

Case Number: BC495593 **Hearing Date:** February 22, 2013 **Dept:** 58
JUDGE ROLF TREU
DEPARTMENT 58

Hearing Date: Friday, February 22, 2013
Calendar No: 11
Case Name: Sparks v. Associated Press
Case No.: BC495593
Motion: Special Motion to Strike
Moving Party: Defendant Associated Press
Responding Party: Plaintiff Phil Sparks
Notice: OK

Tentative Ruling: Special motion to strike is granted.

Background –

On 11/13/12, Plaintiff Phil Sparks, in propria persona, filed this action against Defendant Associated Press for defamation arising out of the publication of an article that reported on court proceedings concerning a restraining order obtained by Sheryl Crow and Harvey Weinstein. On 1/2/13, Defendant filed an answer. On 1/11/13, Plaintiff filed a “response” to the answer. On 1/29/13, Defendant filed this special motion to strike.

Special Motion to Strike –

“An anti SLAPP motion requires the court to engage in a two step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. If the court finds that such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim.” Brenton v. Metabolife International Inc. (2004) 116 Cal.App.4th 679, 684.

1. Protected Activity

“To prevail on an anti-SLAPP motion, the movant must first make ‘a threshold showing the challenged cause of action’ arises from an act in furtherance of the right of petition or free speech in connection with a public issue.” Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal.4th 180, 192. “The phrase ‘arising from’ means the defendant’s act underlying the plaintiff’s cause of action must itself have been an act in furtherance of the right of petition or free speech.” City of Cotati v. Cashman (2002) 29 Cal.4th 69, 67.

Plaintiff’s action arises from the publication of a news article by Defendant concerning a judicial proceeding. This constitutes free speech subject to protection under CCP § 425.16. See Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995) 37 Cal.App.4th 855, 864; see also Traditional Cat Ass’n, Inc. v. Gilbreath (2004) 118 Cal.App.4th 392, 397-98 (noting that the courts have repeatedly held that reports of judicial proceedings are an exercise of free speech).

2. Probability of Prevailing

Because Defendants has established that this action is subject to the protections of the anti-SLAPP statute, the burden shifts to Plaintiff to present admissible evidence that

supports a prima facie case in his favor, much like the burden on a motion for summary judgment or directed verdict. CCP § 425.16(b)(1); Taus v. Loftus (2007) 40 Cal.4th 683, 714.

a. Fair and True Report

Civil Code § 47(d)(1) provides an absolute privilege for a "fair and true report in, or a communication to, a public journal, of (A) a judicial, . . . proceeding, or (D) of anything said in the course thereof," See Sipple v. Foundation For Nat'l Progress (1999) 71 Cal.App.4th 226, 240. A publication concerning legal proceedings is privileged as long as the "substance, the gist, the sting" of the proceedings is described accurately as measured by their impact on the average reader. Colt v. Freedom Communications, Inc. (2003) 109 Cal.App.4th 1551, 1558.

Defendant submits that the article (see McCartney Decl. ¶¶ 2, 4, Ex. C) contained reports of statements made during the judicial proceeding: specifically, Plaintiff agreed to stay away from Ms. Crow and Mr. Weinstein (Segal Decl. Ex. D p. 42:17-21) ; and a Dr. David Glaser testified that Plaintiff was "imminently dangerous" (id. p. 9:26-10:2) and "unambiguously delusional" (id. p. 13:4-8).

To the extent Plaintiff takes issue with Defendant's failure to report facts that Plaintiff raised during the hearing (see Pl.'s Response filed 1/11/13 p. 12-13 (concerning a security expert who pretended to be Plaintiff's lawyer and challenges to Dr. Glaser's diagnosis)), Defendant is not required to present Plaintiff's side of his story or his key facts (Dorsey v. Nat'l Enquirer, Inc. (9th Cir. 1992) 973 F.2d 1431, 1436; Paterno v. Superior Court (2008) 163 Cal.App.4th 1342, 1352-53). Notably, the article stated that the hearing was over an hour long during which Plaintiff accused Ms. Crow and Mr. Weinstein of stealing \$7.5 million from him, and videotaping and following him without permission.

To the extent Plaintiff takes issue with Defendant's failure to investigate into the credibility of Dr. Glaser (see Complaint p. 7-9 (consisting of a printout from an internet website showing Dr. Glaser was sanctioned by the Medical Board of California); see also Pl.'s Response filed 1/11/13 p. 8), there is no such requirement (see Paterno, 163 Cal.App.4th at 1355).

To the average reader, the substance of judicial proceeding was the issuance of the restraining orders, which was accurately described by Defendant's article. Defendant establishes that it is entitled to the absolute privilege provided under Civil Code § 47(d)(1) and Plaintiff fails to submit any evidence to challenge the "fair and true" nature of the article.

b. Retraction

Notwithstanding the absolute privilege under Civil Code § 47(d), Defendant alternatively argues that Plaintiff cannot establish that he can recover any damages as a result of the article. Civil Code § 48a(1) provides that "a plaintiff shall recover no more than special damages unless a correction be demanded and be not published or broadcast" This statute has been applied to internet postings. See Anschutz Entertainment Group, Inc. v. Snepp (2009) 171 Cal.App.4th 598, 643.

Defendant submits that no retraction demand was made (McCartney Decl. ¶ 5; see also Pl.'s

Response filed 1/11/13 p. 14), and that Plaintiff has conceded that at the time the article was published, Plaintiff was a relatively unknown actor and homeless and financially broke (see Segal Decl. Ex. D p. 45:1-15; Pl.'s Response filed 1/11/13 p. 5, 18). Plaintiff fails to establish that he suffered any special damages. See Civil Code § 48a(4)(b).

c. Plaintiff's Filings

Notably, none of Plaintiff's filings (either the Complaint or the responses) were provided under penalty of perjury. Therefore, Plaintiff wholly failed to present admissible evidence in opposition to this motion. This forms an independent basis to grant the special motion to strike. Notwithstanding this, the Court has considered Plaintiff's Response filed on 1/11/13 (see Pl.'s Response filed on 2/4/12) to the extent that it raised arguments pertinent to this motion as discussed above. Plaintiff's Response filed on 1/11/13 otherwise raises inapposite arguments and authorities. However, the Court does not consider Plaintiff's reply, filed on 2/20/13 in response to Defendant's reply: this filing is not authorized

3. Ruling

Consistent with the above, Plaintiff fails to establish a probability of prevailing. Therefore, the special motion to strike is granted.