COURT OF APPEAL – SECOND DIST.
FILED
Jun 02, 2020
DANIEL P. POTTER, Clerk
Johanna Salazar Deputy Clerk

Filed 6/2/20

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CARMEN TAYLOR, Plaintiff and Respondent, v. BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Defendant and Appellant.	B300449 (Los Angeles County Super. Ct. No. 18STCV00955)

APPEAL from an order of the Superior Court of Los Angeles County. Mel Red Recana, Judge. Affirmed.

California State University Office of General Counsel and Maria A. Starn for Defendant and Appellant.

Law Office of Dean Royer and Dean Royer for Plaintiff and Respondent.

Following the termination of the employment relationship between plaintiff and respondent Carmen Taylor and defendant and appellant Board of Trustees of the California State University, plaintiff brought a lawsuit against defendant. In response to plaintiff's second amended complaint (SAC), defendant filed a motion to strike one cause of action set forth in the SAC, pursuant to Code of Civil Procedure section 425.16,[1] California's anti-SLAPP statute.[2] Although the motion was timely filed within 60 days after the filing of the SAC, the trial court denied the motion as untimely, reasoning that because it could have been filed in response to the first amended complaint (FAC), the 60-day period must be calculated from the filing and service of the FAC (§ 425.16, subd. (f) [60-day deadline to file motion after service of "complaint"].) Because the anti-SLAPP motion was not filed within 60 days of the filing and service of the FAC, it was untimely as to the SAC.

The trial court did not err. Defendant could have challenged the substance of the subject cause of action as pled in the FAC via an anti-SLAPP motion. Because defendant waited until more than 60 days after the filing of the FAC, the trial court properly denied defendant's special motion to strike as untimely.

---

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] SLAPP is an acronym for strategic lawsuit against public participation. (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 813, overruled in part on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5.)

FACTUAL AND PROCEDURAL BACKGROUND

Factual background

Plaintiff is the former vice-president of student affairs at California State University, Long Beach (CSULB). She held that position consistently from July 2015 until October 9, 2018.

Plaintiff's separation of employment from CSULB followed a tragic incident involving third party Jaime Williams (Williams), who was formerly employed by an auxiliary organization of CSULB. On September 28, 2018, Williams fatally shot and killed two people and shot and injured one other person in Compton, California. Just hours before the shooting, Williams visited the CSULB campus. According to the SAC, the reason Williams went to the campus was to stalk plaintiff "by making statements regarding his alleged relationship with [her]."

On October 2, 2018, Williams was charged with two counts of murder and one count of attempted murder. That same day, plaintiff was informed that CSULB was investigating the incident; plaintiff was placed on a one-month administrative leave.

On October 8, 2018, plaintiff's employment was terminated, effective October 9, 2018. According to the SAC, plaintiff was terminated because she allegedly referred Williams, with whom she was allegedly romantically involved, for jobs with CSULB or with organizations affiliated with the campus and pressured staff to hire him.

Procedural background

A. Complaint

On October 12, 2018, plaintiff filed her initial complaint against defendant, alleging "employment discrimination."

B. FAC

On December 7, 2018, plaintiff served defendant with her FAC. The FAC alleged claims for (1) employment discrimination, and (2) invasion of privacy based upon the following facts: On September 28, 2018, Williams went to the CSULB and stalked plaintiff. Later that day, he allegedly shot and killed three people in Compton.

In connection with the second cause of action, the FAC asserted that "[o]n or about September 20, 2018 and thereafter from time to time defendant came into possession of private employment information about plaintiff by reason of a so-called investigation it launched into a campus visit by Jaime Williams and by virtue of plaintiff's employment with the University." "The investigation became part of plaintiff's private personnel records and was confidential. A reasonable person would have an interest in maintaining the confidentiality of such information." "On or about October 1, 2018, defendant publicly disclosed the private information described above to persons having no need for such information or legitimate interest in knowing it."

The FAC did not specify what information defendant purportedly disclosed or to whom defendant disclosed the information.

C. Defendant's demurrer; trial court order

Defendant demurred to the entire FAC on the grounds that it failed to set forth sufficient facts to constitute a cause of action. In addition, defendant specifically demurred to the invasion of privacy cause of action.

After entertaining oral argument, on March 20, 2019, the trial court sustained defendant's demurrer to the first and second causes of action with leave to amend. Regarding the second

cause of action (invasion of privacy), the trial court reasoned: "The FAC alleges that '[o]n or about September 20, 2018 and thereafter from time to time defendant came into possession of private employment information about plaintiff by reason of a so-called investigation it launched into a campus visit by Jaime Williams and by virtue of plaintiff's employment with the University.' [Citation.] Plaintiff alleges that, '[o]n or about October 1, 2018, defendant publicly disclosed the private information described above to persons having no need for such information or legitimate interest in knowing it.' [Citation.] These allegations do not specify what the subject employment information relates to and to whom Defendant disclosed the information. Thus, the court finds the FAC's allegations fail to establish the element of the cause of action that the intrusion would be highly offensive to a reasonable person."

D. SAC

On April 19, 2019, plaintiff filed her SAC, alleging claims for discrimination on the basis of race, discrimination on the basis of sex, and false light. In support, she claimed that defendant's employees provided information to the press about her employment status and her alleged connection to or romantic relationship with Williams. She further asserted that beginning September 28, 2018, and continuing into October 2018, the press ran stories about Williams that featured pictures of plaintiff and statements from "various sources," including defendant's employees, averring that plaintiff had a relationship with Williams.

The SAC further alleged that defendant's spokesperson, Terri Carbaugh, stated to the press that she could not comment on why plaintiff was placed on leave and that defendant was

looking into the connection between plaintiff and Williams. In addition, plaintiff asserted that CSULB president, Jane Conoley, stated to the press that plaintiff separated from employment on October 8, 2018, and defendant's spokesperson Jeff Bliss declined to provide further information. According to the SAC, defendant's comments to the press "gave the impression" that plaintiff was terminated for her alleged relationship with Williams and that she associated with a criminal who committed murder.

E. Defendant's anti-SLAPP motion

On May 20, 2019, 31 days after service of the SAC, defendant filed its anti-SLAPP motion, seeking to strike the false light cause of action. Defendant argued that plaintiff's false light claim fell squarely within the scope of the anti-SLAPP statute because her claim was based upon defendant's alleged statements to the press and related to an issue of public concern.

F. Plaintiff's opposition to the anti-SLAPP motion

Plaintiff opposed defendant's anti-SLAPP motion on the grounds that, among other things, it was untimely. She argued that an anti-SLAPP statute may only be filed as to an amended complaint more than 60 days after service of an original complaint if the amended complaint asserts new claims not previously made. Here, defendant sought to strike the false light claim alleged in the SAC. Because that claim was alleged in the FAC, and all the SAC did was expand upon the general allegations of the FAC, defendant could have filed an anti-SLAPP motion in the FAC. Its failure to do so means that it did not timely file an anti-SLAPP motion. On that ground alone, the trial court could deny defendant's motion to strike the false light cause of action.

G. Trial court order denying anti-SLAPP motion

On July 2, 2019, the trial court denied defendant's anti-SLAPP motion on the grounds that it was untimely filed—more than 60 days after the FAC. The trial court reasoned that defendant could have challenged the FAC's invasion of privacy claim; therefore, the SAC did not reopen the time to file an anti-SLAPP motion. According to the trial court, the allegations of the FAC that defendant "publicly disclosed" plaintiff's employment information satisfied the "public forum" requirement of section 425.16. In addition, the trial court concluded that defendant's alleged public disclosure of plaintiff's employment information obtained in connection with its investigation of Williams involved issues of "public interest."

Furthermore, the trial court declined to exercise its discretion to hear defendant's motion, finding that defendant "brought this motion *over five months* after Plaintiff filed and served her FAC" and defendant failed "to establish good cause justifying the substantial delay in bringing this motion."

H. Appeal

Defendant's timely appeal ensued.

DISCUSSION

I. *Standard of review*

"The trial court's determination that [defendant's] motion was untimely is a question of law we review de novo. [Citation.]" (*Starview Property, LLC v. Lee* (2019) 41 Cal.App.5th 203, 208 (*Starview*).)

II. *Defendant's anti-SLAPP motion was untimely*

A. Relevant law

"A SLAPP is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those

who have done so." (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21.) "In 1992, out of concern over a 'disturbing increase' in these types of lawsuits, the Legislature enacted section 425.16, the anti-SLAPP statute." (*Ibid.*; see § 425.16, subd. (a).) Section 425.16, subdivision (b)(1), provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

The anti-SLAPP statute "posits . . . a two-step process for determining whether an action is a SLAPP." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) First, the defendant bringing the special motion to strike must make a prima facie showing that the anti-SLAPP statute applies to the claims that are the subject of that motion. (*Wilcox v. Superior Court*, *supra*, 27 Cal.App.4th at p. 819.) To determine whether the claims alleged fall within the scope of the anti-SLAPP statute, we turn to section 425.16, subdivision (e), which provides: "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: [¶] . . . [¶] (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

Only after a moving defendant has met its burden, the motion will be granted (and the claims stricken) unless the court determines that the plaintiff has established a probability of prevailing on the claim. (*DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 567–568.)

Section 425.16, subdivision (f), further provides that a special motion to strike "may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper." In *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2018) 4 Cal.5th 637, 645, "the California Supreme Court interpreted section 425.16, subdivision (f), to 'permit an anti-SLAPP motion against an amended complaint if it could not have been brought earlier, but to prohibit belated motions that could have been brought earlier (subject to the trial court's discretion to permit a late motion).' [Citation.] An anti-SLAPP motion directed at an amended complaint 'could not have been brought earlier' if '"the amended complaint pleads new causes of action that could not have been the target of a prior anti-SLAPP motion, or adds new allegations that make previously pleaded causes of action subject to an anti-SLAPP motion."' [Citations.]" (*Starview*, *supra*, 41 Cal.App.5th at pp. 208–209.)

B. Analysis

Applying these legal principles, we conclude that defendant's motion to strike the false light cause of action pled in the SAC was not timely. While the anti-SLAPP motion was brought within 60 days of when the SAC was filed, it was not brought within 60 days of when the FAC was filed. And defendant could have brought an anti-SLAPP motion targeting the second cause of action (invasion of privacy) in the FAC.

The FAC asserted that defendant possessed plaintiff's private employment information, including information pertaining to her relationship with Williams, and then publicly disclosed it. While these allegations are minimal at best, they were sufficient to put defendant on notice that its exercise of free speech on a public issue was being litigated. In other words, there was enough to allow defendant to make a nonfrivolous argument that the allegations in this cause of action implicated the first prong of the analysis of an anti-SLAPP motion. The burden would have then shifted to plaintiff to establish a probability of prevailing. At that time, the parties could have debated what evidence plaintiff had that her private information had been wrongfully disclosed to the public.

Urging us to reverse, defendant argues that the SAC alleged a new cause of action (false light) that was not pled in the FAC; thus, it could not have targeted that claim in response to the FAC.

We disagree. Although retitled "false light," plaintiff's theory of liability is the same in the SAC as it was in the FAC. False light is a species of invasion of privacy. (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 865.)

Defendant further argues that it needed the additional facts pled in the SAC in order to make an anti-SLAPP motion. According to defendant, plaintiff's bare bones allegations in the FAC made it "difficult, if not impossible," for defendant to have met its burden of demonstrating that plaintiff's invasion of privacy cause of action fell within the scope of the anti-SLAPP statute. (*Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 628.)

We are not convinced. As set forth above, the minimal allegations pled in the FAC were sufficient to allow defendant to file a motion to strike the second cause of action. The identification of the speech at issue and whether it was wrongfully made to a public forum, such as a newspaper, were issues for the second prong of the anti-SLAPP analysis.

Starview, *supra*, 41 Cal.App.5th 203 does not compel a different result. In that case, the plaintiff filed a complaint against the defendants alleging three contract-based claims: breach of contract, specific performance, and injunctive relief. All three claims were based upon the defendants' failure to sign a requisite covenant in breach of a prior easement agreement. The defendants did not file an anti-SLAPP motion to strike any of the contract-based causes of action. (*Id*. at p. 207.)

Over a year later, the plaintiff filed a first amended complaint, adding some factual detail, but alleging the same basic facts. The amended pleading realleged causes of action for breach of contract and injunctive relief, but added claims for breach of the implied covenant of good faith, negligent and intentional interference with easement, and private nuisance. (*Starview*, *supra*, 41 Cal.App.5th at p. 207.)

In response, the defendants filed an anti-SLAPP motion, seeking to strike only the newly added causes of action. The plaintiff opposed the motion on the grounds that it was untimely because the claimed protected activity was alleged in the original complaint and the motion was filed more than 60 days after the original complaint was served. The trial court denied the motion as untimely, and the Court of Appeal reversed. (*Starview*, *supra*, 41 Cal.App.5th at p. 208.)

The Court of Appeal reasoned that the defendants could not have brought a motion to strike the newly added causes of action because those claims did not exist in the original pleading. While the same factual allegations may have been pled in the original pleading, "the anti-SLAPP statute is directed at striking *causes of action*, not merely factual allegations." (*Starview*, *supra*, 41 Cal.App.5th at p. 209.)

That is not what occurred here. For the reasons set forth above, in this case, defendant could have sought to strike the invasion of privacy cause of action in the FAC. Its failure to do so precludes it from being able to attempt to strike a nearly identical cause of action in the SAC.

DISPOSITION

The order denying defendant's anti-SLAPP motion is affirmed. Plaintiff is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT