

Trials & TRIBULATIONS

Donald Trump and his administration have generated a litigation explosion

Regardless of your opinion regarding President Donald Trump and his administration, there can be no dispute that the president and his administration have caused, during his first year in office, the initiation of more litigation than any other president in modern history. Although a significant amount of the litigation is within the criminal law area with the numerous indictments obtained by special counsel, Robert Mueller, there have also been a plethora of civil cases. For example, there have been cases dealing with Stormy Daniels, the emoluments clause in the U.S. Constitution, DACA, the travel ban and numerous others.

Within the past two weeks, two defamation actions have been decided by the courts relating to Trump and his administration. The first one involved Trump as the defendant, and the other dealt with his former foreign policy adviser, Carter Page. The case involving the president is entitled *Summer Szervos v. Donald J. Trump* and it was decided on March 20, 2018, by New York State Supreme Court Justice Jennifer G. Schecter. In this action, Justice Schecter denied Trump's motion to dismiss the Complaint and directed him to answer it within 10 days from the date of the Order. It has recently been reported in the news media that an appeal has been filed by the president with the Appellate Division First Department, and one would expect that the appeal would be heard and decided by the end of the year.

By way of background, the plaintiff, Summer Szervos, was a contestant on *The Apprentice* in 2005. After being fired from the program, she continued to seek out Mr. Trump for advice and to pursue job opportunities. When she met him in



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his office in 2007, he allegedly kissed her on the lips. Thereafter, he met with her in the Beverly Hills Hotel and allegedly groped her and she resisted his advances.

Despite this inappropriate behavior, Szervos continued to pursue job opportunities and was eventually offered a position at half the salary she had been seeking. After the job offer was extended to her, Szervos called Trump and advised him that she was upset and thought she had been penalized for not sleeping with him. Ultimately, the job offer was rescinded.

After Trump was selected as the Republican nominee and the infamous Access Hollywood tape was released in October 2016, Szervos and a number of others came forward and claimed they had been sexually harassed and groped by Trump. In response to the claims of more than a dozen women who alleged that they had been sexually harassed by Trump, he repeatedly stated on the campaign trail that they were all liars and after he was elected for president, he was going to sue them all.

On Jan. 17, 2017, Szervos commenced an action in which she alleged that Trump had defamed her when he called her a liar.

Immediately after the action was filed, Trump filed a motion to dismiss or for a continuation of the case until he left office. The Court denied the motion. In essence, the Court relied heavily on the case of *Clinton v. Jones*, 520 US 696 (1997), in

which then-president Bill Clinton sought to dismiss the action commenced against him by Paula Jones on the grounds that as president, he is immune from being subject to civil litigation while in office.

Although the Clinton case was in federal court, Justice Schecter concluded, "the rule is no different for suits commenced in State Court related to the President's unofficial conduct." The Court stated, "in the end, there is absolutely no authority for dismissing or staying a civil action related purely to unofficial conduct because defendant is the President of the United States. Resolution of an action unrelated to the President's official conduct is the responsibility of a state court."

The Court pointed out that even after *Clinton v. Jones* was decided more than 20 years ago, Congress has not acted to suspend proceedings against the president and there is no compelling reasons for delaying the plaintiff's day in Court.

As a result, absent a further attempt to stay discovery, Trump will be subjected to a deposition.

On the same day the Szervos case was decided, Judge Lorna Schofield, U.S. District Court Judge for the Southern District of New York decided the case of *Carter Page v. Oath Inc. et al.* This case was also a defamation action brought by pro se plaintiff, Carter Page, who was a former foreign policy adviser to President Trump during the 2016 election campaign.

This lawsuit dealt with Page's claim that Yahoo news had published an article in which it claimed that Page had met with two individuals close to Russian President, Vladimir Putin, in July 2016. Page had denied the meetings and claimed

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that the defendant, Oath Inc., which is the parent company of Yahoo, had defamed him, interfered with his business relationship and also violated the Terrorism Act.

It is surprising that Carter Page, a successful businessman, chose to bring this lawsuit *pro se* since it was evident based on the judge's decision that the Complaint was poorly drafted. The Complaint was dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6).

The Court concluded that Carter's claim that the defendant violated the Anti-Terrorism Act based on defendant's alleged acts of terrorism, failed as a matter

of law since the conduct of the defendant did not constitute any type of terrorism and the Complaint lacked sufficient factual allegations to articulate a claim under the act.

The remaining claims dealt with defamation and tortious interference with a business relationship, both state claims. As a result, the District Court declined to exercise supplemental jurisdiction over those claims and dismissed the action. The Court also refused to grant leave to amend, since according to the Judge, Carter would not be able to amend the Complaint in a matter that would survive dismissal.

Although the *Page* case appears to be

concluded, the *Szervos* case will proceed. One would expect that the president may be forced to sit for a deposition. As we all recall, Clinton's deposition in the Jones case ultimately proved to be problematic since he was found to have testified falsely under oath, which played a part in his impeachment. Will history repeat itself? Time will tell.

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