

**VIETNAMESE FISHERMEN'S ASSOCIATION,  
et al., Plaintiffs,  
v.  
The KNIGHTS OF the KU KLUX KLAN, et al.,  
Defendants.**

**Civ. A. No. H-81-895.**

United States District Court, S. D. Texas, Houston  
Division.

July 15, 1981.

**MEMORANDUM OPINION AND ORDER**

McDONALD, District Judge.

**Introduction**

This is an action filed on April 16, 1981 by an organization of Vietnamese Fishermen and individual Vietnamese fishermen against the Knights of the Ku Klux Klan, the Grand Dragon of the Ku Klux Klan in the State of Texas, certain unknown members of the Ku Klux Klan, the American Fishermen's Coalition, various alleged members of that coalition, and several individual American fishermen alleging violations of various federal and state statutes.

Specifically, the plaintiffs allege that the defendants have violated their rights under several civil rights statutes: 42 U.S.C. ss 1981, 1982, 1985(c), and 1986; the Thirteenth and Fourteenth Amendments to the United States Constitution; the Sherman Act, 15 U.S.C. ss 1, 2, 15, and 26; the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. ss 1962 and 1964; and the common law torts of assault, trespass to personal property, the intentional infliction of emotional distress and intentional interference with contractual relations. In addition, the plaintiffs allege in their Second Amended Complaint that defendants Louis Beam and the Knights of the Ku Klux Klan have violated their rights under Tex.Rev.Civ.Stat. Ann., art. 5780 s 6 (Vernon). Relief by way of preliminary and permanent injunction has been requested as well as a declaratory judgment.

The plaintiffs seek a preliminary and permanent injunction enjoining the defendants generally from engaging in any activity, including unlawful acts of

violence or intimidation, conducted for the purpose of interfering with the rights of the Vietnamese fishermen prior to and during the shrimping season, which begins on May 15, 1981. In particular the plaintiffs request this Court to restrain the defendants from undertaking:

- (a) activities undertaken with the purpose of interfering with the rights of the plaintiff class at issue in this case;
- (b) unlawful acts of violence or intimidation against the plaintiff class;
- (c) engaging, or inciting others to engage in acts of boat burning, armed boat patrols, assault and battery, or threats of such conduct;
- (d) maintaining or conducting or attending military or paramilitary camps and giving or receiving military or paramilitary training except from military institutions operated by the state of Texas or United States government.

The plaintiffs also request this Court to require the conspicuous posting of all Orders as the Court may issue at all meetings and meeting places of any or all of the defendants and to appoint additional United States Magistrates and deputies to prevent the violation of any Orders of this Court.

The plaintiffs' class of Vietnamese fishermen was certified by agreement of all parties on May 8, 1981. The class is defined as "all Vietnamese fishermen in the Galveston Bay, Texas area" and may be maintained under Rule 23(b)(2) of the Federal Rules of Civil Procedure. The defendants' Motion to Dismiss has previously been denied by Order of this Court on May 11, 1981. The testimony and documentary evidence received during the hearing on the Motion for Preliminary Injunction makes it absolutely clear that the claims are justiciable.

**THE FACTUAL SETTING**

On or about January 24, 1981, defendant Fisher was introduced to defendant Louis Beam, Grand Dragon in the State of Texas of the Knights of the Ku Klux Klan (hereinafter KKK or Klan), by defendant James Stanfield a member of the Original Ku Klux Klan of America. (Stanfield Depo. at 13) The admitted purpose for this introduction was for defendant Fisher to secure support of Louis Beam and the Klan in order to further the purposes of a group of American fishermen who were ostensibly concerned about "over fishing" in the Kemah-Seabrook area of Texas. Defendant Fisher considered that the Klan was an organization that had

the "courage" to stand by their convictions and would provide needed publicity to draw the attention of various governmental agencies he felt had failed to address his concerns. This meeting resulted in a rally that was held on February 14, 1981 on the property of defendant Joseph Collins that is located in Santa Fe, Texas. Defendant Joseph Collins leased this property for that purpose for a \$1.00 payment from Mr. Stanfield. He stated in substance that he would give the government 90 days to rectify the situation, (referring to the presence of the Vietnamese fishermen in the Kemah-Seabrook area) and if that was not accomplished the Klan would take action stating it "may become necessary to take laws into our own hands." He admitted stating in his speech that it was necessary to "fight fight fight" and see "blood blood blood" if this country was to survive. That rally was covered extensively by the news media. At that same rally, Beam demonstrated how to burn a boat. A cross propped with the aid of a pickup truck of defendant Joseph Collins was also burned at the rally. On that evening, defendant Beam offered to train American fishermen at one of the "military camps", later referred to as "locations" during his testimony in Court.

On March 15, 1981, a "boat ride" was held in the waters surrounding the Kemah- Seabrook area. The boat was owned by defendant Joseph Collins and was navigated by defendant David Collins. The boat was the shrimping boat used by defendant Joseph Collins in his business, and by his own admission it is hardly a "pleasure craft." Several persons who were on that shrimp boat on March 15, 1981 wore robes of the KKK, some also wore hoods and most were visibly armed. The boat was equipped with a small cannon and a figure hung in effigy. Defendant Stanfield was present on the boat and wore a Klan robe and hood. Other persons who viewed, participated in or heard of this boat ride acknowledged that this display would be fearful and intimidating to Vietnamese fishermen. Indeed, Joanne Oliphant-Curren, a reporter who was invited by David Collins to join them in the boat ride testified that she was "scared." By way of explanation she stated that the presence of robed, armed Klansmen on the boat might incite others to respond in a violent way and acknowledged that if she were a Vietnamese fishermen she would be afraid by such a display. She reported that "Collins steered the boat out into the bay well past the mile marker and the Klansmen fired their small cannon (Plaintiff's Exhibit No. 38). Everybody else had their fingers in their ears, but I was snapping pictures and the cannon blast left me nearly deaf for a

few moments." The account in the newspaper further related the following: "Let's hear it for the American fishermen, David Collins shouted and the fishermen cheered."

Defendant David Collins acknowledged that the purpose of the boat ride was to gain media attention, asserting "violence sells stories." Defendant Fisher testified that defendant Beam had informed him that one of the persons on this boat ride was a Klansman involved in the Greensboro, South Carolina shooting during which members of the Communist Workers Party were killed during a confrontation with members of the Ku Klux Klan.

Members of the class who testified by deposition also expressed fear because of the presence of the shrimp boat loaded with robed and armed Klansmen. Colonel Nam Van Nguyen testified that he was especially frightened by the weapons that were carried by the persons on the boat and the figure that was hanging in effigy on the boat (Nam Depo. at 54). He also testified that the boat came right to his dock and stopped there for about four or five minutes and someone on the boat gestured toward his house (Nam Depo. at 55). Colonel Nam's sister-in-law, Phuong Pham, was present in his house when the boat approached and she saw persons wearing white robes. This so frightened her that she took her infant niece and ran from the house to a nearby relative's home. Although Miss Pham had previously lived with Colonel Nam, since this incident, she testified that she is too fearful to spend the night in that house. (Pham Depo. at 7-11)

Mr. Jerry Walzel, State Game Warden for the Texas Department of Parks and Wildlife testified that "fortunately" he was not on duty on the day of the boat ride; fortunate because if he had been in the area, undoubtedly he would have received a complaint of possible violations of water safety regulations and if he had tried to board the boat it would have been "like throwing a spark on gasoline." He explained that he would be the spark and the armed Klansman the gasoline. In his opinion, the presence of armed Klansmen aboard shrimp boats would cause violence.

Chief Kerber testified further that the tension between Vietnamese and American fishermen did not stem solely from fishing conflicts. According to Chief Kerber, some American fishermen believe there are just too many Vietnamese people in Kemah-Seabrook and therefore these individuals will only be satisfied when

some of the Vietnamese leave the area.

Mr. Louis Beam, the Grand Dragon of the Knights of the Ku Klux Klan of Texas testified about the history of his organization. Mr. Beam stated that the Knights of the Ku Klux Klan of Texas opened a public information center in Pasadena, Texas in 1975. Prior to that time, he originally joined the United Klans of America in and about April of 1969 immediately after returning from Viet Nam. (Beam Depo. p. 12) According to Mr. Beam's testimony, the United Klans of America was "destroyed" by "government subversion" in 1971. Consequently, in 1973, Mr. Beam helped organize the Original Ku Klux Klan in the state of Texas (hereinafter referred to as the "Original Klan"). (Beam Depo. p. 13)

At trial, Mr. Beam testified that the Original Klan received permission from now former Grand Dragon of Louisiana, Robert W. Fuller, to use the Original Ku Klux Klan of Louisiana's charter. Mr. Beam testified that although the aims of the Louisiana and Texas organizations were different, the Original Klan was incorporated under the laws of Louisiana.

Sometime in late 1974 or early 1975 Mr. Beam advised all the members of the Original Ku Klux Klan of Texas to withdraw their membership from that Klan and affiliate themselves with David Duke's Knights of the Ku Klux Klan out of Metairie, Louisiana (hereinafter referred to as "the Knights"). Mr. Beam subsequently abandoned the charter the Original Klan had operated under and adopted the charter utilized by the Knights. The Knights of the Ku Klux Klan is a national organization and David Duke's group is incorporated under the laws of Louisiana.

The record is replete with provocative statements made by various defendants in this action. Defendant David Collins testified by way of deposition and reaffirmed at trial that he planned to have an armed Klansman on his boat on May 15, 1981. (Collins Depo. at 32, 33) Jim Craig owner of the Old Harbor Seafood House testified that he has 43 boats owned by Vietnamese fishermen docked at his establishment, referred to as the "Saigon Harbor". He testified about a conversation during the Fall of 1980 with defendant Fisher. According to Mr. Craig, Mr. Fisher told him to "watch your boats they're easy to burn."

It is uncontroverted that defendant Fisher stated that it would not bother him if the Klan burned all of the (Vietnamese) boats; further adding that the Klan were

the only ones with the courage of their convictions. He added that a certain number of Vietnamese boats would have to be taken out of the water and destroyed. At the rally on February 14, 1981, defendant Fisher publicly stated that "we're going to help (Vietnamese fishermen) to control themselves."

A woman who lives in the Galveston Bay area had allowed a Vietnamese fisherman to use one of her docks for approximately two years. She testified that in January, 1981 she received a card in the mail, signed by the Knights of the Ku Klux Klan which read: "You have been paid a 'friendly visit' do you want the next one to be a 'real one.' " She also received three threatening phone calls. The first asked if she knew where her children were; the second was a threat to burn her boat; the third, stated that she would die that night. Mr. Dang, a Vietnamese fisherman, testified that approximately four weeks ago an American pointed a gun at him while he was on his shrimp boat. Miss Do Thi Doi who is a shrimp seller and married to a Vietnamese fisherman testified that six weeks ago two American men drove up in a truck and pointed a gun at her. She testified that unless there is some solution to the conflict between the American fishermen and the Vietnamese fishermen her husband will not take out their shrimp boat on May 15, 1981 because she is afraid that he will be killed.

The plaintiffs have alleged that defendants Beam and the Knights of the Ku Klux Klan have operated one or more military or paramilitary training camps in the State of Texas in violation of Tex.Rev.Civ.Stat. Ann., art. 5780, s 6 (Vernon). The plaintiffs introduced a videotape depicting defendant Beam instructing persons dressed in military type uniforms in the art of psychological warfare, ambush and counter ambush, reconnaissance patrol and other types of military movements. (Plaintiffs' Exhibit 35) Defendant Beam has referred to the group of persons who will receive his training as the "Texas Emergency Reserve."

Defendants testified that the primary purpose for inviting the Ku Klux Klan to speak on the behalf of American fishermen, was merely an attempt to gain media attention of the plight of the American fishermen because state, federal, and local officials had attempted to "whitewash" (Joseph Collins Depo. at 9), the complexity of the nature of the conflict between the American and Vietnamese fishermen. The defendants stated that over the past year and a half to two years they had attempted to present their concerns to Austin

with the hope that the Texas legislature would enact legislation designed to curtail the number of boats allowed to fish in the Galveston Bay. According to the defendants, such legislation would significantly decrease the amount of tension that exists between the American and Vietnamese fishermen, and would diffuse any explosive situation that may exist in Kemah-Seabrook.

#### TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS

The plaintiffs have alleged that the actions of the defendants constituted the tort of intentional interference with contractual relationships, i. e., interference with their commercial fishing business. (Complaint, P XIII).

It is well established that a wrongful or malicious interference with the performance or the formation of a contract or the right to pursue a lawful occupation constitutes a tort for which damages may be recovered. See 86 C.J.S. Torts, s 43 (1954); Restatement of Torts s 766 (1939). Texas courts recognize a cause of action for improper interference with contractual relationships. *Clements v. Withers*, 437 S.W.2d 818, (Tex.1969). Common law has well established that the reasonable expectancy of a prospective contract is a property right to be protected from wrongful interference in the same sense as an existing contract is protected. *Leonard Duckworth, Inc. v. Michael L. Field & Co.*, 516 F.2d 952 (5th Cir. 1975) (cites omitted). Under Texas law a party has the right to be free from malicious interference with the right to conduct negotiations that have a reasonable probability of resulting in a contract. *Martin v. Phillips Petroleum Co.*, 455 S.W.2d 429, 435 (Tex.Civ.App.1970) rehearing denied. Texas courts have also recognized a cause of action for tortious and wrongful interference with advantageous business relationships. *Cooper v. Steen*, 318 S.W.2d 750, 757 (Tex.Civ.App.1958).

The elements of the tort of wrongful interference with a prospective contract right are as follows: the plaintiff must show that (1) there was a "reasonable probability that he would have entered into a contractual relationship; (2) the defendant acted maliciously by intentionally preventing the relationship from occurring with the purpose of harming plaintiff; (3) the defendant was not privileged or justified, and (4) actual harm or damage occurred as a result." *Duckworth v. Michael L. Field*, supra at 956 (cites omitted). As the plaintiffs

have stated, the commercial fishing business is essentially contractual in nature. Moreover, the commercial fishing business is a lawful occupation which the plaintiffs have a right to pursue without wrongful interference on behalf of the defendants. The evidence adduced at the hearing clearly established that the defendants acted intentionally to impede and prevent the plaintiffs from pursuing their lawful occupation. As a result of the defendants' actions, many members of the plaintiff class have agreed to sell their shrimping boats and many have been reluctant to pursue their lawful occupation. In light of these facts and the Court's earlier discussion of 42 U.S.C. s 1981, there is a substantial likelihood that the plaintiffs will prevail on this tort claim.

#### THE COMMON LAW TORT OF ASSAULT

The plaintiffs also alleged that the defendants had committed the common law torts of assault, trespass to personal property, and the intentional infliction of emotional distress. The cause of action for the tort assault recognizes a plaintiff's right to be free from apprehension of a harmful or offensive contact. Any act of such a nature as to excite an apprehension of a battery may constitute an assault. W. Prosser, *The Law of Torts*, (4th Ed. 1971), s 10. It is an assault to hold a weapon in a threatening position, or to surround an individual with a display of force. *Id.* at 38. As a rule, however the defendant's act must amount to an offer to use force, and there must be an apparent ability and opportunity to carry out the threat immediately. There is no assault where the defendant is too far away to do any harm. With respect to weapons, when the defendant presents the weapon in such a manner as to indicate that it may immediately be made ready for use, the threat becomes sufficiently imminent to constitute an assault. *Id.* at 39.

Under Texas law, a person commits an assault if he intentionally or knowingly threatens another with imminent bodily injury. V.T.C.A., Penal Code s 22.01. The definition of assault is the same whether it is the subject of a criminal prosecution or of a civil suit for damages. *Hogenson v. Williams*, 542 S.W.2d 456 (Civ.App.1976). An assault can only be committed when the act is coupled with the ability to commit a battery. For example, if the parties are too far separated for the accused to commit violence with the means used, there is no assault. *Marthall v. State*, 34 Tex.Cr.R. 22, 36 S.W. 1062 (1896).

At the hearing, Miss Do Thi Toi testified that two American men pointed a gun at her. Mr. Dang, another member of the plaintiff class, also testified that an American pointed a gun at him while he was on his shrimp boat. Although these acts may constitute an assault, none of the actions of these Americans could be attributed directly to the defendants.

Several members of the plaintiff class also testified that when they witnessed the "boat ride" on March 15, 1981 they became frightened. Although there were several armed persons on this "boat ride", there was no testimony that any of these individuals were in close enough proximity to any of the plaintiffs to actually commit a battery. It is certainly clear that the actions of the defendants created an atmosphere conducive to the commission of violence and that such violent acts were the foreseeable natural cause of the calls for violence, especially those of defendants Beam and Fisher and acquiesced in by the remaining defendants. At this stage of the proceedings, the Court will not foreclose the plaintiffs from introducing such evidence and further evidence of a direct connection between the defendants and actual acts of assault and battery; however, insufficient evidence has been adduced to demonstrate a likelihood of success on the merits and therefore, the request for preliminary injunctive relief will be denied.

#### THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The plaintiffs' Original Complaint also sought relief from the defendants' alleged intentional infliction of emotional distress. The elements of a prima facie case of this intentional tort are: 1) an act by the defendant(s), 2) intent, 3) extreme and outrageous conduct, 4) causation and 5) damages. See generally, W. Prosser, *The Law of Torts*, s 12 (4th Ed. 1971).

The evidence adduced at trial demonstrated a substantial likelihood that the "boat ride" constituted extreme and outrageous conduct on the part of defendants David Collins, James Stanfield and several, as yet, unidentified members of the Ku Klux Klan. Colonel Nam's young sister-in-law, Phuong Pham, testified that she was so frightened by the sight of armed and robed Ku Klux Klan members, on the "boat ride," that she ran from Colonel Nam's home and is now afraid to spend the night there. Ordinarily under Texas law, damages for mental anguish and fright are not recoverable unless they result from or are accompanied

by physical injury. See *Pargas of Longview, Inc. v. Jones*, 573 S.W.2d 571, 574 (Tex.Civ.App.1978). However, Texas plaintiffs have a damage action for mental/emotional suffering, unaccompanied by physical injury, "when the wrong complained of is a willful one intended by the (defendant) to produce mental anguish or from which such result should be reasonably anticipated as a natural consequence." *Stafford v. Steward*, 295 S.W.2d 665, 667 (Tex.Civ.App.1957) (assault and battery case). Here, the plaintiffs produced sufficient evidence to establish a substantial likelihood that the defendants intended, or at least could have reasonably anticipated that the "boat ride" would cause plaintiff class members severe emotional/mental distress.

Nevertheless, the facts of this case as well as the governing law need to be more fully developed for the plaintiffs to show a likelihood of success. The plaintiffs have failed to cite any Texas authority allowing a damage action for mental anguish, unaccompanied by some other intentional tort such as trespass or assault. Moreover, the evidence adduced at the hearing failed to establish that any member of the plaintiff class suffered a mental and/or emotional injury severe enough to maintain a cause of action for the intentional infliction of emotional distress. Phuong Pham is not a member of the plaintiff class. The plaintiffs, therefore, have not demonstrated a substantial likelihood that any of the class members would be entitled to recovery of damages for Ms. Pham's emotional distress. See *Landreth v. Reed*, 570 S.W.2d 486 (Tex.Civ.App.1978).

#### TRESPASS TO PERSONAL PROPERTY

The plaintiffs have also alleged that the defendants have committed the tort of trespass to chattels. (Complaint P XIII). It is well established that it is a trespass to damage or destroy goods in the possession of another. See *The Law of Torts*, supra s 14. Testimony at the hearing established that in or about January and March of 1981 three Vietnamese owned and/or operated shrimp boats were destroyed by arson. However, there was no testimony to link any of the defendants with this event. Therefore, the plaintiffs have failed to carry their burden with respect to this cause of action.