

**In the Circuit Court of Summers County, West Virginia**

**Mountain Valley Pipeline, LLC,**  
Plaintiff,

v.

Case No. CC-45-2023-C-25  
Judge Robert Irons

**Martha Ann Zinn,**  
Defendant

**Proposed Order Granting Defendant Martha Ann Zinn's Motion to Dismiss**

This matter is before the Court on Defendant Martha Ann Zinn's motion to dismiss. The matter has been briefed and argued and is mature for decision. Having considered all matters before the Court, the motion is GRANTED for the reasons set forth below.

**PROCEDURAL HISTORY**

On September 15, 2023 Mountain Valley Pipeline, LLC ("MVP") filed a Complaint in Summers County Circuit Court against Martha Ann Zinn ("Ms. Zinn"). The Complaint alleges four substantive counts of Trespass (Count Three), Tortious Interference (Count Four), Violation of W. Va. Code § 61-10-34 (Count Five), and Civil Conspiracy (Count Six). MVP additionally seeks a Preliminary Injunction (Count One), a Permanent Injunction (Count Two), and Punitive Damages (Count Seven).

On May 14, 2024, Ms. Zinn filed a Motion to Dismiss the complaint in its entirety for failure to state a claim under W. Va. R. Civ. P. 12(b)(6). On September 20, 2024, MVP filed a response in opposition to Defendant's motion to dismiss, and on September 24, Ms. Zinn filed a reply in support of her motion. On September 27, 2024, this Court heard oral argument on the motion to dismiss. At the close of that hearing, having fully considered the arguments of the parties and pertinent legal authorities, the Court ruled that all claims against the Defendant should be dismissed.

**LEGAL STANDARD**

A complaint "must set forth enough information to outline the elements of a claim or

permit inferences to be drawn that these elements exist.” *Fass v. Nowoko Well Service, Ltd.*, 177 W. Va. 50, 52 (1986). When considering a motion to dismiss for failure to state a claim upon which relief may be granted, the court must accept each allegation in the Complaint as true. *See Mey v. Pep Boys-Manny, Moe & Jack*, 228 W. Va. 48, 52-53 (2011). A complaint is construed in the light most favorable to the plaintiff when analyzing a motion to dismiss. *Fass*, 177 W. Va. at 51. Therefore, when a trial court is “appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, [it] should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Syl. Pt. 2, *Stricklen v. Kittle*, 168 W. Va. 147 (1981) (quoting *Flowers v. City of Morgantown*, 166 W. Va. 92 (1980)).

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **I. MVP fails to state a claim for Trespass.**

According to MVP, the Complaint alleges that Ms. Zinn “trespassed on property in possession of MVP in two manners. First, she entered on property controlled by MVP pursuant to a valid right-of-way agreement, and second, by attaching herself to a piece of equipment possessed and controlled by MVP.” Plaintiff’s Response in Opposition to Defendant’s Motion to Dismiss (“Response in Opposition”), p. 3. After a careful evaluation of both theories of liability advanced by MVP, even accepting all allegations in the Complaint as true, this Court finds that the Complaint fails to set forth enough information to outline the elements of a trespass claim or permit inferences to be drawn that these elements exist. *See Fass*, 177 W. Va. at 52.

- a. *MVP does not properly allege a possessory interest in the property upon which it alleged a trespass.*

Under West Virginia law, a trespass is “an entry on another man’s ground without lawful authority, and doing some damage, however inconsiderable, to his real property.” *Barker v. Naik*, No. 2:17-cv-04387, 2018 WL 3824376, at \*4 (S.D. W. Va. Aug. 10, 2018) (quoting *Hark v. Mountain Fork Lumber Co.*, 34 S.E.2d 348, 352 (W. Va. 1945)). “[A]n invasion must constitute an interference with possession in order to be actionable as a trespass.” *Id.* (quoting *Rhodes v. E.I. Du Pont de Nemours & Co.*, 657 F. Supp. 2d 751, 771 (S.D. W. Va. 2009) (quoting *W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS* § 13 at 70 (5th ed. 1984))).

MVP alleges, in support of its trespass claim, that “MVP has the legal right to enter upon and construct a pipeline on the Subject Property” and that Defendants have no “interest in the Subject Property or the right to obstruct or interfere with MVP’s use and enjoyment of the Subject Property.” (Compl., ¶ 25) The “legal right” MVP has is as follows: “Through voluntary agreements with property owners, MVP has acquired temporary and permanent easements to construct and operate the pipeline on the land at issue (“Subject Property”).” (*Id.*, ¶ 6.)

“With respect to easements, [the West Virginia Supreme Court of Appeals] has previously stated that ‘an easement may be defined as the right one person has to use the lands of another for a specific purpose.’” *Quintain Dev., LLC v. Columbia Nat. Res., Inc.*, 556 S.E.2d 95, 135 (W. Va. 2001) (quoting *Kelly v. Rainelle Coal Co.*, 64 S.E.2d 606, 613 (W. Va. 1951), *overruled in part on other grounds by Kimball v. Walden*, 301 S.E.2d 210 (W. Va. 1983)). The right created by an easement is “nonpossessory.” *Id.* (quoting RESTATEMENT(THIRD) PROPERTY § 1.2(1) (2000)). *See also United States v. Forest Service v. Cowpasture River Preservation Association*, 590 U.S. 604, 613 (2020) (“easements grant only nonpossessory rights of use limited to the purposes specified in the easement agreement”).

As trespass is interference “with possession,” 2018 WL 3824376, at \*4 (quoting *Rhodes*, 657 F. Supp. 2d at 771 (quoting *W. PAGE KEETON ET AL.*, § 13 at 70)), and the right created by an easement is “nonpossessory,” *Quintain Dev.*, 556 S.E.2d at 135 (quoting RESTATEMENT(THIRD) PROPERTY § 1.2(1)), MVP’s allegations that it has easement rights with respect to the Subject Property cannot form the basis for a trespass claim.

MVP’s assertion that “easements and rights of way are possessory interests on which another may trespass” (*see Response in Opposition*, p. 6) is incorrect as a matter of West Virginia law. In support of this assertion, MVP cites *Huffman v. Appalachia Power Co.*, 187 W. Va. 1 (1991). But “*Huffman* recognizes a trespass in climbing [the power company’s] transmission tower, ***not in being on the land where the tower stood.***” *Smoot ex. rel. Smoot v. American Elec. Power*, 222 W. Va. 735, 742 n. 14 (2008) (emphasis added). *Smoot* reaffirmed the longstanding principle “that utility companies [can] not rely upon the defense of trespass on real property in which they only had a right of way.” *Id.* at 742 (citing *Sutton v. Monongahela Power Co.*, 151 W. Va. 961 (1967)). *Smoot* makes abundantly clear that an easement or right of way

agreement does not amount to a possessory interest in real property giving rise to a trespass claim.

In establishing the nature of MVP's interest in the property involved in this case, this Court also considers the text of the easement/land license agreements at issue, which Defendant attached to the Reply in Support of the Motion to Dismiss.<sup>[1]</sup> These property instruments, referenced in MVP's Complaint, establish conclusively that MVP's interest in the Subject Property is nonpossessory. They contain no provision granting MVP exclusive possession of, or the right to exclude third parties from, the property involved in this case. MVP has no possessory interest in the real property at issue and cannot obtain relief on its theory of trespass to land.<sup>[2]</sup>

- b. *The recoverability of lost profits as a **remedy** in trespass actions does not alter the **element** of damage to property necessary to a trespass claim.*

With regards to the trespass to pipeline equipment, MVP's claim fails because the Complaint never alleges the element of damage to the equipment and does not permit inferences to be drawn that this element exists. *See Fass*, 177 W. Va. at 52. This absence of damage is fatal to the trespass claim. *See Meeks v. McClung*, No. 2:20-cv-00583, 2021 WL 3630526, at \*7 (S.D. W. Va. May 3, 2021) (recommending that motion to dismiss common-law trespass claims brought under West Virginia law because "assuming, as Plaintiff implies, that [Defendants] came onto his property without lawful authority after he moved the vehicle that was the subject of the parking complaint, he has not alleged that they damaged his real property in any manner"), *adopted by* WL 3013361 (S.D. W. Va. July 16, 2021).

MVP cites *Moore v. Equitrans, L.P.*, 27 F. 4th 211, 220-21 (4th Cir. 2022) for the proposition that West Virginia law allows for the recovery for "damages for loss of use" – including lost profits – in a trespass action. *Moore* does not help MVP's trespass claim, because the availability of damages for lost profits in a proper trespass action does not alter the elements of trespass.

MVP does not provide any authority contradicting the well-established proposition that *damage to property* is required to sustain an action for trespass under West Virginia law. *See*,

e.g., *Bailes v. Tallamy*, No. 21-1008, 2023 WL 2785792, at \*3 (W. Va. Apr. 5, 2023) (quoting *EQT Prod. Co. v. Crowder*, 241 W. Va. 738 (2019)) (“A ‘trespass’ is ‘an entry on another man’s ground without lawful authority, and doing some damage, however inconsiderable, to his real property.’”). And a careful reading of *Moore* shows there is nothing inconsistent about the propositions that 1) damage to property is a necessary element of a trespass claim and 2) lost profits are recoverable in a proper trespass action.

Tellingly, in the paragraph immediately preceding the portions of *Moore* cited by MVP, the Fourth Circuit noted that “**when residential real property is damaged**, the owner may recover the reasonable cost of repairing it” as well as additional costs associated with the **damage**. *Moore*, 27 F. 4th at 220 (quoting *Brooks v. City of Huntington*, 234 W. Va. 607, 768 S.E.2d 97, 105-06 (2014)) (emphasis added). Neither *Moore*, nor any of the trespass cases cited in the Fourth Circuit’s discussion of this issue in *Moore*, suggest that a plaintiff states a cognizable claim for trespass by alleging economic loss associated with a temporary and isolated intrusion onto its property that results in no damage to the property itself.

In short, MVP’s Complaint pleads no facts to suggest or permit a reasonable inference to be drawn that MVP’s equipment suffered any damage as a result of the protest in this case. *See Fass*, 177 W. Va. at 52. Consequently, its trespass to equipment theory fails to state a claim for trespass as a matter of law.

## **II. MVP fails to state a claim for Tortious Interference.**

A single protest that delays a construction project for hours on a single day, but does not precipitate a breach or non-performance of any contract, does not amount to tortious interference with a business relationship under West Virginia law. MVP pleads no facts to suggest or permit a reasonable inference to be drawn that any contractual or other business relationship was breached or lost as a result of the brief protest at issue in this case. *See Fass*, 177 W. Va. at 52. This Court finds that MVP did not, and could not plausibly, allege that the hours-long delay at issue in this case adversely impacted the federal regulation or permitting of the pipeline project (which has now been completed), or placed MVP’s easement grants in any jeopardy.

Taking all the allegations in the complaint as true, and considering MVP’s explanation of its theory of liability at the hearing in this matter, it is clear that MVP’s claim is premised on the

proposition that it can recover damages under a theory of tortious interference because, by obstructing pipeline work, Ms. Zinn made MVP's performance of its contractual obligations more expensive. MVP cites no authority to support its expansive theory of liability, under which interfering with a construction project creates a cause of action for tortious interference for any damages incurred during a brief period of delay, even absent any allegation that any contract or relationship with any third party was actually affected by the delay. As a matter of law, this theory of liability cannot sustain a cause of action for tortious interference. *See Webb v. Paine*, 515 F. Supp. 3d 466, 485 (S.D. W. Va. 2021).

In *Webb*, Judge Copenhaver carefully considered, and rejected, the plaintiff's argument that a claim for tortious interference in West Virginia can rest solely upon an action that makes "performance of the contract more burdensome or expensive." *Id.* Judge Copenhaver distinguished between liability based on a "theory of inducement" – i.e., where "the improper interference induce[s] or cause[s] the third party to not perform or to breach the contract with plaintiff" – from liability based on a "theory of hindrance" – i.e., where "the defendant hinders the plaintiff's performance of its obligations to the third party." *Id.* After noting that the hindrance theory was "predicated on a broad expansion of liability under West Virginia state law[.]" Judge Copenhaver declined to recognize the hindrance theory and consequently granted summary judgment against plaintiff's tortious interference claim. *Id.* at 486-87. *Cf. Mountaineer Fire & Rescue Equipment, LLC*, 244 W. Va. at 524-25 (reversing trial court's dismissal of tortious interference claim when pleading alleged that "Mr. Beam's actions forced Mountaineer Fire to materially breach a commission contract with a third party") (emphasis added).

This Court declines MVP's invitation to dramatically expand the circumstances under which plaintiffs may pursue a cause of action for tortious interference in West Virginia. MVP's tortious interference claim consequently fails.

### **III. MVP fails to state a claim pursuant to W. Va. Code § 61-10-34.**

"When interpreting a statute, [courts] first consider whether the language is plain." *State v. Finley*, --S.E.2d--, 2023 WL 6804936, \*5 (W. Va.). The plain text of § 61-10-34(D)(1) says what it says: "Any person who is arrested for or convicted of an offense under this section *may*

*be held civilly liable for any damages to personal or real property while trespassing*, in addition to the penalties imposed by this section.” (Emphasis added).

It is irrelevant that damages for loss of profits may, in limited circumstances, be recoverable in a properly stated common law trespass claim. Simply put, there is nothing in the text of § 61-10-34 that authorizes a cause of action based upon anything other than damages to personal or real property. The state legislature’s decision to provide a cause of action to parties experiencing a specifically defined category of damages warrants respect and deference from this Court. *See Finley*, 2023 WL 6804936, at \*6 (quoting *Brooke B. v. Ray C.*, 230 W. Va. 355 (2013)) (courts may not “arbitrarily read into a statute that which it does not say” or “add to statutes something the Legislature purposely omitted”).

Taking all the allegations in the complaint as true, MVP pleads no facts to suggest or permit a reasonable inference to be drawn that MVP suffered any damage to personal or real property as a result of the brief protest at issue in this case. *See Fass*, 177 W. Va. at 52. Its W. Va. Code § 61-10-34 claim fails as a result.

#### **IV. MVP is not entitled to injunctive relief or punitive damages.**

Injunctive relief is a remedy; it is not an independent cause of action. *See, e.g., Cunningham Energy, LLC v. Vesta O & G Holdings, LLC*, 578 F. Supp. 3d 798, 819 (S.D. W. Va. 2022) (holding that “[r]equests for injunctive relief do not constitute independent causes of action; rather, the injunction is merely the remedy sought for the legal wrongs alleged in the substantive counts”). So too as to punitive damages. *See Durbin v. Nationwide Mutual Insurance Co.*, No. 5:18-CV-211, 2019 WL 1545671, \*1 n.1 (N.W. W. Va. Apr. 9, 2019) (citing *Cook v. Heck’s Inc.*, 176 W. Va. 368, 376, 342 S.E.2d 453, 461 n.3 (1986)) (“under West Virginia law, a separate cause of action for punitive damages does not exist.”).

As discussed above, MVP has failed to state a claim for relief in any of the substantive counts of its Complaint. Its requests for injunctive relief and punitive damages necessarily fail as well.

For the foregoing reasons, the Court has determined that Defendant’s motion to dismiss should be, and hereby is, granted, and

**IT IS THEREFORE ORDERED** that Plaintiff’s Complaint be, and hereby is, dismissed

with prejudice.

[1] This Court may properly consider these property instruments in adjudicating Ms. Zinn's Motion. See *Mountaineer Fire & Rescue Equipment, LLC*, 244 W. Va. 508, 528 (2020).

[W]hen a movant makes a motion to dismiss pleading pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, and attaches to the motion a document that is outside of the pleading, a court may consider the document only if (1) the pleading implicitly or explicitly refers to the documents; (2) the document is integral to the pleading's allegations; and (3) no party questions the authenticity of the document.

Ms. Zinn has proffered, and MVP has not disputed, that the property agreements attached to Ms. Zinn's reply brief meet all three requirements of the *Mountaineer Fire* test. First, the Complaint implicitly refers to these documents at Paragraph 6. Second, the documents are integral to the pleading's allegations, as they set forth MVP's property interest in the Subject Property purportedly giving rise to its trespass claim. Third, has MVP not questioned the authenticity of these documents.

[2] While Defendants represented, and MVP did not dispute, that Exhibit A to the Motion to Dismiss is the property instrument establishing MVP's limited rights to the land on which Ms. Zinn is alleged to have trespassed, the Court's analysis would be the same to the extent the property instrument in Exhibit B is considered as well.

**/s/ Robert Irons**  
Circuit Court Judge  
31st Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.



**IN THE CIRCUIT COURT OF SUMMERS COUNTY, WEST VIRGINIA**

MOUNTAIN VALLEY PIPELINE, LLC,

Plaintiff,

v.

CA No. 23-C-25

MARTHA ANN ZINN

Defendants.

**PROPOSED ORDER GRANTING  
DEFENDANT MARTHA ANN ZINN'S MOTION TO DISMISS**

This matter is before the Court on Defendant Martha Ann Zinn's motion to dismiss. The matter has been briefed and argued and is mature for decision. Having considered all matters before the Court, the motion is GRANTED for the reasons set forth below.

**PROCEDURAL HISTORY**

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### **LEGAL STANDARD**

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### **DISCUSSION AND CONCLUSIONS OF LAW**

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the Complaint fails to set forth enough information to outline the elements of a trespass claim or permit inferences to be drawn that these elements exist. *See Fass*, 177 W. Va. at 52.

- a. *MVP does not properly allege a possessory interest in the property upon which it alleged a trespass.*

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In establishing the nature of MVP’s interest in the property involved in this case, this Court also considers the text of the easement/land license agreements at issue, which Defendant

attached to the Reply in Support of the Motion to Dismiss.<sup>1</sup> These property instruments, referenced in MVP's Complaint, establish conclusively that MVP's interest in the Subject Property is nonpossessory. They contain no provision granting MVP exclusive possession of, or the right to exclude third parties from, the property involved in this case. MVP has no possessory interest in the real property at issue and cannot obtain relief on its theory of trespass to land.<sup>2</sup>

- b. *The recoverability of lost profits as a **remedy** in trespass actions does not alter the **element** of damage to property necessary to a trespass claim.*

With regards to the trespass to pipeline equipment, MVP's claim fails because the Complaint never alleges the element of damage to the equipment and does not permit inferences to be drawn that this element exists. *See Fass*, 177 W. Va. at 52. This absence of damage is fatal to the trespass claim. *See Meeks v. McClung*, No. 2:20-cv-00583, 2021 WL 3630526, at \*7 (S.D.

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<sup>1</sup> This Court may properly consider these property instruments in adjudicating Ms. Zinn's Motion. *See Mountaineer Fire & Rescue Equipment, LLC*, 244 W. Va. 508, 528 (2020).

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<sup>2</sup> While Defendants represented, and MVP did not dispute, that Exhibit A to the Motion to Dismiss is the property instrument establishing MVP's limited rights to the land on which Ms. Zinn is alleged to have trespassed, the Court's analysis would be the same to the extent the property instrument in Exhibit B is considered as well.

W. Va. May 3, 2021) (recommending that motion to dismiss common-law trespass claims brought under West Virginia law because “assuming, as Plaintiff implies, that [Defendants] came onto his property without lawful authority after he moved the vehicle that was the subject of the parking complaint, he has not alleged that they damaged his real property in any manner”), *adopted by* WL 3013361 (S.D. W. Va. July 16, 2021).

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MVP does not provide any authority contradicting the well-established proposition that *damage to property* is required to sustain an action for trespass under West Virginia law. *See, e.g., Bailes v. Tallamy*, No. 21-1008, 2023 WL 2785792, at \*3 (W. Va. Apr. 5, 2023) (quoting *EQT Prod. Co. v. Crowder*, 241 W. Va. 738 (2019)) (“A ‘trespass’ is ‘an entry on another man’s ground without lawful authority, and doing some damage, however inconsiderable, to his real property.’”). And a careful reading of *Moore* shows there is nothing inconsistent about the propositions that 1) damage to property is a necessary element of a trespass claim and 2) lost profits are recoverable in a proper trespass action.

Tellingly, in the paragraph immediately preceding the portions of *Moore* cited by MVP, the Fourth Circuit noted that “***when residential real property is damaged***, the owner may recover the reasonable cost of repairing it” as well as additional costs associated with the ***damage***. *Moore*, 27 F. 4th at 220 (quoting *Brooks v. City of Huntington*, 234 W. Va. 607, 768 S.E.2d 97, 105-06 (2014)) (emphasis added). Neither *Moore*, nor any of the trespass cases cited

in the Fourth Circuit's discussion of this issue in *Moore*, suggest that a plaintiff states a cognizable claim for trespass by alleging economic loss associated with a temporary and isolated intrusion onto its property that results in no damage to the property itself.

In short, MVP's Complaint pleads no facts to suggest or permit a reasonable inference to be drawn that MVP's equipment suffered any damage as a result of the protest in this case. *See Fass*, 177 W. Va. at 52. Consequently, its trespass to equipment theory fails to state a claim for trespass as a matter of law.

## **II. MVP fails to state a claim for Tortious Interference.**

A single protest that delays a construction project for hours on a single day, but does not precipitate a breach or non-performance of any contract, does not amount to tortious interference with a business relationship under West Virginia law. MVP pleads no facts to suggest or permit a reasonable inference to be drawn that any contractual or other business relationship was breached or lost as a result of the brief protest at issue in this case. *See Fass*, 177 W. Va. at 52. This Court finds that MVP did not, and could not plausibly, allege that the hours-long delay at issue in this case adversely impacted the federal regulation or permitting of the pipeline project (which has now been completed), or placed MVP's easement grants in any jeopardy.

Taking all the allegations in the complaint as true, and considering MVP's explanation of its theory of liability at the hearing in this matter, it is clear that MVP's claim is premised on the proposition that it can recover damages under a theory of tortious interference because, by obstructing pipeline work, Ms. Zinn made MVP's performance of its contractual obligations more expensive. MVP cites no authority to support its expansive theory of liability, under which interfering with a construction project creates a cause of action for tortious interference for any damages incurred during a brief period of delay, even absent any allegation that any contract or

relationship with any third party was actually affected by the delay. As a matter of law, this theory of liability cannot sustain a cause of action for tortious interference. *See Webb v. Paine*, 515 F. Supp. 3d 466, 485 (S.D. W. Va. 2021).

In *Webb*, Judge Copenhaver carefully considered, and rejected, the plaintiff's argument that a claim for tortious interference in West Virginia can rest solely upon an action that makes "performance of the contract more burdensome or expensive." *Id.* Judge Copenhaver distinguished between liability based on a "theory of inducement" – i.e., where "the improper interference induce[s] or cause[s] the third party to not perform or to breach the contract with plaintiff" – from liability based on a "theory of hindrance" – i.e., where "the defendant hinders the plaintiff's performance of its obligations to the third party." *Id.* After noting that the hindrance theory was "predicated on a broad expansion of liability under West Virginia state law[.]" Judge Copenhaver declined to recognize the hindrance theory and consequently granted summary judgment against plaintiff's tortious interference claim. *Id.* at 486-87. *Cf. Mountaineer Fire & Rescue Equipment, LLC*, 244 W. Va. at 524-25 (reversing trial court's dismissal of tortious interference claim when pleading alleged that "Mr. Beam's actions forced Mountaineer Fire to materially breach a commission contract with a third party") (emphasis added).

This Court declines MVP's invitation to dramatically expand the circumstances under which plaintiffs may pursue a cause of action for tortious interference in West Virginia. MVP's tortious interference claim consequently fails.

### **III. MVP fails to state a claim pursuant to W. Va. Code § 61-10-34.**

"When interpreting a statute, [courts] first consider whether the language is plain." *State v. Finley*, --S.E.2d--, 2023 WL 6804936, \*5 (W. Va.). The plain text of § 61-10-34(D)(1) says



what it says: “Any person who is arrested for or convicted of an offense under this section *may be held civilly liable for any damages to personal or real property while trespassing*, in addition to the penalties imposed by this section.” (Emphasis added).

It is irrelevant that damages for loss of profits may, in limited circumstances, be recoverable in a properly stated common law trespass claim. Simply put, there is nothing in the text of § 61-10-34 that authorizes a cause of action based upon anything other than damages to personal or real property. The state legislature’s decision to provide a cause of action to parties experiencing a specifically defined category of damages warrants respect and deference from this Court. *See Finley*, 2023 WL 6804936, at \*6 (quoting *Brooke B. v. Ray C.*, 230 W. Va. 355 (2013)) (courts may not “arbitrarily read into a statute that which it does not say” or “add to statutes something the Legislature purposely omitted”).

Taking all the allegations in the complaint as true, MVP pleads no facts to suggest or permit a reasonable inference to be drawn that MVP suffered any damage to personal or real property as a result of the brief protest at issue in this case. *See Fass*, 177 W. Va. at 52. Its W. Va. Code § 61-10- 34 claim fails as a result.

#### **IV. MVP is not entitled to injunctive relief or punitive damages.**

Injunctive relief is a remedy; it is not an independent cause of action. *See, e.g., Cunningham Energy, LLC v. Vesta O & G Holdings, LLC*, 578 F. Supp. 3d 798, 819 (S.D. W. Va. 2022) (holding that “[r]equests for injunctive relief do not constitute independent causes of action; rather, the injunction is merely the remedy sought for the legal wrongs alleged in the substantive counts”). So too as to punitive damages. *See Durbin v. Nationwide Mutual Insurance Co.*, No. 5:18-CV-211, 2019 WL 1545671, \*1 n.1 (N.W. W. Va. Apr. 9, 2019) (citing

*Cook v. Heck's Inc.*, 176 W. Va. 368, 376, 342 S.E.2d 453, 461 n.3 (1986)) (“under West Virginia law, a separate cause of action for punitive damages does not exist.”).

As discussed above, MVP has failed to state a claim for relief in any of the substantive counts of its Complaint. Its requests for injunctive relief and punitive damages necessarily fail as well.

For the foregoing reasons, the Court has determined that Defendant’s motion to dismiss should be, and hereby is, granted, and

**IT IS THEREFORE ORDERED** that Plaintiff’s Complaint be, and hereby is, dismissed with prejudice.

ENTER this \_\_\_\_ day of October, 2024.

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Circuit Judge Robert Irons

ORDER PREPARED BY:

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