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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MICHAEL GAMBINO, et al., Plaintiffs and Appellants, v. KEVIN McGUSHION, Defendant and Respondent.	2d Civil No. B238723 (Super. Ct. No. 56-2011-00391657-CU-BC-SIM) (Ventura County)

Michael Gambino and Denise Gambino appeal from a dismissal entered in favor of defendant Kevin McGushion after the trial court struck appellants' first amended complaint as a SLAPP suit (strategic lawsuit against public participation). (Code Civ. Proc., §425.16.)[1] We affirm and conclude that the action arises from a protected speech activity in connection with an issue of public interest. (§ 425.16, subd. (c)(3); *Ruiz v. Harbor View Community Assn*. (2005) 134 Cal.App.4th 1456, 1468.)

Facts and Procedural History

Appellants and McGushion are neighbors and members of the Westwood Ranch Homeowners' Association (HOA). Starting in 2005, McGushion complained that appellants were parking commercial vehicles in violation of HOA

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

rules and that appellants' trees and shrubs obstructed his view. McGushion complained about appellant's conduct at HOA board meetings that were open to all association members. After the HOA Board of Directors determined that appellants were violating HOA rules and levied fines, appellants sued for damages.

The first amended complaint alleged that the HOA and McGushion conspired to enforce parking and landscaping rules in a discriminatory manner. Appellants sought damages for intentional infliction of emotion distress, invasion of privacy, and interference with prospective economic advantage.

McGushion filed a motion to dismiss on the ground that his complaints to the HOA was a protected speech activity under the anti-SLAPP statute. (§ 425.16.) Appellants argued that the lawsuit arose from a private dispute between two homeowners.

The trial court found that the action arises from McGushion's exercise of free speech/petition rights in connection with an issue of public interest. "The lawsuit targets not only the HOA, but the petitioning homeowner. This fact also is a crucial distinguishing factor . . . . All association members have an interest in the handling of rule violation complaints brought by one neighbor against another. Further, the nature of the requested enforcement, protecting viewshed and eliminating an allegedly improperly parked vehicle, are issues potentially affecting the quality of life of the entire community. The First Amended Complaint . . . alleges 'confiscatory fines' and biased and selective enforcement of association rules against [appellants], all in the context of an alleged conspiracy between the Board and defendant McGushion. There can be no doubt that such allegations satisfy the public interest standard set by *Ruiz* [*v. Harbor View Community Ass'n., supra*, 134 Cal.App.4th 1456]."

The Anti-SLAPP Statute

In analyzing a section 425.16 motion, the trial court engages in a two step process. (*Silk v. Feldman* (2012) 208 Cal.App.4th 547, 553.) First, the court decides whether defendant has made a threshold showing that the challenged action arises from defendant's exercise of his rights of petition or free speech. (*Ibid.*) If the

court finds that defendant has made such a showing, it then determines whether plaintiff has demonstrated a probability of prevailing on the action. (*Ibid.*) "These determinations are legal questions, which we review do novo. [Citation]." (*Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5.)

Issue of Public Interest

Appellants limit their appeal to the first prong of the anti-SLAPP statute, i.e., whether McGushion's complaints to the HOA is a protected speech activity. Section 425.16, subdivisions (e)(3) and (e)(4) provide that an act in furtherance of a person's right of free speech includes "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 . . . 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."

Appellants contend that neighbor complaints about parking and viewshed problems is a private, mundane matter. We recognize that a homeowners association functions as a quasi-governmental entity, paralleling the powers and duties of a municipal government. (*Silk v. Feldman, supra,* 208 Cal.App.4th at p. 553.) Homeowner complaints about the fair enforcement of HOA rules can and do involve an issue of public interest.

Damon

In *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 475 (*Damon*), the former manager of a homeowners association sued for defamation after the homeowners association circulated a newsletter with letters critical of the manager. The HOA board of directors questioned the manager's competency and did not renew his contract. After the manager sued board and association members for defamation, the trial court dismissed the action under the anti-SLAPP statute. The Court of Appeal held that defendants' statements concerned an "issue of public interest" which is broadly construed under the anti-SLAPP statute "to include not only

governmental matters, but also private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity. [Citations.]" (*Id*., at p. 479.)

Like *Damon,* McGushion's complaints and statements address HOA self-governance issues affecting all HOA members. Appellants, however, argue that HOA members are not interested in whether McGushion's view is obstructed or he has parking issues. By law, McGushion's complaints had to be reviewed by the HOA board of directors in a closed session. (Civ. Code, §1363.05, subd. (b).)

Appellants contend there can be no "issue of public interest" unless the communication is made in a public forum, citing anti-SLAPP cases in which the speech activity occurred at an open meeting. (See *Cabrera v. Alam* (2011) 197 Cal.App.4th 1077, 1087 [open HOA board meeting]; *Damon, supra,* 85 Cal.App.4th at p. 474 [same].) But open meetings are not the litmus test where the communication concerns an issue of public interest and is made in the context of an ongoing controversy.

Ruiz

In *Ruiz v. Harbor View Community Assn., supra,* 134 Cal.App.4th 1456 (*Ruiz*), a homeowner (Ruiz) sued a homeowners association after it denied his plans to rebuild a house. The attorney for the homeowners association sent two letters to Ruiz (also an attorney), chastising him for harassing board members and engaging in conduct unbecoming an attorney. Ruiz sued for libel. Although the letters were private, the Court of Appeal held that the communication was a protected speech activity made in the context of an ongoing controversy. "Those disputes were of interest to a definable portion of the public, namely, the members of HVCA, because they would be affected by the outcome of those disputes and would have a stake in HVCA governance." (*Id*., at p. 1468.) The *Ruiz* court concluded: "The focus and primary purpose of the letters concerned HVCA governance and enforcement of its architectural guidelines, issues of concern to the many HVCA members. (*Id*., at p. 1470.)

McGushion's complaints date back to 2005 and are part of an ongoing controversy about HOA landscaping, viewshed, and parking rules. Treating the homeowners association in the same manner as a municipal government reasonably leads to the conclusion that McGushion's complaints are a protected speech activity as defined by section 425.16, subdivisions (e)(3) and (e)(4).

Turner

Appellants cite *Turner v. Vista Pointe Ridge Homeowners Assn.* (2009) 180 Cal.App.4th 676 for the principle that "[n]ot every mundane communication between a homeowners association and a homeowner gives rise to a freedom of speech issue." (*Id*., at p. 679.) There the Fourth District Court of Appeal (the same court that authored *Ruiz)* held that the homeowners association's denial of a homeowner's application to make improvements was not a protected speech activity. The action in *Turner* did not involve neighbor complaints to a homeowners association or allegations of discriminatory enforcement of association rules. (*Id*., at p. 686.) The *Turner* court distinguished *Ruiz* on the ground that the dispute in *Ruiz* "involved homeowners association governance and 'whether the architectural guidelines had been evenhandedly enforced, a matter of concern to [homeowners association] members.' [Citation.]" (*Id*., at pp. 686-687.)

HOA Self-Governance

Appellants' action strikes at the heart of HOA self-governance and the even-handed enforcement of HOA rules. The first amended complaint alleges "a systematic, long-standing, and continuous pattern of vindictive harassment of Plaintiffs on a variety of issues by the Association, aided and abetted by McGushion. . . ." In an October 20, 2006 letter to the HOA board of directors, appellants complained that the McGushions "have chosen to take it public and involve the entire neighborhood and HOA bd. of directors." The first amended complaint alleges that the HOA conspired with McGushion by "manufacturing complaints and violations, sending improper and unjustified notices of violation and maintaining unauthorized, unjust and/or unreasonable fines, penalties and costs."

The controversy is ongoing and involves both the HOA and City of Simi Valley. It requires no leap of logic to conclude that the McGushion's complaints were made in connection with an issue of public interest that affects all HOA members. The trial court did not err in concluding that the action is meritless and was filed too chill a protected speech activity within the meaning of section 425.16, subdivision (c)(3).

The judgment is affirmed. McGushion is awarded costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Vincent O'Neill, Judge

Superior Court County of Ventura

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Mark F. Miller, David V. Hadek; Manfredi, Levine, Eccles, Miller & Lason, for Appellants.

Lowenthal, Hillshafer & Carter, Kevin P. Carter, for Respondent.