

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DECKER ADVERTISING,

Plaintiff,

v.

DELAWARE COUNTY, NEW YORK;

TINA MOLÉ, in her individual and official capacity as Chairperson to the Delaware County Board of Supervisors; ARTHUR MERRILL, in his individual and official capacity as a Member of the Board of Supervisors; MARK TUTHILL, in his individual and official capacity as a Member of the Board of Supervisors; THOMAS AXTELL, in his individual and official capacity as a Member of the Board of Supervisors; JEFFREY TAGGART, in his individual and official capacity as a Member of the Board of Supervisors; WAYNE E. MARSHFIELD, in his individual and official capacity as a Member of the Board of Supervisors; JERRY VERNOLD, in his individual and official capacity as a Member of the Board of Supervisors; JAMES E. EISEL, in his individual and official capacity as a Member of the Board of Supervisors; GEORGE HAYNES JR., in his individual and official capacity as a Member of the Board of Supervisors; BETTY L. SCOTT, in her individual and official capacity as a Member of the Board of Supervisors; JAMES G. ELLIS, in his individual and official capacity as a Member of the Board of Supervisors; CARL PARTRICK DAVIS, in his individual and official capacity as a Member of the Board of Supervisors; ALLEN R. HINKLEY, in his individual and official capacity as a Member of the Board of Supervisors; ERIC T. WILSON, in his individual and official capacity as a Member of the Board of Supervisors; JOHN S. KOSIER, in his individual and official capacity as a Member of the Board of Supervisors; WILLIAM LAYTON, in his individual and official capacity as a Member of the Board of Supervisors; JOSEPH CETTA, in his individual and official capacity as a Member of the Board of Supervisors; and AMY MERKLEN, in her Individual and Official Capacity,

Defendants,

ANSWER

Civil Action No.: 3:23-cv-1531
(AMN/ML)

The Defendants, Delaware County New York, Tina Molé, Arthur Merrill, Mark Tuthill,

Thomas Axtell, Jeffrey Taggart, Wayne E. Marshfield, Jerry Vernold, James E. Eisel, George

Haynes, Jr., Betty L. Scott, James G. Ellis, Carl Partrick Davis, Allen R. Hinkley, Eric T. Wilson, John S. Kosier, William Layton, Joseph Cetta, and Amy Merklen, as and for their Answer to the Complaint herein, by and through their attorneys, Hancock Estabrook, LLP, allege:

1. Defendants deny each and every allegation contained in paragraphs thereof numbered “2,” “3,” “4,” “5,” “73,” “76,” “77,” “80,” “83,” “95,” “100,” “101,” “105,” “106,” “107,” “110,” “111,” “112,” and “113,” and to the extent that those allegations are repeated or realleged, the Defendants answer those allegations in like manner.

2. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs thereof numbered “6,” “7,” “8,” “9,” “10,” “30,” “31,” “32,” “34,” “35,” “36,” “37,” “38,” “39,” “40,” “41,” “42,” “43,” “44,” “45,” “46,” “47,” “48,” “49,” “50,” “51,” “52,” “53,” “54,” “55,” “56,” “57,” “58,” “59,” “60,” “61,” “62,” “63,” “64,” “65,” “66,” “68,” “68,” “69,” “70,” “71,” “72,” “74,” “75,” “78,” “79,” “81,” “82,” “84,” “85,” “86,” “87,” “88,” “89,” “90,” “91,” “92,” “93,” “94,” “96,” “97,” “98,” “99,” “102,” “104,” “108,” and “109,” and to the extent those allegations are repeated or realleged, the Defendants answer those allegations in like manner.

3. Defendants admit those allegations stated in paragraphs “1,” “11,” “12,” “13,” “14,” “15,” “16,” “17,” “18,” “19,” “20,” “21,” “22,” “23,” “24,” “25,” “26,” “27,” “28,” “29,” “33,” and “103,” and to the extent those allegations are repeated or realleged, the Defendants answer those allegations in like manner.

**AS AND FOR THE DEFENDANT’S FIRST COMPLETE AND/OR PARTIAL
AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE
COMPLAINT, IT IS ALLEGED:**

4. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR THE DEFENDANT'S SECOND COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

5. Whatever injuries or damages the Plaintiff may have sustained, those injuries and/or damages were caused by the negligence, fault, improper conduct, misconduct, fault, want of care and/or insubordination on the part of the Plaintiff and not through any improper or unlawful conduct on the part of the Defendants.

AS AND FOR THE DEFENDANT'S THIRD COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

6. The individual Defendants are protected and shielded by the defense of Qualified Good Faith immunity.

AS AND FOR THE DEFENDANT'S FOURTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

7. The individual Defendants are shielded and protected by the defense of Common Law Immunity.

AS AND FOR THE DEFENDANT'S FIFTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

8. The Plaintiff was not engaged in protected activity or in the making of protected speech or activity in the specific circumstances alleged.

AS AND FOR THE DEFENDANT'S SIXTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

9. The Plaintiff was at all times an "at will" third party contractor employee.

AS AND FOR THE DEFENDANT'S SEVENTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

10. The Plaintiff removed themselves from the purview of New York's County Law § 214(1) through their own actions and activities.

AS AND FOR THE DEFENDANT'S EIGHTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

11. The Plaintiff was subject to discharge as a result of their own conduct notwithstanding any tortious motivation alleged.

AS AND FOR THE DEFENDANT'S NINTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

12. Defendants actions as alleged were at all times consistent with the legal obligations in New York state.

AS AND FOR THE DEFENDANT'S TENTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

13. Defendants actions as alleged were, at all times, consistent with their policy obligations in New York state.

AS AND FOR THE DEFENDANT'S ELEVENTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

14. Plaintiff failed to mitigate its damages.

AS AND FOR THE DEFENDANT'S ELEVENTH COMPLETE AND/OR PARTIAL AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION ASSERTED IN THE COMPLAINT, IT IS ALLEGED:

15. Defendants actions as alleged are supported by evidence of Plaintiff's misconduct both before and after the specifically alleged dates of those actions.

WHEREFORE, the Defendants demand that the Complaint be dismissed, with prejudice, and upon the merits.

Date: March 6, 2024
Syracuse, New York

Respectfully submitted,

HANCOCK ESTABROOK, LLP

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