only as an effort to punish FNN for its reporting—and threaten other media outlets with similar actions and ruinous liability if they dare to report statements unfavorable to Dominion. Dominion knew that they could not back up their damage claim with facts. But they made the claim anyway because they knew that it would maximize media coverage of their lawsuit against FNN and escalate the threat to other media outlets.

43. The Dominion Entities’ litigation tactics are an attempt to punish FNN for exercising its constitutional rights in a manner that they do not like, to censor and chill FNN from such reporting in the future if and when that reporting includes

coverage of allegations by public officials against Dominion’s voting systems, and to intimidate FNN and anyone else who might consider exercising constitutional rights by publishing coverage of allegations by public officials concerning Dominion or its voting systems that Dominion deems unflattering in the future.

44. This lawsuit lacks a substantial basis in law, both because the challenged FNN reporting is fully protected by the First Amendment and New York law, and because the Dominion Entities cannot “establish[] by clear and convincing evidence that any [FNN] communication . . . was made with knowledge of its falsity or with reckless disregard of whether it was false.” N.Y. Civil Rights Law § 76-a.

45. This lawsuit also lacks a substantial basis in fact because the allegations, including the allegations of false statements, actual malice, and the damages asserted, have no foundation, and the Dominion Entities were aware that the challenged statements by FNN would not provide strong support for a defamation claim.

46. The claim for damages therefore must fail, and FNN is entitled to a judgment in favor of FNN. Accordingly, under the New York anti-SLAPP Law, FNN is entitled to a judgment against the Dominion Entities for its costs and attorneys’ fees.

JURY DEMAND

47. FNN respectfully requests a jury trial of twelve on its counterclaim and

cross claim.

PRAYER FOR RELIEF

WHEREFORE, FNN respectfully requests that the Court award a judgment in its favor, and against the Dominion Entities, as follows:

- a) awarding FNN all expenses and costs, including attorneys' fees, as required under N.Y. Civil Rights Law § 70-a; and
- b) such other and further relief as the Court deems appropriate.

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*Attorneys for Defendant Fox News
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Dated: January 11, 2023

CERTIFICATE OF SERVICE

I, Katherine L. Mowery, hereby certify that on February 16, 2023, I caused a copy of the *Public Version of Defendant Fox News Network, LLC's First Amended Counterclaim* to be filed and served via File & ServeXpress upon the following counsel of record:

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