Filed 6/19/15 Jeldi v. L.A. Taxi Cooperative CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SAM JELDI, Plaintiff and Respondent, v. L.A. TAXI COOPERATIVE, INC. et al., Defendants and Appellants.	B257407 (Los Angeles County Super. Ct. No. YC069411)

APPEAL from an order of the Superior Court of Los Angeles County, Ramona G. See, Judge. Affirmed.

Marron Lawyers, Paul Marron and Steven C. Rice for Defendants and Appellants.

Law Offices of Morteza Aghavali, Morteza Aghavali, Law Offices of Gary S. Bennett and Gary S. Bennett for Plaintiff and Respondent.

Defendants L.A. Taxi Cooperative, Inc., dba Yellow Cab Co. (LA Taxi), William J. Rouse, Martiros Manukyan, and Kia Tehrany appeal the trial court's denial of their special motion to strike plaintiff Sam Jeldi's complaint for reinstatement of his shares and board membership, contract damages, and tort damages. The trial court found that defendants had failed to establish that the complaint arises from their protected speech activities within the meaning of Code of Civil Procedure section 425.16, and denied the motion.[1] Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

LA Taxi, a cooperative corporation (Corp. Code, § 12200 et seq.), is "the largest driver-controlled taxicab fleet in California." Its 759 shares are owned by its 412 members. Each share entitles the owner to operate one taxi under LA Taxi's trade dress and color scheme.

The individual defendants are LA Taxi's president and board chairman Manukyan, board member Tehrany, and acting general manager Rouse.

As a board member, Jeldi opposed proposals backed by Rouse to have LA Taxi accept a loan and acquire 100 additional taxis for its fleet. In retaliation, Rouse allegedly directed a vicious campaign, with full cooperation from Tehrany and Manukyan, to remove Jeldi from all of his positions. Allegedly, they manipulated, misrepresented, deceived, tricked, and wrongfully influenced a majority of the directors to cancel Jeldi's shares and declare a vacancy of his seat on the board. Jeldi contends his removal was flawed because his seat on the board was not tied to the ownership of shares, as indicated in the bylaws: "The Board shall consist of 13 Directors. Each director shall be a member in Good Standing or an employee, officer or director of a Member in Good Standing of the Cooperative." He maintains that because he remains a manager of Taxirami, Inc., which is a member of LA Taxi, he may retain his seat on the board notwithstanding the loss of his shares.

---

[1] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

The complaint alleged the following causes of action: (1) breach of contract based on cancellation of Jeldi's shares in violation of the bylaws (against LA Taxi); (2) tortious breach of contract (against LA Taxi); (3) breach of fiduciary duties (against all defendants); (4) aiding and abetting the breach of fiduciary duty (against the individual defendants); (5) breach of the duty of candor, loyalty, and good faith (against all defendants); (6) tampering with the board's voting process by making misrepresentations that misled the board to cancel Jeldi's shares (against the individual defendants); (7) setting aside the cancellation of Jeldi's shares (against LA Taxi); (8) fraud and intentional misrepresentation (against all defendants); (9) conspiracy to defraud and misappropriate Jeldi's shares (against all defendants); (10) intentional interference with prospective economic advantage (against all defendants); (11) unfair business practices in violation of Business and Professions Code section 17200 (against LA Taxi and Rouse); and (12) breach of the implied covenant of good faith and fair dealing (against LA Taxi). The complaint sought both reinstatement and damages, including compensation for loss of income derived from operating cabs under the LA Taxi trade dress, and loss of Jeldi's position as director of operations for the now defunct LA Transportation Group.

In their special motion to strike, defendants argued that Jeldi's claims are meritless and subject to dismissal under section 425.16, because they arise from protected speech and petitioning[2] activities (§ 425.16, subd. (b)(1)). Defendants contended the complaint's allegations are based on their "oral statements, e-mails, presentations to the Board of Directors, and votes," which constitute acts in furtherance of their constitutional right of free speech.

The motion was based on subdivisions (e)(3) and (4) of section 425.16: "(e) 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:

---

[2] Defendants contended that some of the allegations were based on declarations submitted in a prior action (*Jeldi v. Administrative Service Co-Op* (Super. Ct. L.A. County, 2012, No. BC496606)), and thus constituted protected statements made during a judicial proceeding. (§ 425.16, subds.(e)(1), (2).) That claim is not mentioned in the opening brief and therefore is not before us on appeal.

. . . (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."

In order to show the requisite connection between protected speech activities and an issue of public interest (§ 425.16, subd. (e)(3), (4)), defendants argued that Jeldi disseminated letters, e-mails, and fliers in opposition to the proposed loan and acquisition of 100 taxis. These e-mails allegedly were sent not only to LA Taxi members and board members, but also to other taxi companies and taxi drivers throughout Los Angeles. Defendants contended that "[e]ven if the issue of L.A. Taxi membership and leadership might not ordinarily qualify as having 'public significance,' [Jeldi] made these corporate debates and Board decisions significant. He published a flyer to 'all owner and lease drivers of taxi in Los Angeles,' requesting their support of an emergency shareholder meeting and to support him, to avoid Board action that 'may bankrupt a lot of [their] investors and shareholders.' . . . In response, Board members received calls from concerned taxi drivers, wanting to know what [Jeldi's] allegations meant. . . . [Jeldi] wrote 'an open letter' to members of other taxi companies, framing his dispute with the Board as 'a window of discontent that is not beneficial to the taxi industry.' . . . [Jeldi's] allegations had implications for contracting with hotels and other businesses, and competing with other taxi companies for exclusivity."

Defendants also argued the matter was of public interest because "Rouse is well known within the taxi industry nationally, and even internationally." Rouse is "the current president of the Taxicab, Limousines & Paratransit Association, with more than 1,100 taxicab company members globally." Jeldi's "baseless allegations that Mr. Rouse engaged in self-interested financial transactions or other improper acts . . . would be significant to not only Los Angeles-area taxi drivers, but to the other organizations he leads. These were ongoing controversies affecting an entire class of people."

Jeldi denied that the controversy involves a matter of public interest. He asserted that LA Taxi is "a private for profit entity"; its board meetings are not open to the public;

it is not a governmental entity and has no quasi judicial powers; the "misrepresentations only concerned a small group of people, namely the board of directors and the few shareholders of L.A. Taxi"; and "the statements had no bearing upon the taxi industry as a whole or any public interest in the taxi industry." Jeldi argued the mere act of voting is not a protected activity, citing *Donovan v. Dan Murphy Foundation* (2012) 204 Cal.App.4th 1500, 1506–1507 (*Donovan*). He urged the denial of the special motion to strike the complaint in this purely "private matter."

After a hearing, the trial court denied the motion to strike, finding that defendants had not met their initial burden of showing the claims had arisen from protected speech activities in connection with a public issue or a matter of public interest. The court found that simply referring to "'statements, e-mails, presentations, and voting' without outlining the specific communications that would fall under" section 425.16 was insufficient to satisfy the requirements of the statute. The court also found that defendants had failed to show the protected activities involved a matter of public interest: "LA Taxi is a private corporation. Its board meetings are not public and are limited to LA Taxi members. Defendants' alleged communications only concerned the campaign to discredit [Jeldi,] remove him from the board, and to cancel his shares. It had no bearing on the taxi industry as a whole and did not concern a matter of public interest in the taxi industry. The degree of closeness between the alleged challenged statements and the public interest is lacking. The decision to oust [Jeldi] from the board was not a decision that would ultimately concern the taxi industry as a whole or be of any great interest to the public at large. The focus of the conduct to which [Jeldi] complains is a private controversy, not a matter of public interest. See *Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736. The *Hailstone* court held that an accusation made to union officials that plaintiff, a senior business agent of Teamsters Local 948, was 'double-dipping' into union funds constituted a matter of public interest. The court found that the alleged act of misappropriation was of interest to a definable member of the public—namely more than 10,000 members of the local union. By contrast, in the instant action, defendants' alleged communications only concerned the campaign to discredit [Jeldi,] remove him from the

board, and to cancel his shares in the private corporation. It had no bearing on the industry as a whole or any public interest of the taxi industry."

Because the court denied the motion under the first step of the analysis, it did not reach the second, in which the plaintiff must demonstrate a probability of prevailing on the merits. This timely appeal followed. (§§ 425.16, subd. (i), 904.1.)

DISCUSSION

Section 425.16 was enacted to provide an expeditious procedure for resolving "nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue. [Citation.]" (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 235.) The motion involves a two-part analysis. First, the trial court must determine whether the defendant has shown that the cause of action arises from a protected activity. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.) If that burden is met, the trial court must then determine whether the plaintiff has demonstrated a probability of prevailing on the merits of the claim. (*Ibid.*) Only if the court concludes that both requirements have been met—the claim arises from a protected activity and lacks even minimal merit—will the motion to strike be granted. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) We review the trial court's ruling de novo. (*Hailstone v. Martinez*, *supra*, 169 Cal.App.4th at p. 735.)

Defendants contend the trial court erred in concluding the targeted speech activities did not satisfy the public interest component of subdivision (e)(3) and (4) of section 425.16. We disagree.

Both parts (3) and (4) of subdivision (e) require that the targeted speech activities involve a matter of public interest. That requirement has not been established in this case.[3]

---

[3] Subdivision (e)(3) is inapplicable for a separate reason: a private corporation's board meetings are not a venue for public discussion. Subdivision (e)(3) applies to statements made "in a place open to the public or a public forum in connection with an issue of public interest." (§ 425.16, subd. (e)(3).) A public forum is a place open to the

The statute itself "does not provide a definition for 'an issue of public interest,' and it is doubtful an all-encompassing definition could be provided. However, the statute requires that there be some attributes of the issue which make it one of public, rather than merely private, interest. A few guiding principles may be derived from decisional authorities. First, 'public interest' does not equate with mere curiosity. [Citations.] Second, a matter of public interest should be something of concern to a substantial number of people. [Citation.] Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. [Citations.] Third, there should be some degree of closeness between the challenged statements and the asserted public interest [citation]; the assertion of a broad and amorphous public interest is not sufficient [citation]. Fourth, the focus of the speaker's conduct should be the public interest rather than a mere effort 'to gather ammunition for another round of [private] controversy . . . .' [Citation.]" (*Weinberg*, *supra*, 110 Cal.App.4th at pp. 1132–1133.)

Applying these factors here, the statements concerning the proposed loan, the acquisition of 100 taxis, and the cancellation of Jeldi's shares do not meet the public interest requirement. Even if we assume the statements are of theoretical interest to a segment of the public, the "'fact that "a broad and amorphous public interest" can be connected to a specific dispute is not sufficient to meet the statutory requirements' of the anti-SLAPP statute. [Citation.] By focusing on society's general interest in the subject matter of the dispute instead of the specific speech or conduct upon which the complaint is based, defendants resort to the oft-rejected, so-called 'synecdoche theory of public issue in the anti-SLAPP statute,' where '[t]he part [is considered] synonymous with the greater whole.' [Citation.] In evaluating the first prong of the anti-SLAPP statute, we must focus on 'the specific nature of the speech rather than the generalities that might be

---

use of the general public '"for purposes of assembly, communicating thoughts between citizens, and discussing public questions."' (*International Soc'y for Krishna Consciousness v. Lee* (1992) 505 U.S. 672, 679, quoting *Hague v. Committee for Industrial Organization* (1939) 307 U.S. 496, 515.)

abstracted from it. [Citation.]' [Citation.]" (*World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561, 1570.)

This case is similar to *Donovan*, *supra*, 204 Cal.App.4th 1500, in which the plaintiff, Donovan, like Jeldi, alleged he was wrongfully removed from the board of directors of a nonprofit charitable foundation. In concluding the board's majority vote to remove Donovan was not a protected activity, we noted that it had not been shown that the public was interested in the dispute: "Even were we to assume that any act of voting is an exercise of the constitutional right of free speech, respondents have not shown that the vote to remove Donovan was 'in connection with a public issue or an issue of public interest.' Respondents presented no evidence of widespread public interest in the financial oversight or governance of the Foundation. They submitted no news articles indicating that the public was interested in these issues, or even in the dispute among directors of the Foundation. Rather, respondents rely solely on the fact that the Foundation is one of the largest charitable organizations in Southern California, subject to public oversight by the Attorney General, and that it donates a substantial amount of money every year to persons and entities that affect millions of Southern Californians. None of these facts, standing alone or taken together, would transform a private disagreement among directors of the Foundation into a public issue or an issue of public interest. California courts have found that private disputes between a small number of employees and a large, well-known employer do not involve a public issue or issue of public interest. (See, e.g., *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 919, 926 (*Rivero*) [employment dispute between local union members and the University of California, Berkeley, did not involve a public issue, although the University employed at least 17,000 public employees].) Nor does the fact that the Foundation's grants may affect large numbers of people transform every dispute among its board members into a matter of public interest. Were the law otherwise, every act of the governing body of a large organization would constitute a matter of public interest. Thus, we conclude that the vote to remove

Donovan was not in connection with a public issue or a matter of public interest." (*Donovan, supra,* 204 Cal.App.4th at pp. 1508–1509, fn. omitted.)

Defendants argue that where, as here, the contested acts include statements and expressive conduct that preceded the board's vote to remove a director, the claim arises from protected speech activity. The case they cite, *Schwarzburd v. Kensington Police Protection & Community Services Dist. Bd.* (2014) 225 Cal.App.4th 1345, 1354–1355, involved a public board and an official proceeding authorized by law (§ 425.16, subd. (e)(2)), rather than a meeting of a private entity's board of directors. We conclude *Schwarzburd* is distinguishable and that *Donovan's* analysis, which involves facts more analogous to the present dispute, supports the denial of defendants' motion.

Defendants argue that Rouse is a well-known figure in the taxi industry, and there is a public interest in his activities. Even assuming that Rouse is well-known in the taxi industry, that does not establish the public was interested in the controversy involved in this case. (See *Albanese v. Menounos* (2013) 218 Cal.App.4th 923, 936–937.)

In light of our determination that defendants have not demonstrated that the protected activities involved a matter of public interest (§ 425.16, subd. (e)(3), (4)), the appeal must be denied.

DISPOSITION

The order is affirmed. Jeldi is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.