

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

BRET WADE,  
Plaintiff,  
v.  
ERIN CHANEY FOSTER,  
Defendant.

Case No. 1:17-cv-01371-GLR

**CORRECTED ANSWER, AFFIRMATIVE DEFENSES AND  
COUNTERCLAIMS<sup>1</sup>**

**Answer to Complaint**

Defendant answers the substantive paragraphs in the Complaint as follows:

1. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.
2. Admitted, except that Plaintiff's name is Erin Colleen Foster.
3. Denied.
4. Admitted.
5. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.

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<sup>1</sup> This filing corrects the inadvertent transposition of references to Plaintiff and Defendant in paragraph 11 of the affirmative defenses section and paragraphs 6, 11, and 13-14 of the counterclaims sections of Defendant's original filing (Dkt. 10). It makes no other substantive modifications.

6. Defendant lacks sufficient information to admit or deny that Plaintiff is “well” known in the “community” and these allegations are therefore denied. Defendant denies that Plaintiff was “well-regarded.” Defendant lacks sufficient information to admit or deny Plaintiff’s allegations regarding Plaintiff’s income and, consequently, they are denied. Defendant denies any defamatory conduct. Defendant denies any further allegation not specifically admitted.

7. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.

8. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied, except that Defendant denies that Plaintiff had a “well-respected reputation.”

9. Admitted.

10. Admitted as to Defendant’s employer (but not as to Defendant’s place of employment).

11. Admitted.

12. Admitted.

13. Admitted except that Defendant denies that they developed a “deep” relationship.

14. Denied.

15. Denied.

16. Admitted that Plaintiff attended a picnic with Defendant and that Plaintiff photographed Defendant at the Picnic. Defendant lacks sufficient information to admit or deny the further allegations in this paragraph and, consequently, they are denied.

17. Denied.

18. Denied.

19. Admitted.

20. Denied except that Defendant admits that she communicated with Plaintiff, that she travelled to Baltimore to have dinner with Plaintiff and others and that she consumed alcohol during that dinner. Defendant denies any further allegation not specifically admitted.

21. Admitted except as to the reasons for the conduct of Plaintiff and his associates. Defendant lacks sufficient information to admit or deny the asserted motivations for the conduct alleged and, consequently, these allegations are denied.

22. Denied.

23. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.

24. Denied.

25. Denied.

26. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.

27. Denied as to Plaintiff's characterization of these communications and specifically denied that Defendant's husband was "going to be upset that she spent the night with Plaintiff." Defendant's husband was upset that Plaintiff had sexually assaulted Defendant. The cited communications speak for themselves. Defendant denies any further allegation not specifically admitted.

28. Denied as to Plaintiff's characterization of these communications except that Defendant admits that she characterized herself as intoxicated. The communications speak for themselves. Defendant denies any further allegation not specifically admitted.

29. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.

30. Denied as to Plaintiff's characterization of these communications. The communications speak for themselves. Defendant denies any further allegation not specifically admitted.

31. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.

32. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.

33. Denied.

34. Denied.

35. As it is not clear to whom these purported statements were made or what their content was, Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied except that Defendant acknowledges that she was subjected to sexual activity and contact without her consent. Defendant denies any further allegation not specifically admitted.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Defendant lacks sufficient information to admit or deny these allegations with respect to Plaintiff's contentions about Defendant's beliefs and, consequently, they are denied. Plaintiff's other allegations are denied.

42. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied, except that Defendant specifically denies making any defamatory statements.

43. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied except that Defendant specifically denies that Plaintiff had a good reputation.

44. Denied.

45. Denied.

46. Defendant lacks sufficient information to admit or deny these allegations and, consequently, they are denied.

47. Denied except that Defendant admits that Plaintiff falsely asserted that Defendant had made false statements about Plaintiff.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

### **Affirmative Defenses**

Defendant asserts the following affirmative defenses:

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

2. Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations.

3. Plaintiff's claims are barred by the doctrine of estoppel.

4. Plaintiff's claims are barred by the doctrine of laches.

5. Plaintiff's claims are barred by the doctrine of waiver.

6. Plaintiff's claims are barred or abated substantially by the doctrine of unclean hands.

7. Plaintiff's claims are barred or his damages reduced by Plaintiff's failure to mitigate his damages.

8. Plaintiff's claims fail in whole or in part because Plaintiff has suffered no damages.

9. Any statements made by Defendant about Plaintiff were true and, consequently, cannot be defamatory.

10. Any statements made by Defendant about Plaintiff were made in good faith and, consequently, cannot be defamatory.

11. To the extent negative information has been disseminated about Plaintiff that is largely or exclusive the result of Plaintiff's own conduct in causing that information to be disseminated and consequently Defendant cannot be liable for such dissemination.

12. Plaintiff did not have a good reputation and consequently his reputation could not be harmed or could not be substantially harmed. Among the reasons that Plaintiff's reputation is not good is that there are rumors, the truth of

which are unknown to Defendant, that Plaintiff engaged in unconsented sexual activity with one or more persons other than Defendant.

Defendant reserves the right to present additional affirmative defenses as factual discovery shall disclose such defenses or as it is otherwise reasonable to present additional affirmative defenses.

### **Counterclaims**

Defendant asserts the Counterclaims set out below:

#### **Summary**

1. In late July 2016 Plaintiff Bret Wade tied Defendant Erin Foster up without having permission to do so. He then sexually assaulted Foster, including by penetrating her vagina with his fingers without her consent and while she was unconscious. He then sought to bully Foster to never speak about the incident by filing this lawsuit in bad faith and by publicly branding Foster a liar. Wade's conduct was malicious, vindictive and tortious and it caused Foster severe emotional distress and other harm. Moreover, if Wade's conduct results in no adverse consequences to him, it will deter victims of sexual assault from speaking out about what happened to them, a development that would have a grave negative impact on society. Consequently, Foster is entitled to recover her actual damages from the harm Wade caused her plus a substantial additional sum in punitive damages to punish Wade and to deter similar future conduct by Wade and others.

Events of July 29, 2016

2. On or about July 29, 2016, at Plaintiff's residence in Maryland, Plaintiff bound and tied Defendant.
3. Plaintiff did not have Defendant's consent to tie and bind her.
4. Plaintiff did not have any reasonable basis to believe that he had such consent.
5. Plaintiff tied and bound Defendant while Defendant was unconscious.
6. Defendant acted out of a desire to further his own sexual gratification.
7. On or about July 29, 2016 Plaintiff, at Plaintiff's residence in Maryland, inserted more than one finger into Defendant's vagina.
8. Defendant perceived that Plaintiff intended to engage in sexual activity with her.
9. Plaintiff engaged in penetrative sexual activity with Defendant during time periods in which Defendant was unconscious.
10. Plaintiff did not have Defendant's consent to engage in this sexual conduct.
11. Alternatively, Defendant was so intoxicated that she was unable to voluntarily consent to sexual activity.

12. Plaintiff did not have any reasonable basis to believe that Defendant had consented to engage in such sexual conduct.

13. Plaintiff knew that Defendant was so intoxicated that she could not voluntarily consent to sexual activity.

14. Plaintiff reasonably should have known that Defendant was so intoxicated that she could not voluntarily consent to sexual activity.

#### Subsequent Events

15. After the events which occurred on or about July 29, 2016 Plaintiff, acting directly or through threatening letters sent by Plaintiff's attorney, on Plaintiff's behalf, falsely claimed to others, orally and in writing, including (but not limited to) by the mechanism of this lawsuit, that Defendant had lied about Plaintiff engaging in unconsented sexual activity with Defendant.

16. Plaintiff knew that he had engaged in unconsented sexual activity with Defendant.

17. Plaintiff knew that his statements to the contrary were false.

18. Plaintiff knew or had reason to know that Defendant had not made any statement about him in bad faith.

19. Plaintiff falsely told others that Defendant had made false statements about him.

Damages

20. Because of Plaintiff's conduct Defendant suffered severe damages, including severe emotional distress which required significant professional mental health treatment, harm to reputation and economic injuries.

**Count 1  
Battery**

21. All the foregoing paragraphs are incorporated herein.

22. Plaintiff's insertion of fingers into Defendant's vagina without her consent constituted and was intended to constitute harmful or offensive contact with Defendant.

23. Plaintiff's tying up of Defendant without her consent constituted and was intended to constitute harmful or offensive contact with Defendant.

24. This conduct constituted the tort of battery.

**Count 2  
Assault**

25. All the foregoing paragraphs are incorporated herein.

26. While engaging in the conduct set out above, Plaintiff attempted to cause a harmful or offensive contact with Defendants' person and to cause an apprehension of such contact.

27. This conduct constituted the tort of assault.

**Count 3**  
**Intentional Infliction of Emotional Distress**

28. All the foregoing paragraphs are incorporated herein.

29. The conduct by Plaintiff targeting Defendant, as set out above, was wrongful, extreme and outrageous and caused Plaintiff extreme and severe emotional distress.

30. This conduct constituted the tort of extreme infliction of emotional distress.

**Count 4**  
**Abuse of Process**

31. All the foregoing paragraphs are incorporated herein.

32. Plaintiff used this lawsuit to improperly intimidate and punish Defendant. This was the improper use of civil process, in a manner not contemplated by law, in a manner meant to cause harm to Defendant.

33. This conduct constituted the tort of abuse of process.

**Count 5**  
**Defamation**

34. All the foregoing paragraphs are incorporated herein.

35. Plaintiff made oral and published written statements to others tending to expose Defendant to public scorn, hatred, contempt, or ridicule to third persons who reasonably recognized the statement as being defamatory; these

statements were false; Plaintiff was at fault in communicating the statements; and Defendant suffered harm because of these statements.

36. This conduct constituted the tort of defamation. This count also encompasses and asserts any related claim that may be denominated as slander or libel.

### **Jury Trial**

1. Defendant demands a jury trial on matters which may be so tried.

### **Request for Relief**

Defendant requests relief as follows:

- a. That Plaintiff take nothing on his claims.
- b. That Defendant be awarded damages on each of her counterclaims.
- c. That Defendant be awarded punitive damages on each of her counterclaims.
- d. That Defendant be awarded appropriate injunctive relief.
- e. That Defendant be awarded interest.
- f. That Defendant be awarded such other relief as is just and proper.

