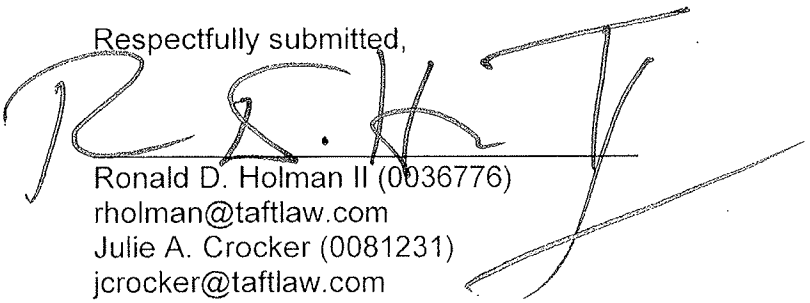
IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

GIBSON BROS., INC., et al.,	)	CASE NO. 17CV193761
	)	
Plaintiffs,	)	JUDGE JOHN R. MIRALDI
	)	
v.	)	
	)	DEFENDANTS OBERLIN COLLEGE
OBERLIN COLLEGE, et al.,	)	AND DR. MEREDITH RAIMONDO'S
	)	PARTIAL MOTION TO DISMISS
Defendants.	)	PLAINTIFFS' COMPLAINT
	)	
	)	

Pursuant to Rule 12(B)(6) of the Ohio Rules of Civil Procedure, Defendants Oberlin College and Dr. Meredith Raimondo (collectively, "Defendants"), respectfully move this Court to dismiss the claims for negligent hiring, retention, or supervision (Count 7) and trespass (Count 8) in Plaintiffs Gibson Bros., Inc., David R. Gibson, and Allyn W. Gibson's Complaint. Neither cause of action sets forth a claim upon which this Court can grant relief and therefore dismissal is proper.

Defendants' Memorandum in Support is attached and incorporated by reference. A proposed order granting Defendants' Partial Motion to Dismiss is attached hereto for the Court's convenience.

Respectfully submitted,



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GIBSON BROS., INC., et al.,	)	CASE NO. 17CV193761
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Plaintiffs,	)	JUDGE JOHN R. MIRALDI
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v.	)	
	)	MEMORANDUM IN SUPPORT OF
OBERLIN COLLEGE, et al.,	)	DEFENDANTS OBERLIN COLLEGE
	)	AND DR. MEREDITH RAIMONDO'S
Defendants.	)	PARTIAL MOTION TO DISMISS
	)	PLAINTIFFS' COMPLAINT
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INTRODUCTION

Oberlin College is a four-year, highly selective liberal arts college and conservatory of music. Oberlin's aim throughout its history has been to educate students to affect positive change in the world. Founded in 1833, Oberlin was the first college in America with a policy to admit students regardless of race, in keeping with Oberlin's profound dedication to and involvement with the abolitionist movement. It was also the first college to grant bachelor's degrees to women in a coeducational environment. Oberlin College's campus community is known for its exemplary academic and musical pedagogy, its outstanding scholarship, and its commitment to social justice, sustainability, and creative entrepreneurship.

Oberlin College and the City of Oberlin are more than just neighbors. Because of their shared founding and common history, Oberlin College and its faculty, staff, and

students have always contributed to the success of the local community through partnerships with local businesses and residents.

This lawsuit arises out of an unfortunate incident involving a local business and its owners, and Oberlin College students. Plaintiffs have rejected all attempts from Oberlin College to rise above misunderstandings, perceived wrongs, and outrage, and further rejected Oberlin's vision of a new relationship built on personal accountability and a shared commitment to the overall health of their beloved hometown. By commencing this legal action, however, Plaintiffs seek to personally profit from a polarizing event that negatively impacted Oberlin College, its students, and the Oberlin community. Thus, not surprisingly, the Complaint contains a smorgasbord of allegations all designed to falsely portray Plaintiffs as innocent victims. The actual facts do not bear this out. In reality, it was an employee of Gibson's Bakery and a relative of the individual plaintiffs, Allyn D. Gibson, who left the safety of his business to violently physically assault an unarmed student.

Defendants Oberlin College and Dr. Meredith Raimondo never targeted Plaintiffs and thus are not liable in any way to Plaintiffs. Defendants' sole concern at all times has been for the safety and well-being of its students and the community. In contrast, Plaintiffs are regrettably attempting to use this divisive community incident and the false allegations contained in the Complaint for their own financial gain.

All of the legal claims in Plaintiffs' Complaint lack merit. But two of those claims are ripe for dismissal by this Court pursuant to Civ.R. 12(b)(6) for failure to state a claim. Specifically, Plaintiffs' claim for negligent hiring, retention, or supervision set forth in

Count 7 of the Complaint, and Plaintiffs' claim for trespass, set forth in Count 8 of the Complaint, fail as a matter of law and should be dismissed by the Court.

STATEMENT OF FACTS

The events giving rise to the allegations in Plaintiffs' Complaint stem from an incident that occurred on November 9, 2016. (Compl. ¶ 22.) On that day, three Oberlin College students, who are African-American, went to Plaintiff Gibson Bros., Inc. (referred to herein as "Gibson's Bakery"). (*Id.*) According to Plaintiffs, one of these students attempted to purchase wine with a fake ID. (*Id.* ¶¶ 22, 96-97.) As reported by several news sources, after the students left Gibson's Bakery, a Gibson's Bakery employee, Allyn D. Gibson, who is Caucasian, followed the students out of the store and onto Oberlin College's campus, which is directly across from Gibson's Bakery, and violently assaulted the male student. (*See id.* ¶¶ 21-23, 38.) The two female students intervened on behalf of their fellow student when Allyn D. Gibson refused to stop the assault. When the police arrived on the scene, they arrested only the three Oberlin College students despite witness statements that Allyn D. Gibson was the aggressor. (*Id.* ¶ 23.)

Some of the Oberlin College students and community members who witnessed and learned of this altercation believed the physical assault by Allyn D. Gibson and the failure of the Oberlin Police Department to arrest Allyn D. Gibson to be the result of racial profiling and racial discrimination. Indeed, these witnesses reported that "[a] member of our community was assaulted by the owner of this establishment yesterday. A nineteen y/o young man was apprehended and choked by Allyn Gibson of Gibson's Food Mart & Bakery. The young man, who was accompanied by 2 friends was choked

until the 2 forced Allyn to let go. The young man was free, Allyn chased him across College St. and into Tappan Square . . ." (*Id.* ¶ 38.) As a result, protesters gathered near Gibson's Bakery the next day to peacefully exercise their constitutional rights. (*Id.* ¶ 34.)

Plaintiffs make various claims that Defendant Dr. Meredith Raimondo, who is the Vice President and Dean of Students for Oberlin College, assisted and joined in with the student protests. (*Id.* ¶¶ 5, 35, 42-43.) These allegations are demonstrably false. Plaintiffs further allege that Dr. Raimondo "demanded" that the Oberlin College Director of Dining Services "cease from engaging in any business with Gibson's Bakery." (*Id.* ¶ 57.) Dr. Raimondo acted within her authority to temporarily suspend daily bakery orders with Gibson's Bakery until such time as a proper review of the business relationship could be performed, including whether a vendor violated the College's legal obligations to maintain a campus free of racial harassment. In an effort to demonstrate good will, the daily bakery orders with Gibson's Bakery were reinstated two months later even though Allyn D. Gibson's beating and choking of a student on campus property is undisputed. (*Id.* ¶ 75.)

Plaintiffs' unfounded claims that Defendants intentionally conspired to harm the Plaintiffs to gain ownership of a parking lot do not end there. In an attempt to further profit from Oberlin College, Plaintiffs assert a claim for trespass against the Defendants in their Complaint. Plaintiffs allege that "Oberlin College has encouraged, facilitated, and permitted its professors, administrators, faculty, students, and third party contractors to use" a parking lot owed by Off Street Parking, Inc., which is not even a party to this case. (*Id.* ¶¶ 60, 61.) Plaintiffs also allege that Oberlin College "instructed

its construction contractors to park vehicles and large construction equipment and otherwise use the parking lot, obstructing access to the parking lot and parking spaces within the lot." (*Id.* ¶ 62.) Plaintiffs argue that all of these actions amount to a trespass by Defendants on the parking lot. (*Id.* ¶ 163.)

STANDARD OF REVIEW

Pursuant to Rule 12(B)(6) of the Ohio Rules of Civil Procedure, in order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192 (reversing appellate court's decision reinstating complaint after concluding that plaintiff could prove no set of facts entitling him to relief). Although a court "must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party" when considering a motion to dismiss pursuant to Rule 12(b)(6), "[u]nsupported conclusions of a complaint are not considered admitted . . . and are not sufficient to withstand a motion to dismiss." *Id.*; *State ex rel. Hickman v. Capots,* 45 Ohio St.3d 324, 324, 544 N.E.2d 639 (1989) (citing *Schulman v. Cleveland* (1972), 30 Ohio St.2d 196, 198, 283 N.E.2d 175, 176); *see also Padula v. Wagner*, 2015-Ohio-2374, 37 N.E.3d 799, ¶ 36 (9th Dist.) (same); *Scott v. Dennis*, 8th Dist. Cuyahoga No. 94685, 2011-Ohio-12, ¶ 10.

A court must grant a motion to dismiss when it appears "beyond doubt that plaintiff can prove no set of facts warranting a recovery." *Lawson Milk Co.*, 40 Ohio St.3d at 192 (citation omitted). Plaintiffs' Complaint demonstrates that they cannot succeed on their claims for negligent hiring, retention, or supervision (Count 7) and trespass (Count 8), as a matter of law, because Plaintiffs can prove no set of facts

entitling them to relief on these claims. Accordingly, these two claims must be dismissed.

LEGAL ARGUMENT

I. Plaintiffs' Claim for Negligent Hiring, Retention, or Supervision Must Be Dismissed Because the Complaint Contains Only Unsupported Legal Conclusions.

Plaintiffs fail, even when accepting all factual allegations as true solely for purposes of this Motion, to state a claim for negligent hiring, retention, or supervision. To state such a claim, a plaintiff must allege:

> (1) the existence of an employment relationship;
> (2) the employee's incompetence;
> (3) the employer's *actual or constructive knowledge* of such incompetence;
> (4) the employee's act or omission causing the plaintiff's injuries; and
> (5) the employer's *negligence* in hiring or retaining the employee as the proximate cause of plaintiff's injuries.

Evans v. Ohio State Univ. (1996), 112 Ohio App.3d 724, 739, 680 N.E.2d 161 (emphasis added); *Collins v. Flowers*, 9th Dist. Lorain No. 04CA008594, 2005-Ohio-3797, ¶ 32 (same). Furthermore, liability for negligent hiring, retention, or supervision arises only where an "employer chose to employ an individual who 'had a past history of criminal, tortious, or otherwise dangerous conduct about which the [employer] knew or could have discovered through reasonable investigation.'" *Abrams v. Worthington*, 169 Ohio App.3d 94, 2006-Ohio-5516, ¶ 14 (10th Dist.) (quoting *Byrd v. Faber*, 57 Ohio St.3d 56, 61, 565 N.E.2d 584 (1991)); Collins, 2005-Ohio-3797, ¶ 33; *see also Jevack v. McNaughton*, 9th Dist. Lorain No. 06CA008928, 2007-Ohio-2441, ¶ 21 (plaintiff must also prove that employee's acts were reasonably foreseeable to the employer). The Complaint falls woefully short of this standard.

To the extent Plaintiffs attempt to apply this claim to any employee other than Dr. Raimondo, they fail to satisfy the first, most basic element of the claim. (Compl. ¶¶ 158-160.) Dr. Raimondo is the only Oberlin employee at issue in regard to this claim. (*See* Compl. ¶ 158 (identifying Dr. Raimondo, but failing to identify any other purported Oberlin employees).) Oberlin admits that Plaintiffs have adequately plead the first element of the claim. There is an employment relationship between Oberlin College and Dr. Raimondo. (Compl. ¶ 5; Answer ¶ 5.)

As to Dr. Raimondo, Defendants deny all allegations related to her alleged actions. (*E.g.*, Answer ¶¶ 35, 42, 57, 69, 103, 123, 158.) Even so, the Court can dispose of this claim in short order. Plaintiffs have plead *no facts* to substantiate that Dr. Raimondo has a history of criminal, tortious, or otherwise dangerous or incompetent behavior. Consequently, the Complaint is devoid of any allegation that Oberlin had actual or constructive knowledge of any such behavior.[1] The Complaint also fails to allege any facts to support that Oberlin was negligent in its initial hiring of Dr. Raimondo in 2003, its appointment of her as Interim Vice President and Dean of Students in July 2016, or its appointment of her as Vice President and Dean of Students in November 2016. Plaintiffs offer nothing but bare legal conclusions devoid of any facts. These unsupported legal conclusions do not state a claim. *See Ford v. Brooks*, 10th Dist. Franklin No. 11AP-664, 2012-Ohio-943, ¶ 24 (affirming dismissal of negligent hiring

[1] Plaintiffs claim that Dr. Raimondo had unspecified "limited experience" when she was appointed in April 2016 to serve as interim Vice President and Dean of Students. (Compl. ¶ 17.) Even if true, which it is not, limited experience in a role does not amount to incompetence as a matter of law. *See Beckloff v. Amcor Rigid Plastics USA, LLC*, 6th Dist. Sandusky No. S-16-041, 2017-Ohio-4467, ¶ 53 (affirming dismissal of negligent hiring, retention or supervision claim because employee's education and manufacturing experience qualified him to manage a manufacturing facility).

claim on the basis that plaintiffs "do not allege any *facts* suggesting that [defendant] possessed actual or constructive knowledge of [the employee's] alleged incompetence") (emphasis added); *see also Hickman*, 45 Ohio St.3d at 324; *Padula*, 2015-Ohio-2374, ¶ 36. In fact, it would be to contrary to the intent and purpose of this common law cause of action to hold the College liable when its employee took steps to ensure that it complied with its affirmative obligations under federal and state civil rights laws and College policy to prevent unlawful racial harassment of its students, to investigate claims of unlawful racial harassment of its students, and to take prompt remedial action to prevent students from being subjected to unlawful racial harassment by a vendor.

Courts routinely dismiss negligent hiring, retention, or supervision claims at the pleading stage, including in matters where, as here, an employee is accused of libel or slander stemming from an isolated incident. In *Webber v. Ohio Dept. of Public Safety*, No. 2015-00449, 2016 WL 4439905, at *1 (Ohio Ct.Cl. Aug. 17, 2016), an Assistant Director of the Lorain County Emergency Management Agency alleged that a state employee accused her of "being discriminatory and racist for failing to perform her job duties." In dismissing the claim, the court held that the plaintiff "failed to plead facts establishing that defendant had notice that [the employee] was incompetent or that it was otherwise foreseeable that she would defame plaintiff." *Id.* at *3; *see also Cooke v. Montgomery Cty.*, 158 Ohio App.3d 139, 2004-Ohio-3780, ¶ 32 (2d Dist. 2004) (affirming dismissal of negligent supervision claim where the complaint did not allege that defendant had knowledge that the employee would commit the underlying act at issue); *Sheldon v. Kettering Health Network*, 2015-Ohio-3268, 40 N.E.3d 661, ¶ 42 (2d Dist. 2015); *Brooks*, 2012-Ohio-943, ¶ 24.

Plaintiffs' Complaint suffers from the same fatal flaw identified in the foregoing case authorities; it does not plead facts establishing that Dr. Raimondo was incompetent or that it was foreseeable at the time of her hiring or appointment to a senior leadership role that she would allegedly defame Plaintiffs or anyone else. (Compl. ¶¶ 17, 35, 42, 43.) Accordingly, the Court should grant this motion and dismiss Count 7 of the Complaint with prejudice.

Finally, Plaintiffs have only brought this claim against Oberlin College, and not Dr. Raimondo. (*See* Compl. ¶ 160 (limiting the request for relief to Oberlin College).) The Complaint contains no allegations that Dr. Raimondo negligently hired, retained, or supervised any employees, or that she is an employer, which she is not. Accordingly, Count 7 must likewise be dismissed with prejudice to the extent it can somehow be construed to pursue a claim against Dr. Raimondo.

II. Plaintiffs' Trespass Claim Fails Because They Do Not Own or Have an Exclusive Possessory Interest in the Parking Lot Behind Gibson's Bakery.

Plaintiffs' claim for trespass must be dismissed for one simple reason: none of them have legal title or an exclusive possessory interest in the real property at issue, as they concede in their Complaint. To state a trespass claim, a plaintiff must show: (1) an unauthorized intentional act, and (2) entry upon land in the exclusive possession of the plaintiff. *Baker v. Fish*, 9th Dist. Summit No. 19912, 2000 WL 1783577, at *6 (Dec. 6, 2000) (citing *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App.3d 704, 716, 622 N.E.2d 1153 (4th Dist. 1993)). Since an action for trespass protects "one's interest in the *exclusive possession* of real estate, the claimant must establish a possessory interest in the premises at time of the trespass." *Elite Designer Homes, Inc. v. Landmark Partners*, 9th Dist. Summit No. 22975, 2006-Ohio-4079, ¶ 28 (quoting *Kay*

Homes, Inc. v. South, 11th Dist. Lake No. 93-L-182, 1994 WL 660600, at *2 (Nov. 18, 1994) (emphasis added)). That possessory interest may be actual or constructive. *Craig Wrecking Co. v. S.G. Loewendick & Sons, Inc.*, 38 Ohio App.3d 79, 81, 526 N.E.2d 321 (10th Dist. 1987). Without actual possession of the property, to the exclusion of others, the holder of legal title to the real estate may bring a trespass action. *Elite Designer Homes*, 2006-Ohio-4079, ¶ 28.

Plaintiffs readily admit that they do not own the parking lot behind Gibson's Bakery; Off Street Parking, Inc. ("OSP") does. (Compl. ¶ 60 ("OSP is the owner of the parking lot immediately contiguous to Oberlin College[.]").) Even so, Plaintiffs claim that they have a nebulous "possessory and/or use right for the parking lot located behind Gibson's Bakery," which is for the "exclusive use of patrons of the downtown businesses, including Plaintiffs' business." (Compl. ¶¶ 60, 162.) But Plaintiffs—owners and employees of *one* downtown business—fail to assert any factual allegations about how or why they had actual possession of the parking lot to the exclusion of all other downtown businesses or employees. As a result, only OSP, the owner of the parking lot, could be deemed to have constructive possession. *See Kay Homes*, 1994 WL 660600, at *2 ("[L]egal title to the real estate will ordinarily constitute constructive possession sufficient to permit an action in trespass.") (citing *Rowland v. Rowland* (1837), 8 Ohio 40, 42); *Baker v. Fish*, 2000 WL 1783577, at *6 (dismissing trespass claim because plaintiff did not have legal possession of the land at the time of the trespass). OSP is not a party to this case. As a result, Count 8 must be dismissed with prejudice.

Furthermore, the Complaint does not include any specific allegations of trespass against Dr. Raimondo. (Compl. ¶¶ 60-62, 162-166.) Accordingly, Count 8 must likewise be dismissed with prejudice as against Dr. Raimondo.

CONCLUSION

Plaintiffs' formulaic recitation of legal elements, devoid of factual allegations, is fatal to two claims. As a result, Plaintiffs have themselves conceded that they can prove no set of facts warranting relief and that their bald allegations are not sufficient to withstand the Motion to Dismiss. Counts 7 and 8 of Plaintiffs' Complaint should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 6th day of December, 2017, via email, pursuant to Rule 5(B)(2)(f) of the Ohio Rules of Civil Procedure, upon the following:

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	)	
Plaintiffs,	)	**JUDGE JOHN R. MIRALDI**
	)	
v.	)	
	)	
OBERLIN COLLEGE, et al.,	)	**ORDER DISMISSING PLAINTIFFS' CLAIMS FOR NEGLIGENT HIRING, RETENTION, AND SUPERVISION AND FOR TRESPASS**
	)	
Defendants.	)	
	)	

This cause came on for hearing upon Defendants Oberlin College and Dr. Meredith Raimondo's ("Defendants") Partial Motion to Dismiss (the "Motion to Dismiss").

Having reviewed the allegations in Plaintiffs' Complaint, and construing all allegations, and making all reasonable inferences, in Plaintiffs' favor, this Court finds: (i) that Plaintiffs can prove no set of facts entitling them to relief on their claim for negligent hiring, retention, or supervision, which is set forth in Count 7 of the Complaint; and (ii) that Plaintiffs can prove no set of facts entitling them to relief on their claim for trespass, which is set forth in Count 8 of the Complaint. Accordingly, Counts 7 and 8 of Plaintiffs' Complaint fail to state a claim upon which relief can be granted, and Defendants' Motion to Dismiss is GRANTED.

It is therefore ORDERED, ADJUDGED and DECREED that Count 7 and Count 8 of Plaintiffs' Complaint, which set forth claims for negligent hiring, retention, or supervision and trespass, respectively, are hereby dismissed with prejudice.

IT IS SO ORDERED.

Date:_____

_____
JUDGE JOHN R. MIRALDI

Submitted by:

_____
Attorney for Defendants
Oberlin College and Dr. Meredith Raimondo