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SJC-13576

KENNETH BRESLER vs. LYNN MUSTER & others.¹

Suffolk. February 10, 2025. - May 29, 2025.

Present: Budd, C.J., Gaziano, Kafker, & Georges, JJ.

Unlawful Interference. Malice. Employment, Termination.
Immunity from suit. Appeals Court. Practice, Civil,
Motion to dismiss.

Civil action commenced in the Superior Court Department on January 19, 2023.

A motion to dismiss was heard by Debra A. Squires-Lee, J., and entry of separate and final judgment was ordered by her.

The Supreme Judicial Court granted an application for direct appellate review.

Kenneth Bresler, pro se.
Aaron R. White for Lynn Muster.
Jeffrey T. Collins (Daniel R. Fishman also present) for Mary Bowe & another.

GEORGES, J. In 2023, the plaintiff, Kenneth Bresler, a former Appeals Court staff attorney, commenced suit in the

¹ Mary Bowe and Gina DeRossi.

Superior Court, asserting a claim of intentional interference with advantageous relations against three Appeals Court employees -- defendants Lynn Muster, Mary Bowe, and Gina DeRossi -- in their individual capacities. Bresler alleged that the defendants engaged in a concerted campaign that ultimately led to his termination.

The defendants moved to dismiss, pursuant to Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), arguing that the complaint failed to state a claim upon which relief could be granted. Specifically, they contended that Bresler did not plead sufficient facts to establish the "actual malice" element required for an intentional interference claim. They further asserted that, as public officials, they were entitled to common-law immunity because the complaint lacked allegations demonstrating that they "acted in bad faith or with malice." Nelson v. Salem State College, 446 Mass. 525, 538 (2006).

A Superior Court judge granted the motion to dismiss as to Bowe and DeRossi, but denied it as to Muster. Following the entry of final judgment for Bowe and DeRossi, Bresler appealed. Muster filed a cross appeal from the partial denial of her motion to dismiss under the doctrine of present execution.²

² Bresler concedes that pursuant to the doctrine of present execution, Muster's interlocutory appeal is proper as to the issue of her immunity from suit, but he asserts that this court should not consider Muster's argument pertaining to the "actual

This court granted Bresler's application for direct appellate review. On appeal, the defendants renew their arguments regarding the insufficiency of the "actual malice" allegations and their entitlement to common-law immunity.³

For the reasons set forth below, we conclude that the allegations in the complaint, when taken as true, along with the reasonable inferences in Bresler's favor, plausibly suggest Muster and Bowe acted with "actual malice," as necessary to

malice" element of the intentional interference claim. While it is true that the denial of a motion to dismiss is typically not appealable, Fabre v. Walton, 436 Mass. 517, 521 (2002), S.C., 441 Mass. 9 (2004), in this case, "there is already one question properly before the court that must be decided in any event," and the actual malice issue "is fully developed in the record, extensively argued by the parties, and certain to reappear in later stages" of litigation, Maxwell v. AIG Dom. Claims, Inc., 460 Mass. 91, 99 (2011). Additionally, as discussed further below, the question of Muster's actual malice for purposes of the intentional interference claim and the question of her malice for purposes of common-law immunity are "intertwined." Estate of Moulton v. Puopolo, 467 Mass. 478, 491 n.18 (2014). Thus, under the unique circumstances of this case, we choose to consider Muster's appeal as it pertains to the actual malice element of Bresler's intentional interference claim.

³ Bowe and DeRossi also contend that Bresler's claim is barred by the exclusivity provision of the workers' compensation act, G. L. c. 152, § 24. However, their argument solely references the "reasons outlined within their motion to dismiss, which are incorporated herein." Such a bare reference does not rise to the level of appellate argument under Mass. R. A. P. 16, as appearing in 481 Mass. 1628 (2019). See Wellfleet v. Glaze, 403 Mass. 79, 80 n.2 (1988); Langlitz v. Board of Registration of Chiropractors, 396 Mass. 374, 376 n.2 (1985). Moreover, allowing parties to incorporate lower court arguments by reference would undermine the page limits for briefs specified in Mass. R. A. P. 20, as appearing in 481 Mass. 1646 (2019).

state an intentional interference claim and, by extension, also acted with "bad faith" or "malice," as necessary to overcome their claim of common-law immunity. As to DeRossi, however, we hold that the complaint does not contain factual allegations adequate either to establish the "actual malice" element of the tort or to defeat her immunity. Accordingly, we affirm the judge's order as to Muster and DeRossi and reverse as to Bowe.

Background. 1. Factual allegations. We summarize the factual allegations set forth in the complaint, accepting them as true and drawing all reasonable inferences in the plaintiff's favor. Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011).

Bresler, a former trial and appellate prosecutor and legal educator, began his employment with the Appeals Court in January 2019 as a staff attorney. At that time, staff attorneys were divided into three categories: (1) writers, who wrote drafts of judicial opinions; (2) editors, who edited drafts of decisions, ensuring compliance with the court's style manual; and (3) screeners, who prepared brief memoranda recommending whether cases should receive oral argument. Although Bresler was hired as a writer, the court soon consolidated all staff attorney duties, requiring each attorney to perform all three roles.

In addressing the newly assigned editing responsibilities, Chief Staff Attorney Mary Bowe remarked that "[i]t takes a long

time to learn these conventions." Regarding screening memoranda, she instructed staff attorneys to "just make your best effort" and not to be concerned with formatting, as the court was considering whether to eliminate the practice of drafting these memoranda altogether.

Shortly after Bresler's arrival, fellow staff attorney Lynn Muster became hostile toward him. Colleagues perceived her behavior as motivated by jealousy of Bresler's background as a legal writer and teacher. In June 2019, after it was announced that Bresler would teach a legal writing seminar for the Social Law Library, another staff attorney overheard Muster accuse him of "trying to take over." The following month, Muster was promoted to deputy chief staff attorney. Thereafter, she began conveying criticisms of Bresler's writing to judges, staff attorneys, Bowe, and the Appeals Court administrator, Gina DeRossi. Muster also solicited negative feedback from two judges with whom she had personal relationships, including attending law school together. One staff attorney overheard Muster mocking Bresler in the company of one of the judges, even though he had never drafted an opinion for that judge. Muster further attempted to restrict staff attorney attendance at Bresler's writing seminar and failed to promote it internally.

In June 2019, prior to Muster's promotion, Bowe provided Bresler with a positive written evaluation, stating:

"Ken has been with the court for less than [six] months, but so far has performed his duties (limited to writing at this time) very well. The judges for whom he has done work have commented that his writing is 'excellent' and his analysis 'thorough.' . . . Ken has brought a great deal of energy and enthusiasm to the office and is a positive influence on staff attorney morale. . . . [He] generates a professional image for the Appeals Court. Most recently, he has planned a writing seminar for the Social Law Library's continuing legal education program."

When Muster was promoted in July 2019, Bresler expressed concern to Bowe about Muster's "personal hostility" toward him and requested protection. Bowe assured Bresler that Muster would not be involved in evaluating his performance.

In October 2019, four days before Bresler's nine-month probation was set to expire, he was summoned to a meeting with Bowe and Muster. At that meeting, Bowe told Bresler his writing was "deficient," falsely claiming that a judge had found one of his drafts "unusable." As a result, Bowe extended Bresler's probation by six months and assigned Muster to supervise his editing -- marking the first time the Appeals Court had denied a staff attorney permanent employment. Soon afterward, a staff attorney serving as union steward reported to Bowe that Muster was bullying Bresler, had been "brutal" in her editorial reviews, and was subjecting him to scrutiny "no one could survive." Bowe took no corrective action.

In December 2019, Bowe told Bresler that his future at the court "would not depend on his editing." One month later, she

informed him that his annual pay increase would be withheld during his probationary period. In February 2020, Bowe, joined by Muster, gave Bresler an unfavorable oral evaluation and remarked that he was "unlikely to last as a [s]taff [a]ttorney." Following this meeting, Bresler began experiencing anxiety, depression, and sleep disturbances.

In June 2020, Bowe gave Bresler a written evaluation, again in Muster's presence. She criticized his writing, discontinued his writing assignments, and instructed him to stop teaching at the Social Law Library. The evaluation exacerbated Bresler's mental health struggles. Bowe also began assigning criminal law opinions to a less experienced staff attorney and omitted from her evaluation of Bresler several positive assessments of Bresler's editing from judges -- assessments Bresler had forwarded to her.

In November 2020, DeRossi placed Bresler on administrative leave and sent him a letter outlining thirteen allegations against him, supplied by Bowe and Muster. Five of these had never been previously raised. Among the allegations were several previously repeated, exaggerated, and trivial claims: that Bresler had "misstated the standard of review" in an assignment; misidentified the number of indictments in a draft opinion; and submitted a draft opinion deemed "unusable" by a judge, even though the judge had expressly stated that the

reassignment of that opinion to another employee was not due to Bresler's writing.⁴ Although Bresler's errors were minor and "comparable to those made by other [s]taff [a]ttorneys, judges, law clerks, and Defendant Muster," he was held to a uniquely high standard. For example, a 2020 opinion containing multiple misspellings, including party names, resulted in no disciplinary action against its author.

To respond to the allegations, Bresler requested access to his "files." In December 2020, DeRossi -- who "was not familiar with the allegations" and "needed to consult with Defendants Bowe, Muster, or both" -- denied the request, though she did provide partial information, failing to address all of Bresler's questions. Bresler submitted a letter refuting the allegations, but DeRossi terminated his employment later that month at a meeting attended by Bowe. The termination deepened Bresler's

⁴ Other allegations included the following: (1) failing to implement a judge's requested change due to a computer "synchroniz[ation]" issue; (2) entering an incorrect docket number, though this was another employee's error; (3) submitting allegedly subpar screening memoranda without explanation of any deficiencies; (4) editing a "snapper" (the statement of disposition at the end of a decision) in early 2020 to state "Judgment" rather than "Judgments," which Bresler corrected when notified; (5) omitting a judge's single change to a decision, where that same judge had praised Bresler's work on the decision; (6) including a phrase in a draft, two months into his employment, that one judge endorsed but with which another panelist disagreed; and (7) making allegedly "overbroad and unsupported statements" in two decisions -- a claim that was unfounded.

mental health struggles. Afterward, Bowe confided to another staff attorney that the campaign against Bresler "had taken on a life of its own."

2. Procedural history. Following a hearing on the defendants' motion to dismiss Bresler's complaint, a Superior Court judge allowed the motion as to Bowe and DeRossi, finding that the complaint did not plausibly allege actual malice or overcome the presumption that they acted with honest and sufficient motives. However, the judge denied the motion as to Muster, concluding that the complaint alleged sufficient facts to proceed on both issues. After final judgment entered for Bowe and DeRossi, both Bresler and Muster appealed. This court granted Bresler's application for direct appellate review.

Discussion. 1. Standard of review. "We review the allowance of a motion to dismiss de novo." Curtis, 458 Mass. at 676. To withstand dismissal under Mass. R. Civ. P. 12 (b) (6), a complaint must allege facts that "raise a right to relief above the speculative level" (citation omitted). Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008). At the pleading stage, the allegations must "plausibly suggest[] . . . an entitlement to relief" (quotation and citation omitted). Id.

2. Intentional interference with advantageous relations. To state a claim for intentional interference with advantageous relations, a plaintiff must plead sufficient facts to establish:

"(1) he had an advantageous relationship with a third party . . . ; (2) the defendant knowingly induced a breaking of the relationship; (3) the defendant's interference with the relationship, in addition to being intentional, was improper in motive or means; and (4) the plaintiff was harmed by the defendant's actions."

Blackstone v. Cashman, 448 Mass. 255, 260 (2007). As to the third element -- improper motive or means -- where, as here, an employee alleges that individual officials of his employer interfered with his employment relationship, the plaintiff must show that "actual malice" was the controlling factor in the alleged interference (quotation omitted). Weber v. Community Teamwork, Inc., 434 Mass. 761, 781-782 (2001), quoting Gram v. Liberty Mut. Ins. Co., 384 Mass. 659, 664 (1981), S.C., 391 Mass. 333 (1984). See Blackstone, *supra* at 270 ("when the defendant is a corporate official, the improper motive or means element should be formulated as whether the controlling factor in the defendant's interference was actual malice").⁵ "Actual malice" is defined as "a spiteful, malignant purpose, unrelated to the legitimate corporate interest." Id. at 261, quoting Wright v. Shriners Hosp. for Crippled Children, 412 Mass. 469, 476 (1992).

⁵ "The actual malice requirement provides a measure of protection to corporate supervisors, who must necessarily make adverse employment decisions from time to time and who otherwise would be unduly exposed to the tortious interference claims of disgruntled former employees." Kelleher v. Lowell Gen. Hosp., 98 Mass. App. Ct. 49, 54-55 (2020).

In this case, the only element in dispute is whether the defendants acted with "actual malice." Bresler contends the allegations in the complaint are adequate as to all three defendants. The defendants disagree. We therefore examine the allegations as to each defendant in turn.

a. Muster. The allegations in the complaint, taken as true, plausibly suggest that "actual malice" was the controlling factor in Muster's conduct. Specifically, it is reasonably inferable that Muster acted with a spiteful, malignant purpose unrelated to any legitimate interest of the Appeals Court -- namely, to alienate Bresler from his superiors and peers out of resentment for his professional success. See O'Brien v. New England Tel. & Tel. Co., 422 Mass. 686, 687-690 (1996) (jury were warranted in finding supervisor's conduct prompted by resentment of plaintiff's success constituted "actual malice"). See also Falcon v. Leger, 62 Mass. App. Ct. 352, 362 (2004) ("In some circumstances, malice may be demonstrated by evidence of the defendant's unjustified personal vendetta or ill will exceeding personal dislike of the employee").

This improper motive is sufficiently supported by allegations that (i) other staff attorneys believed Muster was jealous of Bresler; (ii) Muster accused Bresler of attempting to "take over"; (iii) she solicited criticism of Bresler from judges and encouraged them to report those criticisms to Bowe;

(iv) she ridiculed Bresler and belittled his writing to judges, Bowe, DeRossi, and other staff attorneys; (v) she discouraged attendance at Bresler's seminars and failed to publicize them; (vi) a union steward reported that Muster was "brutal" in her review of Bresler's editing and subjected him to unfair scrutiny; (vii) Bresler's performance evaluations declined sharply after Muster became deputy chief staff attorney and began attending his performance meetings, supporting an inference that Muster contributed to that decline; and (viii) Muster provided at least some of the false or trivial allegations used by DeRossi as grounds for Bresler's termination.

Courts have found similar conduct sufficient to establish actual malice. See O'Brien, 422 Mass. at 687-690 (evidence of open hostility, yelling, and name-calling in front of coworkers supported finding of malice); Clement v. Rev-Lyn Contr. Co., 40 Mass. App. Ct. 322, 325 (1996) (supervisor's baseless public slandering of employee supported finding of malignant purpose).

Moreover, the allegations support an inference that Muster's conduct served no legitimate purpose of the Appeals Court. See Kelleher v. Lowell Gen. Hosp., 98 Mass. App. Ct. 49, 55-56 (2020). Muster's hostility toward Bresler allegedly predated her promotion and her involvement in his supervision. Her concerns and criticisms, as his peer, about his

participation in writing and other seminars were not in any way within her responsibilities and provide a basis for concluding that she was motivated by personal jealousy and hostility. Also prior to Muster's promotion, Bresler had received a highly favorable performance evaluation. Only after Muster's elevation did he begin receiving negative evaluations, further supporting the inference that her actions were without basis and fueled by personal animus, not the Appeals Court's interests.

Accordingly, drawing all reasonable inferences in the plaintiff's favor, Curtis, 458 Mass. at 676, the complaint states a viable claim for intentional interference with advantageous relations as to Muster.⁶

⁶ Muster contends that the allegations concerning her conduct are "substantially less egregious than the conduct that this Court found insufficient to support liability in Gram." But this case is readily distinguishable. Taken as true, Muster's alleged conduct plausibly suggests more than mere negligence or sloppy business practices. See Gram, 384 Mass. at 665. Rather, it supports an inference of an "unjustified personal vendetta or ill will exceeding personal dislike." Falcon, 62 Mass. App. Ct. at 362.

Muster further argues that allegations characterizing her as "spiteful" are vague and conclusory. While some allegations in the complaint are indeed conclusory and need not be accepted, see Iannacchino, 451 Mass. at 633 ("we do not accept legal conclusions cast in the form of factual allegations" [citation omitted]), the complaint as a whole alleges sufficient facts to survive dismissal, see Revere v. Massachusetts Gaming Comm'n, 476 Mass. 591, 609 (2017).

For example, Bresler alleges that a November 2020 letter cited thirteen fabricated or exaggerated performance deficiencies -- some of which were allegedly supplied by Muster.

b. Bowe. We disagree with the judge's determination that Bresler's complaint failed to plausibly suggest that "actual malice" was the controlling factor for Bowe's conduct. In her initial June 2019 evaluation, Bowe praised Bresler's performance, stating that he had "so far . . . performed his duties . . . very well," received positive feedback from judges, "brought a great deal of energy and enthusiasm to the office," and was a "positive influence on staff attorney morale" who "generate[d] a professional image for the Appeals Court."

Yet, following Muster's promotion, Bresler's complaint describes a marked and troubling shift in Bowe's conduct. Specifically, Bowe (i) reneged on her promise to protect Bresler from Muster by assigning Muster to supervise his editing and allowing Muster to attend his performance meetings; (ii) issued three negative evaluations between October 2019 and June 2020 -- the first of which came just months after her glowing review -- and falsely attributed certain mistakes to him; (iii) extended his probation for six months, the first time the Appeals Court had done so, and denied him his scheduled salary increase during

These are specific and factually detailed. It is reasonable to infer that Muster's broader treatment of Bresler, beyond what is documented in that letter, was consistent with those alleged instances. Such inferences, viewed in conjunction with the complaint's detailed allegations, are sufficient to support a plausible claim, especially given that actual malice need not be proved by direct evidence but may be derived from rational inferences from the facts. Gram, 384 Mass. at 664.

that period; (iv) failed to act after being informed by the union steward that Muster was bullying Bresler and subjecting him to impossible scrutiny; (v) reversed course on her prior praise of Bresler's teaching at the Social Law Library by directing him to stop; (vi) assigned substantive work to less experienced attorneys over him; (vii) omitted numerous positive evaluations of Bresler's work from his reviews; (viii) held him to a stricter standard than others who committed similar errors; and (ix) participated in the submission of false or trivial allegations to DeRossi to justify Bresler's termination -- despite knowing, at least in some instances (e.g., the computer synchronization issue), that Bresler bore no fault.

Moreover, Bowe admitted to another staff attorney that there was a "campaign" against Bresler -- apparently initiated by Muster -- which had "taken on a life of its own." This admission supports an inference that Bowe knowingly furthered a campaign separate and apart from any legitimate interest of the Appeals Court.

From these facts, it is reasonable to infer that Bowe's conduct was not merely negligent or misguided, but driven by actual malice. See Gram, 384 Mass. at 664 ("There might be sufficient proof that spite or ill will was the controlling factor . . . derived from a rational inference of probabilities from established facts" [quotation and citation omitted]);

Mailhiot v. Liberty Bank & Trust Co., 24 Mass. App. Ct. 525, 527 (1987) (fabricated allegations supported inference of malice). That is, when taking the allegations as true, it can be inferred that Bowe, like Muster, acted out of a spiteful, malignant purpose wholly unrelated to the court's legitimate interests. See Kelleher, 98 Mass. App. Ct. at 55. Her pattern of exaggerating performance issues, ignoring reports of harassment, renegeing on protective assurances, omitting favorable evaluations, and reassigning his work to less experienced colleagues all indicate that her actions were not motivated by concerns about the "quality or usefulness" of Bresler's work, but by personal animus. Contrast id. at 55-56 (no inference of malice where employer's actions reflected legitimate corporate interest). See O'Brien, 422 Mass. at 687-689 (jury could find actual malice where supervisor denied plaintiff work, reassigned projects, and sharply shifted evaluative tone).

We therefore conclude that Bresler's complaint states a viable claim for intentional interference with advantageous relations as to Bowe.⁷

⁷ Bowe, like Muster, contends that the allegations in Bresler's complaint are conclusory -- an argument that, as previously noted, is unavailing. See note 6, supra. She further characterizes Bresler as a struggling employee with documented performance deficiencies. This characterization, however, fails to credit the well-pleaded allegations and to draw all reasonable inferences in Bresler's favor -- specifically, that either he had no performance issues or such

c. DeRossi. We agree with the judge's conclusion that Bresler's complaint fails to allege sufficient facts to establish that "actual malice" was the controlling factor behind DeRossi's conduct. The allegations concerning DeRossi are too limited to plausibly support Bresler's claim that she was induced to participate in the alleged campaign against him. Specifically, the complaint alleges that DeRossi (i) sent a letter to Bresler listing thirteen performance deficiencies provided by Bowe and Muster; (ii) failed to give Bresler an opportunity to understand or respond to those deficiencies; (iii) did not investigate the deficiency claims herself; and (iv) terminated Bresler for errors, "either knowing that some of them were false or with reckless disregard for their falsity."

The complaint does not plausibly suggest that DeRossi acted with "actual malice" as the controlling factor. As the court held in Weber, 434 Mass. at 783, a supervisor's termination of an employee and failure to explain the reasons may reflect poor management but does not, without more, establish actual malice. The conduct must rise to the level of unjustified personal

issues were unjustifiably exaggerated. See Curtis, 458 Mass. at 676. Bowe also asserts that she lacked any apparent motive to join in Muster's alleged "vendetta." Yet, Bresler alleges that Bowe ignored his request for protection from Muster and knowingly relied on suspect information in evaluating his performance. These allegations plausibly support the inference that Bowe acted with "a spiteful, malignant purpose" (citation omitted). Blackstone, 448 Mass. at 261.

hostility or ill will "exceeding personal dislike." Falcon, 62 Mass. App. Ct. at 362. At most, the allegation that DeRossi, as the court administrator, failed to investigate the charges prepared by high-level managers suggests mismanagement, not malice. See Gram, 384 Mass. at 665 (inadequate investigation insufficient to show malice). See also Psy-Ed Corp. v. Klein, 459 Mass. 697, 718-719 (2011) (board of director's "ill[-]considered" actions insufficient to establish vengeful campaign).

Bresler compares this case to Mailhiot, 24 Mass. App. Ct. at 527, where the court held that a jury could infer actual malice from a defendant's fabrication of charges. But here, Bresler does not allege that DeRossi fabricated charges -- only that she conveyed performance deficiencies originating from Bowe and Muster. Moreover, DeRossi necessarily relied on Bowe and Muster for information regarding Bresler's performance, as she lacked independent knowledge of the underlying events.

Ultimately, DeRossi's alleged conduct is distinguishable from Bowe and Muster's conduct. While Bresler provides factual allegations from which one could infer that Bowe and Muster acted with a "spiteful, malignant purpose," his claim that DeRossi was similarly motivated rests solely on conclusory assertions, devoid of factual support, which must be disregarded (citation omitted). See Anzalone v. Administrative Office of

the Trial Court, 457 Mass. 647, 660-661 (2010) (disregarding "talismanic" use of labels like "unconscionable" and "wrongful interference" as insufficient to plead malice).

Accordingly, the complaint does not state a viable claim for intentional interference with advantageous relations as to DeRossi.⁸

3. Common-law immunity. The defendants assert that Bresler's claims are barred by common-law immunity. Bresler counters that none of the defendants is entitled to such immunity because each acted in bad faith and with malice.

Under the doctrine of common-law immunity, a public official exercising judgment and discretion is not liable for negligence or other errors during official decision-making, provided the official acted in good faith, without malice, and free of corruption. Nelson, 446 Mass. at 537. This doctrine protects public employees from both suit and liability,

⁸ Bresler's complaint further alleges that a consultant retained to conduct an independent assessment of the Appeals Court's work environment recommended "bar[ring] Muster and DeRossi from working together because they were intriguing against staff attorneys," and that this recommendation "evidences DeRossi's participation in Muster's campaign against Bresler." This isolated allegation, however, is vague, unsupported, and conclusory. The complaint does not identify the staff attorneys who were allegedly targets, describe the nature of the purported "intriguing," or otherwise provide any factual detail to support the claimed conspiracy. Absent such specifics, the allegation fails to raise more than a speculative right to relief. See Anzalone, 457 Mass. at 660-661.

reflecting the presumption that public officials act honestly and in the public interest. See South Boston Betterment Trust Corp. v. Boston Redev. Auth., 438 Mass. 57, 69 (2002); Breault v. Chairman of the Bd. of Fire Comm'rs of Springfield, 401 Mass. 26, 34 n.9 (1987), cert. denied sub nom. Forastiere v. Breault, 485 U.S. 906 (1988).

To overcome this presumption, the plaintiff bears the burden of showing that the officials acted in bad faith or with malice. Maxwell v. AIG Dom. Claims, Inc., 460 Mass. 91, 104-105 (2011). See Nelson, 446 Mass. at 538. "Bad faith" is more than "bad judgment or negligence," but rather "suggest[s] a dishonest purpose or some moral obliquity, a conscious doing of wrong, or a breach of a known duty through some motive of interest or ill will" (quotations and citation omitted). Buffalo-Water 1, LLC v. Fidelity Real Estate Co., 481 Mass. 13, 25-26 (2018). "Malice" constitutes "a wrongful act, done intentionally, without just cause or excuse." Pino v. Trans-Atlantic Marine, Inc., 358 Mass. 498, 504 (1970), quoting McGurk v. Cronenwett, 199 Mass. 457, 462 (1908).

Because Bresler alleged facts plausibly suggesting that "actual malice" was the controlling factor in the actions of Muster and Bowe, neither defendant is entitled to common-law immunity. See Cachopa v. Stoughton, 72 Mass. App. Ct. 657, 665 (2008) (actual malice sufficient to support intentional

interference claim also defeats common-law immunity). In other words, Bresler's complaint supports the inference that both defendants "acted in bad faith or with malice," thus precluding the protection of immunity. Nelson, 446 Mass. at 538.⁹

However, as previously noted, the allegations concerning DeRossi are too attenuated to plausibly suggest that she acted with "actual malice" toward Bresler or knowingly participated in the alleged campaign by Muster and Bowe. While the complaint may describe conduct that reflects poor judgment or negligence, such conduct does not rise to the level of "bad faith" or "malice." See Buffalo-Water 1, LLC, 481 Mass. at 25-26. Accordingly, Bresler has not met his burden to overcome the presumption of common-law immunity as to DeRossi. See Nelson, 446 Mass. at 538 (common-law immunity shields public employees absent showing that they acted in bad faith or with malice).

⁹ Substantively, the standards for "actual malice" and "malice" are similar. "Actual malice" requires that the defendant acted with "a spiteful, malignant purpose, unrelated to the legitimate corporate interest" (citation omitted). Blackstone, 448 Mass. at 261. "Malice," by contrast, is defined as a "wrongful act, done intentionally, without just cause or excuse" (citation omitted). Pino, 358 Mass. at 504. The distinction lies in degree. "Actual malice" is a "heightened" standard: when applied, courts conduct a unified analysis of the defendant's conduct, treating "improper motive" and "improper means" as subsumed within the more demanding framework of "actual malice." Blackstone, supra at 269. Accordingly, a finding of "actual malice" necessarily encompasses and resolves the question whether the defendant acted with ordinary "malice."

Conclusion. For the foregoing reasons, we hold that Bresler has alleged sufficient facts to establish the element of "actual malice" as to defendants Muster and Bowe, thereby stating a viable claim for intentional interference with advantageous relations. These same allegations are sufficient to defeat their entitlement to common-law immunity. In contrast, as to DeRossi, the complaint fails to allege facts sufficient to establish either "actual malice" or that she acted "in bad faith or with malice." DeRossi is therefore entitled to immunity. Accordingly, we affirm the judge's order as to Muster and DeRossi, and we reverse as to Bowe.

So ordered.