

PART 13

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

GALICIA, EFRAIN

Index No. 0024973/2015E

-against-

Hon. FERNANDO TAPIA

TRUMP, DONALD J

Justice.

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, DISMISSAL  
Noticed on January 11 2016 and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

*See accompanying Decision.*

Motion is Respectfully Referred to:  
Justice: \_\_\_\_\_  
Dated: \_\_\_\_\_

Dated: 8 / 25 / 16

Hon.   
FERNANDO TAPIA, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: Part 13

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EFRAIN GALICIA, FLORENCIA TEJEDA PEREZ,  
GONZALO CRUZ FRANCO, JOHNNY GARCIA  
& MIGUEL VILLALOBOS,

Index No.: 24973/2015E

Hon. Fernando Tapia, J.S.C

Plaintiffs,

v.

DONALD J. TRUMP, DONALD J. TRUMP FOR  
PRESIDENT INC., THE TRUMP ORGANIZATION  
LLC, KEITH SCHILLER and JOHN DOES 1-4,

Defendants.

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DECISION

The plaintiffs, Efrain Galicia, Florencia Tejada Perez, Gonzalo Cruz Franco, Johnny Garcia and Miguel Villalobos, bring this action against the defendants, Donald J. Trump, Donald J. Trump for President, Inc., The Trump Organization LLC, Keith Schiller and John Does 1-4 alleging assault and battery, conversion and destruction of property, tortious interference with political speech/prima facie tort, negligent hiring, and negligent supervision. Defendants move to dismiss the causes of action of conversion and tortious interference with political speech/prima facie tort. Counsel for defendant Donald J. Trump for President, Inc. joins, adopts, and incorporates all of the arguments and exhibits contained in the motion filed by the co-defendants.

Defendants' argue that because plaintiffs have not alleged that a demand was made for the return of the property at issue, they have failed to state a claim for conversion. As no demand was made and as the Defendants did not refuse any demand for the return of the property, they argue, plaintiffs' claim must fail. However, as plaintiffs point out, a demand for the return of the converted property is only necessary if a defendant's possession of the property is originally

lawful (*See D'Amico v. First Union Nat. Bank*, 285 AD2d 166, 172 [1st Dept 2001]). Plaintiffs explain that the rationale for the demand, to protect innocent third parties and afford them an opportunity to comply, is not present in an instance where the taking was not originally lawful as was alleged here. Therefore, no demand requirement must be met in this case as the defendants' right to take the property at issue is in dispute. Notwithstanding their argument negating the need for a demand, plaintiffs contend that a demand for return of the property was made. Defendants also argue that absent a refusal to return the property, plaintiffs cannot maintain a cause of action for conversion and destruction of property. Although this Court finds that a demand for return was not necessary, the fact that the property was not returned to the plaintiffs for a substantial amount of time, the exact amount apparently is in dispute, speaks for itself. Plaintiffs' cause of action for conversion is not made moot by the belated return of the plaintiffs' property.

Defendants are correct that no cause of action for tortious interference with political speech exists in the state of New York. Plaintiffs, nevertheless, urge this Court to recognize at common law "tortious interference with political speech" as a "prima facie tort". This Court looks to the U.S. Supreme Court and the lower Federal Courts, as it must, regarding alleged violations of the Constitution. It is conceivable that plaintiffs may argue in that the defendants, by purportedly acting to preserve public safety pursuant to the NYC Administrative Code, acted under the color of state law. In any event, a public sidewalk is a "quintessential public forum" that has "been immemorially held in trust for the use of the public" (*Perry Educ. Ass'n v. Perry Local Educator's Ass'n*, 460 US 37, 45 [1983] quoting *Hague v. CIO*, 307 US 496, 515 [1939]).

The plaintiffs submit that they have been deprived of their First Amendment rights and there must be recompense. *Carey v. Phipps* (435 U.S. 247 [1978]), which is limited to violations involving procedural due process, did not recognize presumed general damages. While the scope

of this decision is limited, it provides a glimpse into the Court's position with regards to the appropriateness of damages when addressing constitutional violations. Presumed general damages were not recognized in the limited context of *Carey v. Piphus*, however recovery of proven compensatory damages was authorized. The Court endeavored to apply common law damages principles to constitutional violations. The difficulty presented to the courts has been quantifying the harm where the aggrieved seeks compensatory damages for the inherent value of a lost constitutional right. While it is without question that such fundamental rights possess an intrinsic value and much of our jurisprudence is dedicated to protecting their worth, courts have differed widely in terms of applying a deterrent. Suffice it to say, questions remain regarding the adequacy of remedies for violations of constitutional rights outside of the context of procedural due process. Indeed, punitive damages may be allowed were the Court to find the circumstances called for them (*Id* at 257 n.11). What these circumstances are remains unclear. Considerable doubts remain pertaining to the legitimacy of the plaintiffs' claim. Plaintiffs seek what is currently not available and they have not persuaded this Court that there exist any grounds to fashion law out of whole cloth.

In light of the uncertainty involved in applying damages for similar alleged violations and the facts of this case, plaintiffs' claim for interference with political speech/prima facie tort must be dismissed. To reiterate, plaintiffs brought no 42 U.S.C. Section 1983 claim. It is not at all clear that plaintiffs could maintain such an action against these defendants. In the event that the plaintiffs could maintain a cause of action for tortious interference with political speech, plaintiffs offer absolutely no evidence to substantiate their claims. Traditional indicia demonstrating the actual harm suffered at the very least must be furnished to satisfy the requirement of demonstrating actual damages. However, plaintiffs offer no evidence of any

actual harm allegedly suffered other than the inherent value of the constitutional right for which general damages are not permitted.

Additionally, plaintiffs previously applied for and were granted a preliminary injunction against defendants by Order dated October 8, 2015, restraining them from interfering with plaintiffs' First Amendment rights. By applying for equitable relief, plaintiffs represented that no adequate remedy at law exists which could address the alleged violation of their constitutional rights. Equitable relief was granted and none of the facts or circumstances lead this Court to find that compensatory measures to address the alleged harm are warranted. Moreover, plaintiffs brought causes of action for assault and battery, conversion and destruction of property, negligent hiring, and negligent supervision. They seek to prevail on these common law tort claims which provide for general damages.

Defendants' motion to dismiss plaintiffs' claim for conversion is DENIED. Defendants' motion to dismiss plaintiffs' claim for tortious interference with political speech/prima facie tort is GRANTED.

This constitutes the Decision and Order of the Court.

**Dated:** August 25, 2016  
Bronx, NY



**Hon. Fernando Tapia J.S.C**