

STATE OF VERMONT
ORLEANS COUNTY, SS:

CHRISTOPHER BRAITHWAITE and
THE CHRONICLE, INC

-- Plaintiffs

v.

VERMONT SUPERIOR COURT
ORLEANS UNIT, CIVIL DIVISION
DOCKET NO. _____

DAVID CORIELL and GREEN
MOUNTAIN POWER CORPORATION

-- Defendants

COMPLAINT

1. David Coriell (hereinafter Coriell) is a resident of South Burlington, Vermont. During the period May 2011 through June 2012, Coriell was an employee of Green Mountain Power Corporation.
2. Green Mountain Power Corporation (hereinafter GMP) is a Vermont Corporation with principal offices in Colchester, Vermont. Donald J. Rendall, Jr. is its Registered Agent.
3. Christopher Braithwaite (hereinafter Braithwaite) is a resident of Glover, Vermont. He is an owner, publisher, and newspaper reporter for The Chronicle, Inc. and has been since 1974.
4. The Chronicle, Inc. is a Vermont corporation with its principal offices in Barton, Vermont. At all times material to this action Braithwaite was engaged as an owner and agent of The Chronicle.
5. During the period of 2009 through to the present GMP has been engaged in the planning and construction of a commercial wind project on a mountainous ridgeline in Lowell, Vermont.
6. During this same period Braithwaite has gathered news about this project, written articles about the project, and has published editorial opinions strongly opposed to the project.
7. Ownership of some of this property is in dispute.

8. GMP claims that it is in lawful possession of all of the land on which wind towers and access roads have been constructed.
9. As part of this project GMP formed a Leadership Team with a wide range of authority including, but not limited to, (1) public relations and legal issues related to this Project, (2) who should be allowed access to the property, and under what circumstances, and (3) decisions related to specific issues involving access to the site by protesters as well as working journalists covering the project and, at times, covering protests of the project and GMP's and law enforcement's response to those protests.
10. The Team included Stephen Terry, Robert Dostis, Charles Pughe, Dorothy Schnure, and David Coriell.
11. David Coriell was answerable to this Team and was expected to follow the directives of the Team.
12. On or about December 5, 2011 numerous protestors ascended the mountain on the so-called crane path with the intention of blocking construction and being arrested.
13. Knowing of their plans, Braithwaite ascended the mountain as a working member of the press for the purpose of covering the protest and the anticipated arrest of some protestors.
14. GMP, learning of the protest, dispatched its employee, Coriell to the scene and requested the assistance of the Orleans County Sheriff's Department and the Vermont State Police to effectuate the arrests of those protestors who refused to leave the crane path.
15. In doing so the Leadership Team anticipated Braithwaite's presence and gave Coriell explicit directions to inform law enforcement that Chris Braithwaite and any other members of the working press who showed up to cover this protest had GMP's consent to be there to cover this event and that they were not to be arrested.

16. Coriell talked with Phil Brooks, Orleans County Chief Deputy Sheriff when he arrived.
17. They discussed the fact that Phil Brooks should advise all of the protestors that they were trespassing, give any and all of them the opportunity to leave the property, and then arrest those who refused to leave.
18. Both Coriell and Brooks anticipated that some protestors would leave the site and that others would remain in the crane path expecting to be arrested.
19. Coriell was aware of the presence of Chris Braithwaite.
20. Coriell was aware that Chris Braithwaite was a member of the working press, that he was owner, publisher and reporter for The Chronicle, that he had written numerous articles about the Wind Project, that he had been on the mountain and on the project site numerous times, with and without express invitation from GMP, and that he had written numerous editorials strongly opposing the project.
21. Brooks was also aware of the facts contained in Paragraphs 19 and 20 above.
22. Brooks asked Coriell if any of the persons on the site, including the press, had permission of any kind to be there.
23. Coriell falsely, intentionally and maliciously told Brooks that there were no exceptions what so ever, and that any and all who refused to leave the property should be arrested, including Chris Braithwaite.
24. At no time did Coriell convey the explicit directive from the Leadership Team that GMP had given its consent to allow Chris Braithwaite to cover this event on the property without being arrested.

25. Coriell knowingly, intentionally, maliciously, and fraudulently told Brooks that there were no exceptions and knowingly, intentionally, maliciously, and fraudulently concealed the Leadership Team directive from Brooks.
26. Coriell knew that Brooks believed him and would take legal action to effectuate a false arrest against Braithwaite. Under these circumstances, Coriell assumed a duty and an obligation to disclose the true facts so as to avoid this false arrest, which he had fraudulently set in motion.
27. Coriell made these false statements and fraudulently concealed the true facts in retaliation against Braithwaite because of his published opinions opposing the wind project and in an effort to suppress and intimidate Braithwaite in the exercise of his well established First Amendment Right to express and publish such opinions.
28. Brooks then approached the protesters and told them they should leave the property or be arrested for unlawful trespass.
29. A number of protesters did leave the property, leaving six behind in the crane path.
30. Braithwaite removed himself to a stump, about 15 feet away from the crane path, just beside an orange line which indicated the border of the construction zone.
31. Brooks then approached Braithwaite and told him that he must either leave the property altogether or return to the crane path to be arrested.
32. Braithwaite responded by saying that he intended to stay at this spot in order to cover the arrest of the six who remained on the crane path but that he would leave as soon as they were arrested and voluntarily travel down the mountain when they did.
33. Brooks reiterated the false information communicated to him by Coriell, that GMP had said there were no exceptions, including the press. All had to leave or be arrested.
34. Braithwaite refused to leave the site but remained on the stump.

35. Brooks then ordered Braithwaite to return to the crane path, thereby taking custody of him.
36. Braithwaite refused to voluntarily leave from his spot on the stump and so he complied with Brooks' demand to return to the crane path so he could be arrested.
37. When he did return to the crane path he was arrested with the six protesters.
38. Coriell stood and watched from about 10 to 15 yards away while Brooks and Braithwaite had this exchange.
39. Later, when Coriell was asked by his superiors why Braithwaite got arrested, he misrepresented these events. Coriell falsely and misleadingly suggested that, in the confusion of the moment, some law enforcement officers did not get the message.
40. However, a cursory review of these events by GMP superiors would have revealed that Coriell had intentionally refused to communicate their explicit directive.
41. Following Braithwaite's arrest, GMP knew or should have known that a false arrest had occurred and a criminal prosecution based on misinformation was about to occur. Nevertheless, it intentionally failed to disclose to law enforcement or the Orleans County State's Attorney's Office, that the corporation had given explicit directives to Coriell to tell law enforcement that Chris Braithwaite was not to be arrested, i.e., that he had corporate permission to be on the site at the time this protest was underway.
42. Had GMP promptly communicated these facts to the Lamoille Sheriff's Department or to Orleans County State's Attorney's Office one of three things would have happened:
 - a. The State's Attorney's Office would have or should have declined to prosecute; it knew or should have known that it could not prove beyond a reasonable doubt an essential element of the offense;

- b. These exculpatory facts would have been included in the a charging affidavit and the trial court would not have found probable cause; or
 - c. These exculpatory facts would have been or should have been disclosed to Braithwaite and his attorney, who would have filed a prompt Motion to Dismiss, which motion would have been granted.
43. Instead this information remained concealed by GMP. A charge was filed with an affidavit that contained false and/or fraudulently misleading assertions; probable cause was found based on these false and/or fraudulently misleading assertions; a year-long prosecution ensued based on these false and fraudulently misleading assertions; and Braithwaite was forced to defend against these criminal charges for one year.
44. On or about November 29th, 2012, the State and Braithwaite drew a jury and prepared to proceed to trial.
45. That afternoon, in response to a subpoena issued by Braithwaite, GMP disclosed to the State and Braithwaite, for the very first time, exculpatory documents which revealed that Braithwaite had the consent of GMP to be on the property to cover the protest (and any arrests that might occur) and that GMP officials did not want him arrested.
46. Defendant immediately filed a motion to dismiss and included some of those documents in its filing as justification for its filing. That motion and the documents included were subsequently made public.
47. The state then responded by dismissing the charges without prejudice.
48. At Defendant's urging, the trial court subsequently dismissed the charges with prejudice, concluding that implicit within GMP's directive not to arrest Braithwaite was corporate consent

for him to be present as a working journalist covering the protest and any arrests of protesters. A copy of this decision is attached to this Complaint as Exhibit C.

49. Lack of the owner's permission to be on the parcel of property is an essential element of an unlawful trespass charge; the trial court concluded that the State could not have proven its case, dismissed this criminal charge with prejudice, and terminated this action favorably to the defendant, Braithwaite
50. Braithwaite is 68 years old.
51. During his entire life, Braithwaite has never been charged with a criminal offense.
52. Braithwaite incurred legal fees and expenses totaling \$22,530 in the year long defense of this matter.
53. These fees and expenses were reasonable given the nature of the charge and the issues it presented.
54. Braithwaite also suffered anxiety, loss to his professional reputation, and other emotional, professional, and economic damages as a result of the pendency of this criminal charge over the course of a year.
55. During the period of his employment with GMP, Coriell acted as its agent and within the scope of his actual and/or apparent authority to act.
56. GMP is vicariously and actually liable for the acts of Coriell.
57. GMP knew or should have known that the arrest and subsequent prosecution of Braithwaite was based on, at best, a failure of its agent to communicate its explicit directive to law enforcement.
58. GMP had a duty to voluntarily disclose the true facts to law enforcement, the Orleans County State's Attorney's Office and Braithwaite himself;

59. GMP's subsequent refusal to disclose the true facts negligently, recklessly, intentionally, maliciously, and/or fraudulently inflicted harm, damage, and emotional distress on Braithwaite.
60. GMP is liable for the actions of Coriell under the doctrine of Respondeat Superior.
61. The foregoing allegations are reiterated in each of the ensuing, specific counts that follow.

Count One - False Arrest

62. Coriell knowingly, intentional, maliciously, and fraudulently caused the false arrest of Plaintiff, thereby causing damages complained of.
63. GMP is vicariously liable for the damages caused by the actions of Coriell while acting within the scope of his agency and/or within his apparent authority.

Count Two - False and Malicious Prosecution

64. Coriell and GMP negligently, knowingly, intentional, maliciously, and/or fraudulently caused the false and malicious prosecution of Plaintiff, thereby causing damages complained of.

Count Three – Fraud, Slander and False Report

65. Coriell knowingly, intentionally, and/or maliciously made false statements to a law enforcement officer about Braithwaite which he knew would wrongfully induce the law enforcement officer to take actions which would cause Braithwaite harm and the damages complained of.
66. The statements were untrue and slanderous.
67. GMP is vicariously liable for the tortuous actions of its agent acting within the scope of his agency and/or the apparent scope of his authority.

Count Four – Fraudulent Concealment

68. Coriell and GMP knew or should have known that Braithwaite had permission to be on the property and that, at the very least, misinformation provided by Coriell and GMP to law

enforcement had caused Braithwaite to be wrongly taken into custody, arrested, and subsequently charged with and prosecuted for unlawful trespass.

69. Under all of these circumstances, Coriell and GMP had a duty to promptly disclose the true facts.

70. Instead, Coriell and GMP negligently, intentionally, maliciously, and/or fraudulently concealed information for over 12 months, all to the harm, detriment, and damage of Plaintiff

Civil Rights – 42 U.S.C. Section 1983

71. Braithwaite was acting within well established First Amendment Rights by voicing strong opinions and publishing fierce editorials opposing GMP's commercial wind project on a ridgeline in Lowell.

72. At all times material to this complaint GMP and its agents, including Coriell, have maintained a symbiotic relationship with Vermont State Police and Orleans County law enforcement officers in coordinating the times and conditions under which protesters would or would not be arrested for unlawful trespass.

73. At all times material to this complaint GMP and its agents, including Coriell, and Orleans County law enforcement officers have jointly participated in the planning and execution of arrests of protesters.

74. GMP and/or Coriell were acting under the color of law and engaging in "state action" when they maliciously gave the government false and misleading information with the purpose of causing the government to engage in false arrest and wrongful prosecution.

75. GMP and/or Coriell intentionally, fraudulently, and maliciously unleashed the power of government against Braithwaite in retaliation for the exercise of his well established First Amendment Rights and did so with the intent to impair the ongoing exercise thereof.

Civil Rights - Vermont

76. For the reasons stated above, GMP and Coriell's conduct constitute a violation of Vermont's civil rights law as well. These actions constituted malicious and unconstitutional retaliation for the exercise of Braithwaite's right to publish his opinions regarding the commercial wind project in Lowell.

Relief

WHEREFORE. Plaintiff prays that this Honorable Court shall award him:

1. Compensatory and Consequential Damages of at least \$22,530;
2. Legal interest at a rate of 12% per annum from this date forward;
3. Punitive damages;
4. Attorneys fees and expenses related to this action; and
5. Such other relief as this Honorable Court shall deem just and equitable

DATED at Newport, Vermont, this 26th day of December, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. H. White', with a long horizontal flourish extending to the right.

Philip H. White, Esq.