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IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN PAUL MAC ISAAC, Plaintiff/Counterclaim, Defendant Below, Appellant/Appellee, v. POLITICO LLC, ROBERT HUNTER BIDEN, AND BFPCC, INC. Defendants/Counterclaim, Plaintiff Biden Below, Appellees/Appellant Biden.	)	Case No. 448, 2024

FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

APPELLANT'S ANSWERING BRIEF IN RESPONSE TO CROSS-APPELLANT ROBERT HUNTER BIDEN'S CROSS-APPEAL

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NATURE AND STAGE OF PROCEEDINGS

On October 17, 2022, John Paul Mac Isaac ("Mac Isaac") filed a complaint alleging, *inter alia*, defamation against Cable News Network, Inc. ("CNN"), Politico LLC ("Politico"), BFPCC, Inc. ("BFPCC"), Adam Bennett Schiff ("Schiff"), and Robert Hunter Biden ("Hunter"). On behalf of Schiff, the United States removed this case to the Federal District Court on March 7, 2023. The United States District Court for the District of Delaware dismissed the case against Schiff in March 2023 and remanded the case back to the Superior Court of the State of Delaware for further proceedings with the remaining defendants. On March 30, 2023, Hunter filed a counterclaim against Mac Isaac.

CNN, Politico, and BFPCC each filed motions to dismiss Mac Isaac's complaint. Mac Isaac filed a motion to dismiss Hunter's counterclaim and Hunter filed a motion for summary judgment. The motions were briefed by the parties and argued before the Superior Court. By order dated September 30, 2024, the Superior Court granted the motions to dismiss submitted by CNN, Politico, and BFPCC, granted Hunter's motion for summary judgment, and granted Mac Isaac's motion to dismiss Hunter's counterclaim.

This is Mac Isaac's Answering Brief in response to Biden's Opening Brief.

SUMMARY OF THE ARGUMENT

1. Denied. The Superior Court did not err in granting Plaintiff's motion to dismiss Mr. Biden's counterclaims based on Delaware's "time of discovery" rule for the two-year statute of limitations. The Superior Court correctly applied the "time of discovery" rule, determining that Mr. Biden was on notice of the alleged invasion of privacy by October 14, 2020, following the publication of the New York Post article. This article made Mr. Biden aware that his data had been compromised and disseminated, thus starting the statute of limitations clock. The court's decision was based on the fact that Mr. Biden could have discovered the alleged wrong with due diligence, as required by Delaware law.

2. Denied. The Superior Court did not err in dismissing all six of Mr. Biden's counterclaims based on the conclusion that the statute of limitations began to run on October 14, 2020. The Superior Court's conclusion was based on the fact that the New York Post article provided sufficient notice to Mr. Biden that his privacy had been invaded. The article's publication was a clear indication that the data had been compromised, and Mr. Biden had the opportunity to investigate further at that time. The court's decision was consistent with the application of the "time of discovery" rule, which does not require the plaintiff to have full knowledge of all details of the invasion, only sufficient notice to prompt further inquiry.

3. Denied. The Superior Court did not err in relying on the October 14, 2020 New York Post article as the starting point for the statute of limitations. The New York Post article provided Mr. Biden with sufficient information to be aware of the invasion of his privacy. The article's publication was a public disclosure of the data, which should have prompted Mr. Biden to investigate the extent of the invasion. The court correctly determined that Mr. Biden was on notice of the invasion by this date, and the statute of limitations began to run accordingly. The court's decision was based on the principle that the statute of limitations begins when the plaintiff has reason to know of the wrong, not when all details are known.

4. Denied. The Superior Court did not fail to separately analyze the statute of limitations for Mr. Biden's claim for invasion of privacy by publication. The court applied the statute of limitations analysis consistently across all claims, as the publication of the New York Post article on October 14, 2020, was the point at which Mr. Biden was on notice of both the intrusion and the publication of private facts. The court's decision was based on the understanding that the statute of limitations for both types of invasion of privacy claims began when Mr. Biden was aware of the public disclosure of his data. The court's approach was consistent with Delaware law, which does not require separate analyses for different types of invasion of privacy claims when the same event triggers the statute of limitations for both.

5. Denied. The Court did not err in finding that the statute of limitations for each of Mr. Biden's claims expired on October 14, 2022. The Superior Court correctly determined that the statute of limitations began on October 14, 2020, when the New York Post article was published, providing Mr. Biden with notice of the invasion of his privacy. The court's decision was based on the principle that the statute of limitations begins when the plaintiff has reason to know of the wrong, not when all details are known. The court's application of the "time of discovery" rule was consistent with Delaware law, which requires plaintiffs to act with due diligence once they are on notice of a potential claim.

CONCISE STATEMENT OF FACTS

I. PARTIES

Mac Isaac is a private citizen who resides in Wilmington, Delaware, and was the owner of a computer repair shop named "The Mac Shop." (Cross-Appellants Appendix, A131)

Biden, who currently resides in California, is the son of the President of the United States, Joseph R. Biden, Jr., and was a customer of The Mac Shop who sought Mac Isaac's assistance with retrieving data from a Mac computer after damaging the Mac with liquid. (Cross-Appellants Appendix, A131)

II. FACTS ALLEGED BY APPELLANT

Appellant, Robert Hunter Biden's ("Biden") invasion of privacy claims center on a few specific dates. Biden claims that Appellee, John Paul Mac Isaac, accessed Biden's data as early as April 13, 2019. (Cross-Appellants Appendix, A093, ¶ 9). According to Biden, Mac Isaac made a "clone" of the data that he then loaded onto a MacBook of his own in July 2019. (Cross-Appellants Appendix, A096, ¶ 22). On or around September 2019, Mac Isaac allegedly sent a hard drive containing the data from Wilmington, Delaware to his father, Richard "Steve" Mac Isaac, in Albuquerque, New Mexico. (Cross-Appellants Appendix, A097, ¶ 23). In that same month, Mac Isaac allegedly composed a letter to send to President Trump's attorney Rudy Giuliani. (Cross-Appellants Appendix, A097, ¶ 24). In November 2019, Mac

Isaac allegedly printed out materials from the data he maintained to assist then-President Trump in defending against the impeachment proceedings in the U.S. House of Representatives. (Cross-Appellants Appendix, A097, ¶ 25).

Mac Isaac also allegedly gave a copy of the data in his possession to his friend, Kristen Riley, to hold in case something happened to Mac Isaac. (Cross-Appellants Appendix, A097, ¶ 26). No date is cited in this claim, but it likely occurred around the same time as outlined in Cross-Appellants Appendix, A097, ¶ 23. According to the counterclaim, Mac Isaac also allegedly gave a copy of the data in his possession (either electronic or printed) to his uncle, Ronald J. Scott, Jr., who in May 2020 was allegedly sending at least summaries of the data he received from his nephew to journalists and Republican members of Congress. (Cross-Appellants Appendix, A098, ¶ 27).

On August 27, 2020, Mac Isaac allegedly made contact with Rudy Giuliani's lawyer, Robert Costello, regarding the data in his possession. (Cross-Appellants Appendix, A098, ¶ 29). On August 28, 2020, Mac Isaac allegedly sent another copy of the data in his possession to the home of Mr. Costello in New York. (Cross-Appellants Appendix, A099, ¶ 31).

On September 24, 2020, Mac Isaac allegedly informed Senator Ron Johnson's staff that he had possession of data that he claimed came from a laptop left at his business by Mr. Biden. (Cross-Appellants Appendix, A101, ¶ 36).

On October 14, 2020, the New York Post published an article allegedly about the data Mac Isaac had accessed and copied that he claimed belonged to Mr. Biden. (Cross-Appellants Appendix, A102, ¶ 39). There are also many other allegations about people who allegedly received the data from the hard drive from Giuliani, not Mac Isaac.

III. ACTUAL FACTS

Hunter's Laptop

At issue is the fact that, on April 12, 2019, Biden dropped off his Mac Book ("laptop") at Mac Isaac's Mac repair shop, returned once a day or two later at Mac Isaac's request, but never returned. When he dropped off the laptop, Biden provided Mac Isaac with his phone number and email address, both of which he confirmed were his, and, after Mac Isaac explained the data recovery process, signed the work authorization. When Mac Isaac called Biden more than once and left him voicemails to come to pick up his laptop, if Biden didn't remember doing so, this would have been a pretty clear reminder. Further, when Mac Isaac sent Biden an email with the invoice, again, that would have been a pretty clear reminder that he dropped off his laptop with Mac Isaac. It is simply not logical for a political operative (or Russian operative) to pretend to be Biden then drop off the laptop and then provide Mac Isaac with Biden's actual contact information. (Cross-Appellants Appendix, A133)

Not only did Biden not pay for the services but he left the laptop with Mac Isaac, triggering its contractual provisions deeming it Mac Isaac's property after 90 days. The contract also held Mac Isaac harmless from any damage incurred by Biden as a result.(Cross-Appellants Appendix, A133)

Biden refuses to admit that he visited The Mac Shop (twice), despite Mac Isaac presenting evidence that he dropped off his Mac computer "Mac" at Mac Isaac's store. Biden also interprets passages from Mac Isaac's book in ways that obfuscate the true meaning of the passages (discussed herein) with the hope that this Honorable Court will not read Mac Isaac's book and glean the true meaning of the passages.(Cross-Appellants Appendix, A134)

Recognition of Hunter Biden

Contrary to Biden's counterclaim, Mac Isaac never claimed he was *never* able to identify who brought the laptop into his shop. He has consistently said that he was not sure who came into his shop *that night*. Despite Biden's insistence that he is recognizable by everyone (he may be now), Mac Isaac did not know what he looked like and, therefore, did now know who he was when he walked into the shop.

When Biden told Mac Isaac his name, that identification coupled with the Beau Biden Foundation sticker on the laptop seemed to confirm who was in the shop. Further, Mac Isaac looked up Biden to see what he looked like and confirmed that

the person who dropped off the laptop was, in fact, Biden.(Cross-Appellants Appendix, A134)

The twisting of Mac Isaac's words in a way that suits Biden does not change the facts.

Data Recovery of Laptop

Mac Isaac suspected the laptop had a short in the keyboard or trackpad. He then explained to Biden the process of recovering the data, which included accessing the data. He also explained the store policies and the price of the recovery. After this explanation, Biden signed the work order authorizing Mac Isaac to access the data to recover it.

The process was slow since the laptop would need to be charged but would not remain charged for long. While it was charged, Mac Isaac would recover as much data as he could until the laptop shut down. Then Mac Isaac would have to charge the laptop again, find where he had left off (by reviewing the files), and begin the recovery again.

Further, when recovering data, professionals try to verify that no corruption of data occurred. The best files to use in this verification are video files. Mac Isaac opened some of the larger video files to confirm that they were not corrupted. Unfortunately, many (most) of these video files were homemade pornography featuring Biden. Although disgusting, the video files were not corrupted so, in the

end, Mac Isaac determined that his recovery was successful and called Biden and left a voicemail telling him to purchase an external hard drive onto which he could transfer the data from the store server. (Cross-Appellants Appendix, A135)

Biden did as he was told and returned to the shop with the external hard drive. Mac Isaac then completed the recovery and contacted Biden to tell him to pick up his laptop and the hard drive. He never returned and the rest is history.(Cross-Appellants Appendix, A136)

FBI

After obtaining the rights to the laptop pursuant to the contract signed by Biden, Mac Isaac grew uneasy with the seemingly illegal activities cataloged in the laptop. As he was taught to do at the Apple Store and in accordance with his own convictions, he made contact with the FBI. Soon thereafter, on *December 9, 2019*, Mac Isaac gave the laptop, the original hard drive, and the original work order to the FBI.(Cross-Appellants Appendix, A136)

Rudy Giuliani

After making a determination that the authorities had not disclosed the existence of the laptop to the President of the United States for use during his impeachment trial, Mac Isaac felt compelled to do so himself. By the time he made this decision, the laptop had been in the possession of the FBI for a few months. Mac Isaac first approached members of Congress about the laptop but, when he

failed to receive responses, he took it upon himself to contact the attorney for the President of the United States – Rudy Giuliani.[1]

It was not until 2023 that Mac Isaac met Giuliani in person. As noted by Biden in his counterclaim, Mac Isaac was invited to attend an event by the Metropolitan Republican Club on April 17, 2023. He was one of the honorees at the event along with Giuliani. During that event, he briefly met Giuliani. Unlike the political slant Biden alluded to in the counterclaim, Mac Isaac did not assist with planning the event, he was simply invited and he attended.(Cross-Appellants Appendix, A136 - A137)

October 14, 2020 (NY Post Article)

Mac Isaac provided no information about Biden to the NY Post. All information had been provided by someone else and caught Mac Isaac off guard when he found out about it. His only role in the article was in confirming who he was and what happened. He did not confirm any of the information presented in the article that came from the laptop. (Cross-Appellants Appendix, A137)

"Interviews"

Biden points out interviews in which Mac Isaac participated in an attempt to show that Mac Isaac relished in the spotlight. In fact, reporters from the Daily Beast,

[1] Mac Isaac never actually spoke with or met Mr. Giuliani. All of his interactions were with Mr. Giuliani's attorney, Robert Costello.

CNN, and CBS (and possibly others) did not politely request an interview with Mac Isaac. They forced their way into his shop when Mac Isaac unlocked the door to let a customer out. They barraged him with questions and threatened not to leave until he answered their questions. The reporters not only twisted his words but also put words in his mouth (i.e., reference to Seth Rich). The entire interview can be heard on the website of the Daily Beast (https://www.thedailybeast.com/man-who-reportedly-gave-hunters-laptop-to-rudy-speaks-out-in-bizarre-interview).

Mac Isaac had never been involved in any situation like this and was uncomfortable and scared that such a powerful family would seek retribution. His answers were nervous responses to questions and the things he anticipated would be used against him (i.e., he is legally blind). (Cross-Appellants Appendix, A137-A138)

Financial Capitalization by Mac Isaac

Mac Isaac's sole source of income was torn from him as a result of the Biden Presidential campaign-led backlash to the October 14, 2020, NY Post article. Out of concerns for his own safety, Mac Isaac had to shutter his business.

Mac Isaac wrote his book for a few reasons: (1) to provide an accurate account of what happened from the time Biden dropped off his laptop at Mac Isaac's shop to the immediate aftermath of the October 14, 2020, NY Post article; (2) to have something to do since he no longer had a business to run; and (3) to survive.

Mac Isaac's book merely tells the story of what happened. The only information from the laptop included in the book was information that had already been publicly released by others. No new information from the data on the laptop appeared in Mac Isaac's book.(Cross-Appellants Appendix, A138-A139)

Biden's Book

Throughout the counterclaim, Biden hems and haws about how embarrassing the content of the laptop was while, at the same time, failing to identify what content and if it was even his content. At the same time, Biden wrote and released a book describing his very personal and embarrassing struggle with drug abuse.

Anyone who "wins" the struggle against drug abuse should be applauded. However, this abuse should not be an excuse to destroy the life of someone else. Biden had a very clear picture of his comings and goings in his book yet failed to remember details like bringing Mac Isaac his laptop and returning another time with an external hard drive. (Cross-Appellants Appendix, A139)

ARGUMENT

I. BIDEN'S CLAIMS ARE BARRED BY 2-YEAR STATUTE OF LIMITATIONS

Questions Presented

Whether Biden's claims of invasion of privacy are barred by the two-year statute of limitations, given that the alleged actions by Mac Isaac occurred prior to March 17, 2021, and Biden filed his counterclaims on March 17, 2023

Standard and Scope of Review

The scope of review for statute of limitations issues in Delaware involves a de novo review by the appellate court. This means that the appellate court will review the matter anew, without deference to the lower court's decision. *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727 (Del. 2020)

Merits of Argument

In Delaware, claims of invasion of privacy are subject to a two-year statute of limitations period. *Ciabattoni v. Teamsters Local 326*, No. N15C-04-059 VLM, 2017 Del. Super. LEXIS 362, at *11 (Super. Ct. July 25, 2017). Further, Delaware follows the "time of discovery" rule which starts the clock for the statute of limitations. *See White v. Riego*, No. 04C-10-015 PLA, 2005 Del. Super. LEXIS 67, at *5 (Super. Ct. Mar. 3, 2005).

Here, Biden originally filed his Answer with Counterclaims in Federal Court against Mac Isaac on March 17, 2023. Any actions by Mac Isaac concerning Biden prior to March 17, 2021, are not actionable.

In Count One of his counterclaims, Biden claims that Mac Isaac intruded upon Biden's seclusion by accessing the data on Biden's Mac. Here, according to the counterclaim, Mac Isaac first accessed the information on Biden's Mac computer on or around April 13, 2019. Biden also alleges that Mac Isaac created a "clone" of the data in July 2019. Biden states in September 2019, Mac Isaac sent a hard drive containing the data to his father, Steve Mac Isaac. The latest date alleged in Biden's claim that Mac Isaac arguably accessed Biden's data was when Mac Isaac sent a copy of the data to Rudy Giuliani's lawyer, Robert Costello on August 28, 2020. Therefore, the statute of limitations period for these acts expired at the earliest on April 12, 2021 (when he first accessed the data) and at the latest August 28, 2020, when the data was sent to Costello. Either way, any plausible claim expired on August 28, 2022.

Using Delaware's "time of discovery rule," especially since Biden knew Mac Isaac would have to access his data to recover it from his laptop, the time of discovery was the day he dropped off the laptop with Mac Isaac – April 13, 2019. Therefore, any right to a claim for intrusion into seclusion by Biden expired on April 13, 2021. Even if, *arguendo*, Biden did not know that Mac Isaac had to access his

data to recover it for him, Biden (and the World) knew that Mac Isaac accessed the data after the NY Post article was released on October 14, 2020.[2] In this scenario, Biden's claims lapsed on October 14, 2022.

The statute of limitations will begin to run "upon the discovery of facts 'constituting the basis of the cause of action *or* the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery' of such facts." *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004). "The failure to exercise this due diligence resulted in the continued running of the statute of limitations." *Shockley v. Dyer*, 456 A.2d 798, 799 (Del. 1983).

The assertion of invasion of privacy is categorized as a personal injury action. *See Kedra v. City of Philadephia,* E.D.Pa., 454 F.Supp. 652 (1978). The case law is clear that the two-year limitations period applicable to personal injury actions begins to run when the injury is sustained and the cause of action arises. *See Layton v. Allen*, Del. Super., 246 A.2d 794, 796 (1968). In privacy actions, it is the invasion itself which creates the cause of action. *See Birnbaum v. United States*, E.D. N.Y., 436 F. Supp. 967 (1977) judgment aff'd in part, reversed in part, 2nd Cir., 588 F.2d 391 (1978). In Biden's case, he knew that Mac Isaac would access the data on his

[2] That is assuming Biden's lawyer, George Mesires, acted on his own on October 13, 2020, when he contacted Mac Isaac to ask if he still had Biden's laptop.

laptop on April 13, 2019. If he did not remember learning of that, at the very least, he knew of Mac Isaac's access to the data when the NY Post published its article on October 14, 2020. By then, the injury alleged by Biden, had already been sustained and it would be reasonable to determine that Biden was put on notice of Mac Isaac's actions on October 14, 2020, and that, by exercising due diligence, he could have determined the extent to which Mac Isaac accessed his data.

In Count Two of his counterclaim, Biden claims that Mac Isaac intruded on Biden's privacy by publishing private matters/facts. Although Mac Isaac had no part in the publication of the data on the laptop, any potential liability concerning the publication of private matters took place at the latest on October 14, 2020, in the New York Post article. Biden also discusses YouTube videos published in December 2020 which would also fall outside of the statute of limitations. Biden's conspiracy and aiding and abetting claims would also be time-barred as they are inextricably connected to the tort claims.

Further, the two-year statute of limitations for these claims began from the "date upon which it is claimed that such alleged injuries were sustained." *See Del. Code Ann. Tit. 10, § 8119.* The alleged injuries were clearly sustained on October 14, 2020, when the NY Post article was published, at the latest. With that said, as discussed herein, Mac Isaac was unaware that the NY Post article was going to be published until just prior to its publication. Further, Mac Isaac did not take part in

any disclosure to the NY Post or to anyone else other than those specifically disclosed in the Second Amended Complaint and in his book.

II. INCONSISTENCIES BETWEEN ANSWERS TO AMENDED COMPLAINT AND ALLEGATIONS IN COUNTERCLAIM.

Questions Presented

Whether Biden's inconsistent statements in his answer to the Second Amended Complaint and his counterclaims undermine the credibility of his allegations, particularly regarding his knowledge and actions related to the laptop.

Standard and Scope of Review

The scope of review for statute of limitations issues in Delaware involves a de novo review by the appellate court. This means that the appellate court will review the matter anew, without deference to the lower court's decision. *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727 (Del. 2020)

Merits of Argument

Biden continues to refuse to admit that the laptop was his. It is noteworthy that, in Biden's answer to Mac Isaac's Second Amended Complaint, many responses were "Mr. Biden is without knowledge sufficient to admit or deny the allegations…" In Paragraph 17 of the answer, Biden claims he is "without sufficient knowledge" about asking Mac Isaac for assistance in recovering his data. (Cross-Appellants Appendix, A068, ¶ 17) Yet, in Paragraph 152, he flat-out denies leaving his laptop

at Mac Isaac's shop. (Cross-Appellants Appendix, A093, ¶ 152) In Paragraph 22 of his answer, Biden claims he is "without knowledge" about never picking up the laptop. (Cross-Appellants Appendix, A069, ¶ 22) However, in Paragraph 154 of the answer, Biden admits that he never returned to the shop. (Cross-Appellants Appendix, A084,¶ 154)

Biden's answer goes even further to obfuscate the facts. In Paragraph 156 of the answer, Biden claims that the allegation is unclear about "what 'laptop' is being referred to." (Cross-Appellants Appendix, A084, ¶ 156) The Second Amended Complaint makes it clear which laptop is at the center of the controversy. This is just another game Biden began to play in his depositions and continues in his answer to the Second Amended Complaint.

Although Biden "is without knowledge" as to his whereabouts on April 12, 2019, Mac Isaac knows exactly where he was. Additionally, financial records show frequent uses of Wells Fargo ATMs where significant withdrawals were made – all within a few miles of Mac Isaac's shop. Biden's confused and dishonest responses prove fatal to all facts alleged in his counterclaims.

Paragraphs 35 and 157 of the Second Amended Complaint show that Biden's own attorney contacted Mac Isaac to ask about the Mac the day before the NY Post story broke. (Cross-Appellants Appendix, A029,¶ 35 & Cross-Appellants Appendix, A054, ¶157) However, in Biden's answer, while Biden admits that George Mesires

was his attorney, Biden is "without knowledge sufficient to admit or deny the allegations." (Cross-Appellants Appendix, A071, ¶ 35 & Cross-Appellants Appendix, A084, ¶ 157) If Biden's response is to be believed, Mesires, his personal attorney at that time, was in the business of representing clients without being asked to do so.

As discussed above, Biden gave Mac Isaac his contact details when he visited Mac Isaac's shop on April 12, 2019. Biden confirmed that the contact information was his. Mac Isaac used this information (both phone number and email address) to contact Biden about his laptop. While Biden denies it, he clearly received the information from Mac Isaac because he followed Mac Isaac's direction to purchase an external hard drive. Assuming his denials are true, which they are not, Biden would have received voicemail messages and emails from Mac Isaac about his computer. Would this not have raised any alarms in his head if he had not dropped off the laptop himself? For the reasons stated above and below, Biden's appeal should be denied.

III. INVASION OF PRIVACY BY INTRUSION

Questions Presented

Whether Mac Isaac's actions constituted an intrusion upon Biden's seclusion, given that Biden signed a work order authorizing data recovery, and whether such actions would be highly offensive to a reasonable person.

Standard and Scope of Review

The scope of review for statute of limitations issues in Delaware involves a de novo review by the appellate court. This means that the appellate court will review the matter anew, without deference to the lower court's decision. *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727 (Del. 2020)

Merits of Argument

To state a claim for intrusion upon seclusion, Biden must show that Mac Isaac intentionally intruded, physically or otherwise, upon his solitude or seclusion or his private affairs or concerns in a manner that would be highly offensive to a reasonable person. *Dayton v. Collison*, No. N17C-08-100 CLS, 2020 Del. Super. LEXIS 310, at *29 (Del. Super. Ct. June 22, 2020). The key element to this tort is that there must be an act of intrusion. *See Lee v. Picture People, Inc.*, 2012 Del. Super. LEXIS 159, *7-8 (Del. Super. Ct. March 19, 2012). "To intrude means to enter without invitation." *Id*.

A. Intrusion

While Biden claims he did not give consent to Mac Isaac to access the data on his Mac, the evidence shows otherwise. The work order, shown as Exhibit A of the Second Amended Complaint (Cross-Appellants Appendix, A065), contains not only Biden's signature authorizing the work done but also Biden's contact information. Biden does not contend that he did not sign the work order and he presents confusing responses to whether he even dropped off the laptop with Mac Isaac. He either doesn't recall or denies it altogether. However, we do know that there is a work order with Biden's signature and his contact information. As mentioned above, it makes no sense that an "operative" would sneak into Mac Isaac's shop with a laptop containing Biden's information and provide Mac Isaac with Biden's correct information. If the purpose was to hurt President Biden's candidacy (which had not even been announced on April 12, 2019), it seems odd that Biden's contact information would have been used.

Further, after fully informing Biden of the procedures for the recovery, he signed the work order. One cannot recover data without first accessing the data. As discussed above, only portions of the data could be transferred at one time requiring Mac Isaac to confirm where he left off by viewing the files. Finally, in order to confirm the data was not corrupted, Mac Isaac viewed random files (typically large video files) to check for data corruption. By accessing the files, Mac Isaac was able

to confirm the data was not corrupt. This was all explained to Biden prior to when he signed the work authorization. The work authorization was all the invitation Mac Isaac needed to access the data.

Biden's claims that the "boilerplate terms of the Repair Authorization" were "well below the signature line" does not impact the fact that Biden, a trained attorney, signed the document. (Cross-Appellants Appendix, A092, ¶ 6) Further, Biden refers to the Repair Authorization as a "typical small-print adhesion clause for which there was no proper notice or opportunity to bargain or negotiate." (Cross-Appellants Appendix, A092, ¶ 8) First, the text is not abnormally small. In fact, the text seems to be the same size as the description of the work to be performed. Next, Mac Isaac had the authority to modify the contract if he was asked by Biden to do so. Biden did not ask for any revisions to the contract. Finally, Biden was also free to seek assistance from another repair shop. The fact that Biden, an attorney, did not ask for any modification of the contract and transacted business with Mac Isaac weighs heavily against Biden's claim that the contract was unenforceable.

Biden knowingly gave Mac Isaac permission to access his data. Biden breached the agreement by failing to pay Mac Isaac for his services and failing to return to the shop to pick up his data. Now, Biden has failed to allege the essential element of intrusion upon seclusion – that Mac Isaac accessed Biden's data without

invitation. Even if this claim were not barred by the statute of limitations, it should fail because of the clear evidence that Biden invited Mac Isaac to access his data.

B. Highly Offensive to a Reasonable Person

While many of the files on Biden's Mac seem to be of the kind that "would be highly offensive to a reasonable person," Biden, himself, seemed to share the information with others. Much of the material that a reasonable person would find most offensive (sexually explicit photos) was voluntarily shared by Biden with others through the website, "Pornhub."[3] Additionally, other information discovered on the laptop Biden's lack of concern about using his father's political ties to close deals with foreign countries, some of whom are considered adversaries with the United States (i.e., People's Republic of China).[4] The use of the "reasonable person" standard should clearly not apply to Biden.

Since Biden invited Mac Isaac to access the files, he cannot now claim that Mac Isaac intruded upon his privacy and that the intrusion was highly offensive to him. The invitation to access the files itself negates the claim of intrusion. Further, the fact that Biden may have suffered some embarrassment because of his actions does not give him a cause of action for invasion of privacy by intrusion. *See Beckett*

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[3] *See* https://www.thetimes.co.uk/article/hunter-biden-uploaded-videos-of-himself-having-sex-p3vjkwm0k.

[4] https://oversight.house.gov/release/comer-reveals-biden-family-members-receiving-payments-from-chinese-energy-company%EF%BF%BC/

v. Trice, 1994 Del. Super. LEXIS 599 (Del Super. Ct. November 4, 1994). He invited Mac Isaac in with full knowledge of what data that Mac Isaac would see. As far as embarrassment, Biden posted homemade pornography on Pornhub and wrote a book outlining his debauchery. It seems what would embarrass a reasonable person does not embarrass Biden.

Biden has failed to properly allege key elements of the tort of invasion of privacy by intrusion and Mac Isaac respectfully requests that this Honorable Court deny Biden's appeal.

V. INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS/MATTERS.

Questions Presented

Whether Mac Isaac's limited disclosure of information to a small group for specific purposes constitutes publication of private facts, and whether the information disclosed is of legitimate public concern.

Standard and Scope of Review

The scope of review for statute of limitations issues in Delaware involves a de novo review by the appellate court. This means that the appellate court will review the matter anew, without deference to the lower court's decision. *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727 (Del. 2020)

Merits of Argument

To state a claim for invasion of privacy by publication of private facts/matters, Biden must show that the facts/matter "publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public." *Spence v. Cherian*, 135 A.3d 1282, 1288 (Del. Super. Ct. 2016) (*citing Restatement (Second) of Torts § 652D*).

A matter has been given publicity when it is "made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." *Restatement (Second) of*

Torts § 652D cmt. a. "It is not an invasion of privacy to communicate a fact concerning one's private life to just one person, or even to a small group." *Spence* at 1288.

A. Disclosure

Originally, Mac Isaac disclosed some of the information to his father and uncle in hopes of getting their input as to what he should do. It was determined that Mac Isaac should disclose the information to the FBI, which he did. He also gave a copy to his friend, Kristin, but did not provide her with a bootable copy, only with the instructions that, if something were to happen to him, she get the drive to Giuliani. Kristin could not have accessed the drive because she did not possess the knowledge of how to access it. Plus, she is a loyal friend to Mac Isaac, so she just held it for him.

After recognizing that President Trump did not seem to have the information from the laptop available for his defense, despite being in the possession of the FBI since December 2019, Mac Isaac then disclosed the information to Mr. Costello with the expressed intent that the information be disclosed solely to Mr. Giuliani, the President's attorney.[5]

[5] Mac Isaac discussed the information on the Mac with his father and his uncle in order to seek advice and assistance from them. The Biden family is very powerful, and Isaac is a private citizen so he became concerned about what the Biden's would/could do to him and sought advice from his family.

Prior to the publication of the NY Post article, Mac Isaac only disclosed the information to his father, uncle, the FBI, and Mr. Costello.[6] That disclosure, to a small group for specific purposes, investigation by the FBI into potential criminal activity and for use by Giuliani in his defense of President Trump in the impeachment, does not rise to the level required by the tort of intrusion by publication.

B. Highly Offensive to a Reasonable Person

As Biden has failed to adequately allege that Mac Isaac "published" the information on the laptop to a large enough group of people to trigger this tort, one must not even delve into the discussion of whether the information published (by others, not Mac Isaac) would be considered "highly offensive to a reasonable person." If this Court must analyze this element of the tort, as discussed above, such an analysis might not be the appropriate standard considering Biden's proclivities.

C. Legitimate Public Concern

Even if Biden properly alleged the other elements of the tort of invasion of privacy by publication, which he has not, the information that was published by others is certainly of "legitimate public concern." As discussed above, the information discovered on the laptop seems to clearly show Biden's use of his father's political power to close deals with foreign countries with whom the U.S.

[6] As mentioned, he did not share what was on the drive with Kristin.

shares an adversarial relationship. The fact that Biden was involved in these deals while making homemade pornography and abusing drugs is certainly of legitimate public concern.

Despite the overwhelming evidence of information that constitutes "legitimate public concern," that analysis does not matter in the case of Mac Isaac since Mac Isaac, himself, did not disclose the information to the "public at large." He solely shared the information with a small group of individuals, those with the authority to investigate whether the data held criminal information and/or information that should have been available to the U.S. President during his impeachment trial. Mac Isaac had no control over what those individuals chose to do with it thereafter.

D. True Statements of Fact

"[U]nder § 652D, not only must the communications at issue be publicized, but they must also represent *true statements of fact.*" *Atamian v. Gorkin*, 1999 Del. Super. LEXIS 666, *9 (Del. Super. Ct. August 13, 1999). Is Biden claiming the information disclosed by others (again, not by Mac Isaac) is true? He only tacitly mentions in Paragraphs 5 and 6 and in footnote 1 of his counterclaim that "some of the information" obtained by Mac Isaac belonged to Biden. (Cross-Appellants Appendix, A091, ¶ 5 & Cross-Appellants Appendix, A092, ¶ 6) In order for a claim of invasion of privacy by publication of facts/matters to be successful, the

information disclosed must be true. Nowhere in the counterclaim does Biden identify any specific information publicly disclosed (by others – not by Mac Isaac), that was true. With this glaring omission coupled with the facts that Mac Isaac *did not* disclose the information to the public, there was no "embarrassing" information published that Biden did not already publish himself and that the information disclosed by others was clearly of *legitimate public concern*, Biden has failed to properly allege key elements of the tort of invasion of privacy by publication of private facts/matters and Mac Isaac respectfully requests this Honorable Court deny Biden's appeal.

VI. CONSPIRACY AND AIDING AND ABETTING COUNTS

Questions Presented

Whether Biden's claims of conspiracy and aiding and abetting fail due to the lack of underlying tortious conduct, and whether Mac Isaac had the requisite intent or knowledge to support such claims.

Standard and Scope of Review

The scope of review for statute of limitations issues in Delaware involves a de novo review by the appellate court. This means that the appellate court will review the matter anew, without deference to the lower court's decision. *ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727 (Del. 2020)

Merits of Argument

Biden's remaining claims of conspiracy (Counts Three and Four) and aiding and abetting (Counts Five and Six) fail along with his claims of invasion of privacy by intrusion and invasion of privacy by publication of private facts/matters. Neither conspiracy claims nor aiding and abetting claims are independent causes of action. There must be some underlying tortious conduct. *See Cousins v. Goodier*, 2021 WL 3355471, at *7 (Del. Super. Ct. July 30, 2021). For these claims to survive a motion to dismiss, Biden must have stated valid claims for invasion of privacy by intrusion and invasion of privacy by publication of private facts/matters – which he has not done. As the alleged counts in the counterclaim are not actionable as invasions of

privacy, they are not actionable as "conspiracy, or aiding and abetting." *Id*. With that said and in recognition that a tort could have conceivably been committed by someone else, although no other party is included in this counterclaim, for the additional reasons set forth below, Biden's counts for conspiracy and aiding and abetting fail.

A. Conspiracy

Delaware follows the language of the *Restatement (Second) of Torts* when determining whether a civil conspiracy was present. Specifically, *Restatement § 876(a)* defines civil conspiracy as "the combination of two or more persons or entities either for an unlawful purpose or for the accomplishment of a lawful purpose by unlawful means, resulting in damage." *Anderson v. Airco, Inc.*, No. 02C-12-091 HdR, 2004 Del. Super. LEXIS 393, at *10 (Super. Ct. Nov. 30, 2004).

One cannot be part of a conspiracy without the specific intent to cooperate with the other conspirators. *See Triplex Communications v. Riley*, 900 S.W.2d 716, 720, 38 Tex. Sup. Ct. J. 765 (Tex.) 1995). While the agreement need not be expressed in words, "it has been recognized that 'accidental, inadvertent, or negligent participation in a common scheme does not amount to a conspiracy.'" *Anderson* at *19 (*citing In re Methyl Butyl Ether Prods. Liab. Litig.*, 175 F. Supp.2d 593, 634 (S.D.N.Y. 2001)).

At no point in the counterclaim does Biden provide any factual allegations that support a claim that Mac Isaac's intent was to get the information on the hard drive released to the public. Mac Isaac has been very clear and has never deviated about why he contacted the FBI and Mr. Costello, which has been expressed throughout this opposition as well.

B. Aiding and Abetting

In Delaware, liability for aiding and abetting requires proof of three elements: (1) underlying tortious conduct, (2) knowledge, and (3) substantial assistance or encouragement. *See Anderson v. Airco, Inc.*, No. 02C-12-091 HdR, 2004 Del. Super. LEXIS 393, at *22 (Super. Ct. Nov. 30, 2004). Biden has not properly alleged that there was any underlying tortious conduct.

Biden has not alleged that Mac Isaac had knowledge of any tortious conduct that would arise from his actions. While Delaware recognizes that a negligent act can create liability for aiding and abetting tortious conduct, the aider and abettor must still be generally aware that he is providing substantial assistance or encouragement to the tortfeasor. Biden's counterclaims are replete with conclusory allegations masquerading as facts and fail to present any facts that Mac Isaac knew that he would be aiding a tort. Perhaps in Biden's overly politicized world, it would make sense. To a common citizen, however, he was just trying to get the information to the authorities and had no idea it would be used as part of a political attack.

Mac Isaac never expressed any type of loyalty to President Donald Trump, nor did he express any dislike for President Joseph Biden, despite what Biden attempts to say in his counterclaim. Mac Isaac respects the office of the President and would have done the same thing if Donald Trump, Jr. had dropped off a laptop with incriminating information on it and that information could be used by President Biden in his defense. Biden's counterclaim assumes that everyone thinks like he does and, in doing so, Biden fails to properly allege any cause of action.

CONCLUSION

For the foregoing reasons, John Paul Mac Isaac respectfully requests that the Court affirm the Superior Court's decision dismissing the counterclaims against John Paul Mac Isaac with prejudice.

Respectfully submitted,

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